

**PLUMBERS & STEAMFITTERS LOCAL 377**

**RETIREMENT PLAN**

AMENDED AND RESTATED

JANUARY 1, 2009

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PLUMBERS & STEAMFITTERS LOCAL 377  
RETIREMENT PLAN

(Amended & Restated)

LOCAL 377, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (hereinafter called the "Union"), hereby adopts and publishes on this the 27<sup>th</sup> day of April, 2009, this Amended and Restated Retirement Plan for the exclusive benefit of such of its Members who may become Participants and their Beneficiaries as set forth in this document, pursuant to Section 401(a) of the Internal Revenue Code, as follows:

WITNESSETH:

WHEREAS, the Trustees previously established a money purchase pension plan effective October 1, 1980; and

WHEREAS, said Plan was restated in its entirety effective October 1, 1989, and subsequently restated in its entirety effective January 1, 1997; and

WHEREAS, said Plan provides that the Trustees reserve the right at any time and from time to time to amend in whole or in part any and all provisions of said Plan; and

WHEREAS, the Trustees desires to approve and adopt the Plumbers & Steamfitters Local 377 Retirement Plan, as hereinafter restated, which amends and restates the Plumbers & Steamfitters Local 377 Retirement Plan and Trust Agreement in its entirety; and

NOW, THEREFORE, in consideration of the above premises and the mutual covenants herein contained, Trustees amends said Plan as of the dates hereof and causes the terms and provisions of the original Plan and amendments thereto to be modified and amended as set forth herein:

ARTICLE I

PURPOSE

The Plan was established to provide retirement benefits for Employees who are represented for the purposes of collective bargaining by the Union. It is necessary that a Collective Bargaining Agreement be entered into between the Union and Contributing Employers which provides for contributions to the Trust Fund. The participation by the Employees of a Contributing Employer becomes effective upon the group being accepted for participation by the Trustees. Employers will make contributions to the Trust Fund to be received, held and disbursed pursuant to the terms of a Trust Agreement dated the 27<sup>th</sup> day of April, 2009, hereinafter for brevity referred to as the "Trust Agreement". It is intended that this Plan qualify as a retirement plan for purposes of Section 401(a) of the Code. The Trust Fund will be devoted to the exclusive benefit of the Employees and their beneficiaries and in no event will any part of the trust income revert to the Union or to any Employer or be used for or devoted to any other purpose.

[End of Page]

ARTICLE II

NAME AND EFFECTIVE DATE

2.1 Name of Plan. The name of this Plan shall be the Plumbers & Steamfitters Local 377 Retirement Plan.

2.2 Contributing Date. The contributing date shall be as of the first day of each calendar month.

2.3 Effective Date. The original Effective Date of this Plan is October 1, 1980.

2.4 Restatement Effective Dates. Unless otherwise specified herein, the Plan is amended and restated effective January 1, 2009, except the following effective dates shall apply to the provisions specified below:

**Distributions made on and after March 28, 2005:**

Sections 8.10, 8.11      General Consent Rules and Involuntary Cashout/Automatic Rollover

Section 15.5(b)(vii)      Dollar threshold for alternate payee consent

**Plan Years beginning after December 31, 2001 (EGTRRA):**

Section 3.9(b)      Increase in annual compensation taken into account under the Plan to \$200,000

Section 7.3(a)      Limitations on Annual Additions

Section 10.2      Definitions of Eligible Rollover Distribution and Eligible Retirement Plan

Section 10.3      Expansion of types of rollovers a plan may accept

[End of Page]

### ARTICLE III

#### DEFINITIONS

When used herein, the following words and phrases shall have the following meanings, unless the context clearly indicates otherwise.

3.1 "Accrued Benefit" shall mean the sum, as of the last Valuation Date, of balances of all accounts maintained for a Participant.

3.2 "Age" shall mean attained age.

3.3 "Anniversary Date" shall mean the last day of the Plan Year.

3.4 "Annual Addition Suspense Account" shall mean the account maintained in the Plan to record reductions in the annual addition as required by Section 7.4 hereof.

3.5 "Annuity Starting Date" shall mean the first day of the first period for which an amount is paid as an annuity or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the Participant to such benefit.

3.6 "Beneficiary" shall mean, subject to the distribution provisions of Article VIII, the person or persons selected in writing by the Participant to receive his benefits under the Plan in the event of the his death. Wherever the rights of a Participant are stated or limited herein, his Beneficiary shall be deemed bound thereby. If any Participant shall fail to designate a Beneficiary, or if there is no designated Beneficiary surviving at the Participant's death, the Administrator shall be empowered to designate a Beneficiary or Beneficiaries on his behalf, but only from among the following, in the order named: (1) spouse, (2) children, in equal shares, (3) parents, in equal shares or survivor, (4) brothers and sisters, per stirpes, and (5) estate of the Participant. In the event any of the above shall be under the age of majority, then the proceeds shall be paid in accordance with the provisions of Section 8.24.

3.7 "Code" shall mean the Internal Revenue Code of 1986, as amended.

3.8 "Collective Bargaining Agreement" shall mean the written labor contract or agreement by and between a Contributing Employer and the Union which provides for contributions to this Retirement Plan in a manner acceptable to the Trustees.

3.9 "Compensation" shall mean a Participant's Section 415 Compensation for the Plan Year for which the contribution is made.

(a) Compensation shall not include deemed Section 125 compensation in Section 125 for purposes of the definition of Compensation.

(b) In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual Compensation of each Participant taken into account in determining allocations for any Plan Year 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. If a determination period consists of fewer than 12

months, the 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.

(c) If compensation for any prior determination period is taken into account in determining an Employee's allocations for the current Plan Year, the compensation for the prior determination period is subject to the annual compensation limit in effect under Section 401(a)(17) for that prior determination period.

(d) In the case of an Employee who becomes eligible to participate in the Plan on a date other than the first day of the Plan Year, Compensation with respect to such Year shall be determined from the date of participation.

3.10 "Contributing Employer" shall mean "Employer" as defined in Section 3.15 hereinbelow.

3.11 "Disability" shall mean, for all purposes under this Plan, a condition under which a Participant is determined to be totally and permanently disabled by the Social Security Administration. The payment of supplemental security income (SSI) is not deemed to be a determination by Social Security that a Participant has met its definition of disability.

3.12 "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

3.13 "Early Retirement Date" shall mean the first day of any month before a Participant's Normal Retirement Date which the Participant selects for the start of his retirement benefit, provided he ceases to be an Employee and has attained age fifty-five (55).

3.14 "Employee" shall mean:

(a) any person who is performing work under the Collective Bargaining Agreement between a Contributing Employer and the Union and for whom the Employer is obligated to make contributions to the fund under the terms of the Collective Bargaining Agreement; or

(b) any full-time Employee of the Union.

(c) The Employer may determine who is a full-time employee on a reasonable and uniform basis, provided, however, all Employees who meet the participating requirements set forth in Article V must be treated as full-time Employees.

(d) The term "Employee" shall not include any self-employed person, partner, or sole proprietor of an unincorporated business which is a Contributing Employer but that the interest be direct or indirect.

3.15 "Employer" or "Contributing Employer" shall mean any person, company, business organization, pension fund, or welfare fund which is accepted by the Trustees and becomes a party to the Trust Agreement and which has agreed in the Collective Bargaining Agreement to make contributions to the Retirement Plan either by virtue of having signed or by virtue of agreeing to be bound to the terms of the Collective Bargaining Agreement. In addition, if Employees of the Union are eligible to participate in the Plan, the Union may be considered a Contributing Employer.

3.16 "Employment Commencement Date" shall mean the date on which an Employee first performs an Hour of Service for the Employer. In the case of a re-hired Employee, "Employment Commencement Date" shall mean the date on which the Employee first performs an Hour of Service after being re-hired.

3.17 "Employer Contribution" shall mean a contribution made by the Employer pursuant to Section 6.1(a).

3.18 "Employer Contribution Account" shall mean the account maintained for a Participant to record his share of Employer Contributions and forfeitures, and adjustments relating thereto.

3.19 "Limitation Year" shall mean the Plan Year.

3.20 "Member" shall mean any person who is a member of the Plumbers and Steamfitters Local 377 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitters Industry of the United States and Canada.

3.21 "Named Fiduciary" shall mean the Trustees.

3.22 "Normal Retirement Date" shall mean the first day of the month on or after the date the Participant attains his Normal Retirement Age (the Participant's attainment of age sixty-five (65)).

3.23 "Parental Absence" shall mean an Employee's absence which begins after December 31, 1984, (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

3.24 "Participant" shall mean any Employee who meets (or has met in prior plan years) the participation and eligibility requirements set out in the Plan. A Participant may be either an Active Participant or an Inactive Participant.

(a) An Active Participant is an Employee who is actively participating in the Plan according to Article V hereinbelow.

(b) An Inactive Participant is a former Active Participant who has an account balance in the Plan.

3.25 "Period of Service" shall mean a period of time beginning on an Employee's Employment Commencement Date or Reemployment Commencement Date (whichever applies) and ending on his Severance from Service Date. The following applications shall apply when determining an Employee's service:

(a) An Employee will receive credit for the aggregate of all time period(s) commencing with his Employment Commencement Date and ending on his Severance from Service Date (elapsed time method). An Employee will receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days. For purposes of this Section, Severance from Service Date shall mean the earlier of:

(i) the date on which an Employee quits, retires, is discharged or dies; or

(ii) the twelve (12) month anniversary of the date an Employee is first absent (with or without pay) for reasons other than quit, retirement, discharge or death (such as vacation, holiday, sickness, disability, leave of absence or layoff).

3.26 "Period of Severance" shall mean continuous period of time during which the Employee does not perform an hour of service for the Employer. Such period begins on the date the Employee retires, dies, quits or is discharged, or if earlier, the 12- month anniversary of the date on which the Employee was otherwise first absent from service. For purposes of this Section, the following additional definitions and applications shall apply:

(a) One-Year Period of Severance shall mean a Period of Severance of at least 12 consecutive months.

(b) In the case of an individual who is absent from work for Parental Absence, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Period of Severance. Rather, the Period of Severance begins on the second anniversary of the first date of such absence. The period between the first and second anniversaries of the first day of such absence is neither a Period of Service nor a Period of Severance.

3.27 "Plan" shall mean the Plumbers & Steamfitters Local 377 Retirement Plan, as set forth by this document and all amendments thereto.

3.28 "Plan Administrator" (hereinafter sometimes for brevity referred to as "Administrator") shall mean the Trustees.

3.29 "Plan Year" shall mean the period of twelve (12) consecutive months beginning on the first day of January and ending on the last day of December.

3.30 "Pre-Retirement Survivor Annuity" shall mean:

(a) An annuity for the life of the surviving spouse, the actuarial equivalent of which is not less than fifty percent (50%) of the Participant's nonforfeitable account balance, including the proceeds of insurance (if any) on the Participant's life, as of the date of the Participant's death. The amount of the Participant's employee-derived account allocated to the surviving spouse will be in the same proportion as the employee-derived account balance is to the total account balance of the Participant.

(b) For purposes of determining the amount of the Pre-Retirement Survivor Annuity, any security interest held by the Plan by reason of an outstanding loan to the Participant shall be taken into account.

3.31 "Qualified Joint and Survivor Annuity" shall mean an immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse which is fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and the spouse and which is the amount of benefit which can be purchased with the Participant's Vested Accrued Benefit.

3.32 "Qualified Plan" shall mean any plan which is qualified under Section 401(a) of the Code.

3.33 "Retirement Date" shall mean the date a retirement benefit will begin and is a Participant's Early, Normal or Late Retirement Date, as the case may be.

3.34 "Rollover Account" shall mean the account maintained by the Employer to record transfers to the Trust Fund pursuant to ARTICLE X of the Plan.

3.35 "Section 415 Compensation" shall mean Section 415 Compensation as defined in Section 7.4(c) hereinbelow.

3.36 "Taxable Year" shall mean the 12 months during which the tax liability of the Employer or a Participant is calculated. The Taxable Year of the Employer may or may not be the same as the Taxable Year of a Participant.

3.37 "Trust Agreement" shall mean the agreement of trust establishing the Trust Fund for the purpose of holding and distributing benefits under the terms and provisions of the Plan.

3.38 "Trustee" shall mean, collectively, the individuals appointed to perform the duties of Trustee as set out in the Trust Agreement. There shall be two "Employer Trustees" appointed by the Contractors Association of Alabama and two "Union Trustees" appointed by the Union.

3.39 "Trust Fund" shall mean all funds and property received by the Trustee, together with all income, profits or other increments thereon.

3.40 "Union" shall mean the Plumbers and Steamfitters Local Union No. 377 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitters Industry of the United States and Canada.

3.41 "Valuation Date" shall mean the date as of which the Trust Fund is valued, account balances are determined, and adjustments and allocations are made to each account by the Administrator. Valuation Date shall be at least annually on the Anniversary Date and such additional dates as the Plan Administrator shall deem appropriate. The selection by the Administrator of any additional Valuation Dates shall be made on a non-discriminatory basis.

3.42 "Vested" shall mean the portion of the Participant's Accrued Benefit which is nonforfeitable; fully Vested shall mean totally nonforfeitable.

[End of Page]

## ARTICLE IV

### ADMINISTRATION OF THE PLAN

4.1 Authority. The Trustees shall have the sole responsibility and the sole control of the operation and administration of the Plan. The Trustees, as Plan Administrator, shall have the right to delegate its functions to any parties, including the Business Manager of the Union.

4.2 Powers of the Administrator. The Administrator is empowered to administer the Plan in accordance with its terms and shall have all powers and authority necessary to carry out the provisions of the Plan. The Administrator shall perform the following functions:

(a) Construe and interpret the provisions of the Plan, and all parts thereof, including the interpretation of any ambiguity, the supplying of any language which is omitted and the reconciling of any inconsistency so that the Plan is given a reasonable interpretation and construction in light of what was intended in establishing the Plan;

(b) To determine all questions with respect to the individual rights of the Participants and their Beneficiaries under the Plan, including, but not limited to, all issues with respect to a Participant's eligibility for participation and eligibility for benefits, a Participant's Compensation, a Participant's eligibility for disability benefits and retirement benefits;

(c) To decide and resolve any disputes which may arise relative to the rights of Employees, current and former, and their Beneficiaries, under the terms of the Plan, except to the extent that the claims procedure set forth herein shall authorize any other person or party to determine or review claims of Participants or Beneficiaries.

(d) To provide the Trustee with such directions and instructions as may be necessary to carry out the terms of the Plan.

(e) To maintain all Plan records and relevant data, including Employee data relating to Hours of Service, other than those required to be maintained by the Trustee.

(f) If all or any part of a Participant's Compensation received from the Employer is determined to be unreasonable in amount by the Internal Revenue Service, the Administrator shall be empowered and authorized to adjust the Employer's contribution, which is based on the unreasonable Compensation, in any manner permitted by Revenue Ruling 67-341, and subsequent rulings, regulations and laws pertaining thereto; or, in the alternative, the Administrator shall be empowered and authorized to reallocate the contribution among other Participants in any manner permitted by Revenue Ruling 67-341, and subsequent rulings, regulations and laws pertaining thereto.

(g) To make allocations of contributions, earnings, losses and forfeitures among Participants, from year to year.

(h) To provide appropriate parties, including government agencies, with such returns, reports, schedules, descriptions and individual statements as are required by law within the times prescribed by law; and to furnish to the Employer, upon request, copies of any or all such materials, and further, to make copies of such instruments, reports and descriptions as are required by law available for examination by Participants and such of their Beneficiaries who are or may be entitled to benefits under the Plan in such places and in such manner as required by law.

(i) To communicate with each eligible Employee and inform him of the existence of the Plan and its pertinent provisions and to make certain that such additional disclosure requirements which may be imposed by the Department of Labor or the Department of Treasury are carried out.

(j) To give necessary instructions and directions to the Trustee to assure the payment of benefits to any Participant or his Beneficiary, at such time as the Participant or Beneficiary may become entitled thereto.

(k) To give appropriate instructions and directions to the Trustee where any Participant terminates his participation under the Plan or ceases to be entitled to benefits.

(l) To make certain that all benefits are paid to a Participant or his Beneficiary in accordance with the terms and provisions of this Plan.

(m) To hire persons to provide necessary services to the Plan.

(n) To issue directions to the Trustee to pay any fees, taxes, charges or other costs incidental to the operation and management of the Plan.

(o) To comply with all disclosure requirements imposed by state or federal law.

4.3 Administrative Records. The records of the Administrator and of all its proceedings and acts shall be made a part of the records and minutes of the Trustees.

4.4 Bonding of the Fiduciaries. Bonding shall be made in accordance with Act Section 412 of ERISA.

4.5 Non-Discriminatory Administration. Wherever under the provisions of this Plan discretion is granted to the Administrator, which shall affect the benefits, rights and privileges of Participants or their Beneficiaries under this Plan, such discretion shall be exercised uniformly so that all Participants or Beneficiaries similarly situated shall be similarly treated.

4.6 Terminated Participant Statement. The Administrator shall furnish to each Participant who during a Plan Year has separated from the service of the Employer, or who is entitled to a deferred vested benefit under the Plan as of the end of such Plan Year, and with respect to whom retirement benefits were not paid under the Plan during such Plan Year, an individual statement setting forth the following: (a) the name of the Plan; (b) the name and address of the Plan Administrator; (c) the nature, amount and form of the deferred vested benefit to which such Participant is entitled; and (d) such additional information as the Secretary of the Treasury or his delegate may require. Such statement shall be furnished by the Administrator within such period after the end of a Plan Year as prescribed by the Secretary of the Treasury in Regulations.

4.7 Delegation by Administrator. The Administrator may delegate to any other agent, advisor or consultant any of its functions, particularly those set forth in ARTICLE VII hereinbelow.

[End of Page]

ARTICLE V

PARTICIPATION OF EMPLOYEES

5.1 Requirements.

(a) Each Employee who was a Participant on December 31, 2008, shall continue to participate under the terms of this amended and restated Plan.

(b) Except as provided in (c) below, each Employee who was not a Participant on December 31, 2008, shall participate under the terms of this Plan commencing with his Employment Commencement Date.

(c) An Employee who is a first year apprentice under the Local Construction Collective Bargaining Unit shall participate under the terms of this Plan commencing with the Tuesday after the Labor Day that follows his completion of a one-year Period of Service.

5.2 Re-Hired Employees. A former Participant who is later rehired shall participate immediately upon reemployment.

5.3 Participation Upon Return to Eligible Class.

(a) In the event a Participant is no longer a member of an eligible class of Employees and becomes ineligible to participate, such Employee will participate immediately upon returning to an eligible class of Employees.

(b) In the event an Employee who is not a member of an eligible class of Employees becomes a member of an eligible class, such Employee will participate immediately if such Employee would have otherwise previously become a Participant.

[End of Page]

ARTICLE VI

CONTRIBUTIONS

6.1 Employer Contributions. Contributing Employers shall each make a contribution in cash to the Trustee in amounts specified on Exhibit A.

6.2 No Employee Contributions. A Participant shall not be required nor permitted to make contributions to the Trust Fund.

[End of Page]

## ARTICLE VII

### ALLOCATIONS AND ADJUSTMENTS TO ACCOUNTS

7.1 Procedure. The balance in each Participant's Accounts shall be determined as of the first day of each Plan Year. After such balance has been determined, adjustments and allocations shall be made to each account by the Administrator, as of each Anniversary Date or other Valuation Date (collectively referred to in this Section 7.1 as "Valuation Date"), as the case may be, according to the following procedure:

(a) The earnings, losses and increases or decreases in the investments elected by each Participant pursuant to ARTICLE XI shall be determined on a daily basis and allocated to each active and Inactive Participant's account(s) based on each Participant's pro rata share of such investment.

(b) Subsequent to the allocation provided for in the preceding subparagraph of this Section, the contribution of each Employer shall be allocated by the Administrator to the Employer Contribution Account of each Participant in the amount described in Section 6.1 hereinabove, except that if a contribution made on behalf of a Participant is limited by Section 7.4, the amount to be allocated to that Participant's Employer Contribution Account shall be limited as provided in Section 7.4.

7.2 Accounts. The Administrator shall maintain for each Participant the appropriate accounts to receive and hold contributions made on the Participant's behalf. Each account shall consist of contributions and forfeitures allocable to such Participant and the earnings, losses, expenses, and increases or decreases in the fair market value of the Trust Fund attributable to the account.

#### 7.3 Limitations on Annual Additions.

(a) Limitations. 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 maximum permissible amount. If the Employer contributions 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, which is the lesser of:

(i) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or

(ii) 100 percent of the Participant's Section 415 Compensation for the Limitation Year. The compensation limit referred to in (ii) 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.

#### (b) Annual Additions.

(i) For purposes of this Section and unless as otherwise provided, the term "annual addition" shall mean the sum for any Limitation Year of (1) Employer contributions, (2) forfeitures, (3) amounts attributable to post-retirement medical benefits allocated to an account of a key employee established pursuant to Section 419A(d) of the Code, under a welfare benefit fund, as defined in Section 419(e) of the Code, and (4) amounts allocated to an individual medical account, as defined in Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer.

(ii) Annual Additions shall not include restorative payments and certain other amounts described in Section 2 of Article VII-A hereinbelow.

#### ARTICLE VII-A

#### FINAL 415 REGULATIONS

#### **SECTION 1. SECTION 415 COMPENSATION DEFINITION**

1.1 **Testing and Other Compliance Purposes.** The provisions of the Plan setting forth the definition of compensation for purposes of Code §415 (hereinafter referred to as "Section 415 Compensation"), as well as compensation for purposes of determining highly compensated employees pursuant to Code §414(q) and for top-heavy purposes under Code §416 (including the determination of key employees), shall be amended to read as follows:

(a) Section 415 Compensation.

(i) Notwithstanding anything herein to the contrary, the term "Section 415 Compensation" means the generally applicable definition of compensation within the meaning of Section 415(c)(3) of the Code, as defined in Treasury Regulation Section 1.415(c)-2(b) and -2(c), and any subsequent guidance interpreting the generally applicable definition of compensation under Section 415(c)(3) of the Code, as such definition shall be amended from time to time thereunder. "Section 415 Compensation" shall include (unless the Treasury Regulations, as amended from time to time, require otherwise) remuneration for services of the following types:

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

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

(C) Amounts described in section 104(a)(3), 105(a), or 105(h), but only to the extent that these amounts are includible in the gross income of the Employee.

(D) Amounts paid or reimbursed by the Employer for moving expenses incurred by an Employee, but only to the extent that at the time of the payment it is reasonable to believe that these amounts are not deductible by the Employee under section 217.

(E) The value of a nonstatutory option (which is an option other than a statutory option as defined in §1.421-1(b)) granted to an Employee by the Employer, but only to the

extent that the value of the option is includible in the gross income of the Employee for the taxable year in which granted.

(F) The amount includible in the gross income of an Employee upon making the election described in section 83(b).

(G) Amounts that are includible in the gross income of an Employee under the rules of section 409A or section 457(f)(1)(A) or because the amounts are constructively received by the employee.

(ii) "Section 415 Compensation" shall not include (unless the Treasury Regulations, as amended from time to time, require otherwise) the following:

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

(B) Amounts realized from the exercise of a nonstatutory option (which is an option other than a statutory option as defined in §1.421-1(b)), or when restricted stock or other property held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture (see section 83 and regulations promulgated under section 83).

(C) Amounts realized from the sale, exchange, or other disposition of stock acquired under a statutory stock option (as defined in §1.421-1(b)).

(D) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts that are described in section 125).

(E) Other items of remuneration that are similar to any of the items listed in paragraphs (ii)(A) through (ii)(D) of this section.

(b) "First Few Weeks" Rule. Section 415 Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.

**1.2 Definition of Compensation for Contributions and Benefits.** The provisions of the Plan setting forth the definition of compensation for allocation purposes (hereinafter referred to as "Plan Compensation") shall not be affected by the provisions or adjustments that are made to Section 415 Compensation in this Amendment.

**1.3 Section 415 Compensation paid after severance from employment.** Section 415 Compensation shall be adjusted, as set forth herein, for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code §414(b), (c), (m) or (o)). However, amounts described below in this Section 1.3 may only be included in Section 415 Compensation to the extent such amounts

are paid by the later of 2-1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered Section 415 Compensation within the meaning of Code §415(c)(3), even if payment is made within the time period specified above.

(a) **Regular pay.** Section 415 Compensation shall include regular pay after severance of employment if:

(i) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(ii) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.

(b) No other types of post-severance compensation shall be included under this Section. Examples of types of post-severance compensation that are not included are:

(i) Payments for unused accrued bona fide sick, vacation, or other leave;

(ii) Payments from nonqualified unfunded deferred compensation plans;

(iii) Salary continuation payments for participants on military service; and

(iv) Salary continuation payments to a participant who is permanently and totally disabled (as defined in Code §22(e)(3)).

## SECTION 2. ANNUAL ADDITIONS

2.1 **Definition of annual additions.** The Plan's definition of "annual additions" is modified as follows:

(a) **Restorative payments.** Annual additions for purposes of Code §415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under ERISA or under other applicable federal or state law, where participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under ERISA are not restorative payments and generally constitute contributions that are considered annual additions.

(b) **Other Amounts.** Annual additions for purposes of Code § 415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) Rollover contributions (as described in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (3) Repayments of loans made to a participant from the Plan; and (4) Repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C)) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code §414(d)) as described in Code §415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

2.2 **Change of limitation year.** The limitation year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.

2.3 **Excess Annual Additions.** Notwithstanding any provision of the Plan to the contrary, if the annual additions (within the meaning of Code §415) are exceeded for any participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2006-27 or any superseding guidance, including, but not limited to, the preamble of the final §415 regulations.

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## ARTICLE VIII

### BENEFITS

8.1 Participant's Rights and General Rules. Notwithstanding anything in this Plan to the contrary, a Participant shall not have a right to receive his Accrued Benefit or any of the assets held in the Trust Fund except in accordance with the terms and provisions of ARTICLE VIII.

8.2 Retirement Benefits. Upon a Participant's Early or Normal Retirement Date, payment of his Vested Accrued Benefit (as of the Valuation Date coincident with or next following the Retirement Date) shall commence as soon as administratively possible following such event.

8.3 Deferred Retirement Benefits. If a Participant continues to be employed by the Employer after his Normal Retirement Date, such participant shall continue to share in the allocation of contributions and forfeitures in accordance with ARTICLE VII, and payment of such Participant's normal retirement benefit shall be deferred until actual termination of employment. Payment shall commence as soon as administratively possible following such termination. In no event shall benefit payments be delayed beyond a Participant's required beginning date set forth in this ARTICLE, nor is this Section intended to provide any Participant with a right to continue in the employ of Employer.

8.4 Disability Benefit. A Participant who terminates employment due to total and permanent Disability shall have a benefit equal to his Vested Accrued Benefit as of the Valuation Date coincident with or next following the date the Participant is determined to be disabled, with payment commencing as soon as administratively possible following such Valuation Date.

8.5 Death Benefit. A Participant who dies shall have a benefit equal to his Vested Accrued Benefit as of the Valuation Date coincident with or next following the date of his death, with payment commencing as soon as administratively possible following such Valuation Date.

8.6 Benefit Upon Other Termination of Employment. A Participant who terminates employment for any reason other than Early or Normal Retirement, disability or death, shall be entitled to his Vested Accrued Benefit upon the earlier of the following: (a) the date the Participant ceases to be a Member, (b) Early Retirement Date, (c) death, (d) Disability or (e) Normal Retirement Date. Payment of such Vested Accrued Benefit shall be in accordance with this Article and shall commence as soon as administratively possible following the Valuation Date coincident with or next following such event.

8.7 Normal Mode of Distributions.

(a) Each Participant who is entitled to receive payment of his Vested Accrued Benefit for any reason other than death shall receive payment of his Vested Accrued Benefit as follows:

(i) In the case of a Participant who has been married throughout the twelve-month period ending with his Annuity Starting Date, benefits shall be payable in the form of a Qualified Joint and Survivor Annuity, which shall be the actuarial equivalent of a Participant's Vested Accrued Benefit and in all events shall be at least as valuable as any other optional form of benefit payable under the Plan at the same time, unless a Participant and his spouse duly elect to waive the Qualified Joint and Survivor Annuity pursuant to this Article. Such election shall be made by the Participant in writing during the ninety (90) day period ending on the Annuity Starting Date. Notwithstanding the provisions of this Subparagraph (i), however, if a Participant marries within the twelve-month period ending on his Annuity Starting Date, and the Participant and spouse in such

marriage remain married to each other for at least one (1) year, such Participant and spouse shall be treated as having been married throughout the twelve-month period ending on the Participant's Annuity Starting Date. If the Participant and spouse do not remain married for one year, the Plan shall treat the Participant as having not been married on the Annuity Starting Date. In such event, any survivor benefit rights of the spouse shall be forfeited, and the Participant shall not be entitled to a retroactive correction of the amount paid to such Participant.

(ii) In the case of a Participant to whom subsection (i) does not apply, benefits shall be payable in the form of a life annuity with 10-year certain unless a Participant duly elects to waive the life annuity and selects an optional form from Section 8.8.

(b) The Participant may elect to have the annuity described in this Section distributed upon attainment of the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

(c) No less than 30 days and no more than 90 days before the Annuity Starting Date, the Administrator shall provide the Participant with a written explanation of: (i) the terms and conditions of a Qualified Joint and Survivor Annuity, (ii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit, (iii) the rights of the Participant's spouse concerning the Qualified Joint and Survivor Annuity, and (iv) the right of the Participant to revoke such an election, and the effect of a revocation. A distribution may commence less than 30 days (but not less than seven days) after the notice required under this subparagraph is given, provided that:

(i) The Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and

(ii) The Participant, after receiving the notice, affirmatively elects a distribution.

8.8 Optional Modes of Distribution. If a Participant (with spousal consent, if married) duly elects not to take his Vested Accrued Benefit in the form of the Annuities provided pursuant to Sections 8.7 and 8.9 hereof, the Participant may elect to receive his benefits under one of the following options:

- (a) In one cash lump sum, or
- (b) Qualified Joint & 75% Survivor Annuity.

8.9 Qualified Pre-Retirement Survivor Annuity. If a Participant who has been married throughout the twelve-month period ending on the date of his death dies prior to the Annuity Starting Date, the benefits to which a Participant is entitled under this Article shall be paid to his surviving spouse in the form of a Pre-Retirement Survivor Annuity unless an optional form of benefit has been selected in accordance with Sections 8.12 and 8.13 hereinbelow. The surviving spouse may elect to have such annuity distributed within a reasonable time after the Participant's death.

8.10 General Consent Rules. Notwithstanding anything herein to the contrary, if the present value of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity exceeds \$1,000 on the date the distribution commences and such benefit is immediately distributable, such benefit may not be distributed without the written consent of the Participant and, if such benefit

exceeds \$5,000, the written consent of the Participant and his spouse (or where the Participant has died, the surviving spouse). A Participant's Vested Accrued Benefit is considered immediately distributable if any part of the benefit could be distributed to the Participant (or surviving spouse) before the Participant attains (or would have attained if not deceased) the later of his Normal Retirement Age or age 62.

#### 8.11 Involuntary Cash-Out of Small Benefit.

(a) If the present value of a Participant's Vested Accrued Benefit does not exceed \$1,000 on the date the distribution commences and, after receiving the notice described in Section 8.8 above, the Participant does not affirmatively elect whether to take a cash distribution or a direct rollover, the Plan Administrator shall distribute the Participant's benefit in a cash lump sum, less applicable withholding. However, the Participant may not be cashed-out without consent if: (1) the Participant has begun to receive distributions under an optional form of benefit; (2) at least one scheduled periodic distribution is still payable; and (3) the present value of the Participant's Vested Accrued Benefit exceeded the \$1,000 cash-out limit at the time of the first distribution under the optional form of benefit.

(b) For purposes of subparagraph (a) above, the value of a Participant's nonforfeitable account balance shall be determined by including that portion of the account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Code.

#### 8.12 Pre-Retirement Survivor Annuity Election and Notice.

(a) Election. An election to waive the Pre-Retirement Survivor Annuity must be made by the Participant, in writing, and consented to by the spouse in accordance with Section 8.13 hereinbelow. Such election must be made during the period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death. In the event a Vested Participant terminates employment prior to the beginning of the Plan Year in which he attains age thirty-five (35), the election period shall begin on the date of his separation from service.

(b) Notice. The Administrator shall provide each Participant, within the applicable period, a written explanation of: (i) the terms and conditions of a Pre-Retirement Survivor Annuity, (ii) the Participant's right to make and the effect of an election to waive the Pre-Retirement Survivor Annuity form of benefit, (iii) the rights of the Participant's spouse concerning the Pre-Retirement Survivor Annuity, and (iv) the right of the Participant to revoke such an election, and the effect of a revocation.

(c) Applicable Period. For purposes of subsection (b) hereinabove, the "applicable period" shall mean, with respect to the Participant, whichever of the following period ends last:

(i) The period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35.

(ii) A reasonable period ending after the individual becomes a Participant.

(iii) A reasonable period ending after the survivor benefits become applicable to a Participant.

In the case of a Participant who separates from service before attaining age 35, "applicable period" means the period beginning one year before the separation from service and ending one year after such separation.

(d) For purposes of applying paragraph (c), a reasonable period ending after the enumerated events described in subparagraphs (c)(ii) and (iii) is the end of the one-year period beginning with the date the applicable event occurs. The applicable period for such events begins one year prior to the occurrence of the enumerated events.

(e) Pre-Age 35 Election. In the case of a Participant who has not yet attained age 35 as of the end of any current Plan Year, such Participant may (provided he has been given a written explanation comparable to that required in subparagraph (b) above) elect to waive the Qualified Pre-Retirement Survivor Annuity for the period beginning on the date of such election and end on the first day of the Plan Year in which the Participant attains age 35, at which time the Qualified Pre-Retirement Survivor Annuity coverage is automatically reinstated and any new waiver shall be subject to the requirements of this Article.

### 8.13 Waiver of Annuity and Spousal Consent.

(a) A waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity shall not be effective unless:

- (i) the Participant's spouse consents in writing to the election;
- (ii) 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 without any further consent);
- (iii) the spouse's consent acknowledges the effect of the election; and
- (iv) the spouse's consent is witnessed by a Plan representative or notary public.

(b) In addition to the requirements in (a) above, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without any further spousal consent).

(c) The Participant's waiver will be deemed a qualified election if it is established to the satisfaction of the Administrator that the required consent cannot be obtained because there is no spouse or the spouse cannot be located, or other circumstances that may be prescribed by Treasury Regulations.

(d) Any consent by a spouse obtained under this Section shall be effective only with respect to such spouse. A consent that permits designations by the 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 in writing by a Participant without the consent of the spouse at any time before commencement of benefits. The number of such revocations shall not be limited. However, any new election must comply with the requirements of this Section. A former spouse's waiver shall not be binding on a new spouse.

8.14 Conditions for Annuity Contracts. The terms of any annuity contract purchased and distributed by the Plan to a Participant or spouse shall comply with the requirements of this Article. If the Participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Section 401(a)(9) of the Code and the final regulations thereunder. Furthermore, any annuity contract distributed herefrom must be nontransferable.

8.15 In-Service Withdrawals. Prior to May 15, 2000, the Plan permitted Participants to make after-tax voluntary employee contributions. A Participant may withdraw any or all of his voluntary contributions, provided, however, he may make only two such withdrawals in any 12-month period.

8.16 Statutory Commencement of Benefits.

(a) Payment of a Participant's Accrued Benefit must commence not later than the sixtieth (60th) day after the close of a Plan Year in which the latest of the following events occurs:

- (i) The attainment by the Participant of his Normal Retirement Age;
- (ii) The tenth (10th) anniversary of the date on which the Participant commenced participation in the Plan; or
- (iii) Termination of employment by the Participant.

(b) If a Participant has terminated employment before satisfying the age requirement for Early Retirement, such Participant shall be entitled to elect an Early Retirement Benefit upon satisfaction of such age requirement.

8.17 Required Beginning Date.

(a) Non-Five Percent (5%) Owners. The required beginning date of a Participant who is not a five percent (5%) owner is the April 1 of the calendar year following the calendar year in which occurs the later of retirement or attainment of age 70-1/2.

(b) Five Percent (5%) Owners. The required beginning date of a Participant who is a Five Percent Owner is the April 1 following the calendar year in which the Participant attains age 70-1/2. Once distributions have begun to a Five Percent Owner under this Section, they must continue to be made even if the Participant ceases to be a Five Percent Owner.

8.18 Minimum Distribution Requirements - General Rules.

(a) Effective Date. Unless otherwise stated to the contrary, the provisions of Sections 8.18 through 8.22 will apply for purposes of determining required minimum distributions for calendar years beginning after December 31, 2002.

(b) Precedence. The requirements of Sections 8.18 through 8.22 will take precedence over any inconsistent provisions of the Plan.

(c) Requirements of Treasury Regulations Incorporated. All distributions required under Sections 8.18 through 8.22 will be determined and made in accordance with the Treasury

regulations under Code Section 401(a)(9) and the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G).

(d) Limits on Distribution Periods. As of the first distribution calendar year, distributions, if not made in a single sum, may only be made over one of the following periods (or a combination thereof):

- (i) the life of the Participant;
- (ii) the life of the Participant and a Designated Beneficiary;
- (iii) a period certain not extending beyond the life expectancy of the Participant; or
- (iv) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a Designated Beneficiary.

(e) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of Sections 3.18 through 3.22, 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.

### 3.19 Time and Manner of Distribution.

(a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

(b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed as follows:

(i) Except as provided in (ii) below, if the Participant's surviving spouse is the Participant's sole Designated Beneficiary, 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.

(ii) Except as provided in (iii) below, if the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, 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.

(iii) Participants or Beneficiaries may elect on an individual basis whether the five-year rule or the life expectancy rule in subsections (i) and (ii) above

(iv) 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.

(v) 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 subparagraph (b), other than section (b)(i), will apply as if the surviving spouse were the Participant.

For purposes of this Section 8.19(b) and Section 8.21, unless section (iv) above applies, distributions are considered to begin on the Participant's Required Beginning Date. If section (iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section (i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section (i) above), the date distributions are considered to begin is the date distributions actually commence.

(c) Form 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 8.20 and 8.21. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereafter will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

#### 8.20 Required Minimum Distributions During Participant's Lifetime.

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

(i) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Treasury regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(ii) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, 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.

(b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 8.20 beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

#### 8.21 Required Minimum Distributions After Participant's Death.

(a) Death On or After Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

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

(B) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

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

(b) Death Before Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, 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.

(ii) 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.

(iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 8.19(b)(i), this Section 8.21(b) will apply as if the surviving spouse were the Participant.

8.22 Definitions.

(a) "Designated Beneficiary" shall mean the individual who is designated as the beneficiary under Section 3.6 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-4 of the Treasury regulations.

(b) "Distribution Calendar Year" shall mean 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 8.19. 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.

(c) "Life Expectancy" shall mean life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(d) "Participant's Account Balance" shall mean 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 dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

(e) "Required Beginning Date" shall mean date specified in section 8.17 of the Plan.

#### 8.23 Location of Participants and Beneficiaries.

(a) It is the duty of Participants who have terminated employment, or Beneficiaries of Participants, to keep the Administrator informed as to their correct address. If a Participant or Beneficiary fails to inform the Administrator in writing of a change of address and if the Administrator is unable to locate such Participant or Beneficiary by reasonable means, the Administrator shall notify the Participant or Beneficiary of available benefits by registered mail at the last address noted on the records of the Administrator. If the delivery of the notice by registered mail is refused or returned with address unknown, any benefits due such Participant or Beneficiary shall be segregated into a federally insured savings account for the benefit of the Participant or Beneficiary. The segregated account shall not share in the earnings and losses in the fair market value of the assets held in the Trust Fund. The Administrator shall determine earnings and losses in the fair market value of the assets held in the segregated account and shall allocate such earnings and losses to the segregated account. Such benefit shall remain in the segregated account until distributed in accordance with the Lost or Unclaimed Property Laws of the state in which the Plan Sponsor is domiciled.

(b) If the Plan has terminated and the Administrator is unable to locate a Participant or Beneficiary using the means described in (a) above, the Administrator shall establish a savings account for the benefit of the Participant or Beneficiary at a federally insured banking institution within the geographic vicinity in which the employer is located. Any benefits due such Participant or Beneficiary shall be deposited in said savings account at the same time distributions are otherwise allowed under the Plan termination procedure. Such benefit shall remain in the savings account until distributed in accordance with the Lost or Unclaimed Property Laws of the state where the account is maintained.

8.24 Payments for the Benefit of Minors or Incompetents. If the Administrator receives evidence that a Participant or Beneficiary entitled to receive any payment under the Plan ("Recipient") is a minor or under any legal disability, including without limitation incompetence or incapacity, and may be unable to receive such payment, apply the proceeds to his or her best interest, and

give valid release therefor, then the Administrator, in its sole discretion, is authorized to pay over such sums in any one or more of the following ways:

(a) to the legal guardian or conservator of the Recipient, or to the Representative Payee who has been appointed to receive any government benefits paid on behalf of such Recipient, or to an agent designated under a valid durable power of attorney for the use and benefit of the Recipient; or

(b) in any custodial account established for the Recipient prior to the date of such payment, or if none exists, to a custodian eligible to serve as such custodian of the Recipient under the Uniform Transfers (or Gifts) to Minors Act in effect in the state of the Recipient's residence for the use and benefit of the Recipient; or

(c) to the trustee (either court appointed or with a valid power of attorney) of any trust, or share of a trust, established prior to the date of such payment for the sole benefit of the Recipient, including without limitation, if appropriate, payment to the trustee of a discretionary, supplemental special needs trust.

The Administrator, in its discretion may elect not to use any of (a), (b) or (c) above and may seek direction from a court of competent jurisdiction.

[End of Page]

ARTICLE IX

VESTING

A Participant's Accrued Benefit shall be fully Vested at all times. The time and method of payment of an Employee's Accrued Benefit shall nevertheless be governed by the provisions of ARTICLE VIII.

[End of Page]

## ARTICLE X

### ROLLOVERS AND TRANSFERS

10.1 Direct Rollovers by Employees. Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover. However, if his Eligible Rollover Distribution is less than \$500, he may elect to have all, but not a portion, of such distribution paid directly to an Eligible Retirement Plan specified by the Distributee.

10.2 Definitions. For purposes of this ARTICLE X, the following definitions shall apply:

(a) "Eligible Rollover Distribution" shall mean:

(i) Except as provided in (ii) below, 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: (1) 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; (2) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (3) any hardship distribution from the Plan, (4) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities); and (5) any other distribution(s) that is reasonably expected to total less than \$200 during a year.

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

(b) "Eligible Retirement Plan" shall mean an individual retirement account or annuity described in Section 408(a) or 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. 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) "Distributee" shall mean an Employee or former Employee. In addition, 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" shall mean a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

### 10.3 Rollovers From Other Plans.

(a) Direct Rollovers. The Plan will accept a direct rollover of an eligible rollover distribution, including Employee after-tax contributions, from the following types of plans:

(i) A qualified plan described in Section 401(a) or 403(a) of the Code; and

(ii) An annuity contract described in Section 403(b) of the Code;

(iii) 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.

(b) Traditional 60-day Rollovers. If elected below, an Employee may transfer to the Plan all or any portion of the proceeds received from another plan, in accordance with procedures established by the Administrator, provided the transfer occurs on or before the sixtieth (60th) day following receipt of the distribution by the Employee from the other plan, and, if the proceeds received from the other plan were received by the Employee as a partial distribution, such distribution must qualify under Section 402(a)(5)(D) of the Code, or, provided the transfer is directly made from a "conduit" Individual Retirement Account (as defined in Section 408(a) of the Code) which held only the proceeds from such other plan and which were transferred to the Individual Retirement Account on or before the 60th day following receipt of the distribution by the Employee from the other plan. The plan will accept a participant contribution of an eligible rollover distribution, including Employee after-tax contributions, from the following types of plans:

(i) A qualified plan described in Section 401(a) or 403(a) of the Code;

(ii) An annuity contract described in Section 403(b) of the Code;

(iii) 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.

(c) Rollovers from Traditional IRAs. The Plan will not accept rollovers from traditional individual retirement account or annuity described in section 408(a) or 408(b) of the Code.

10.4 Procedures and Information. The Administrator shall develop such procedures and may require such other information from an Employee desiring to make (or to have made) such rollover or transfer as described in this Article as it deems necessary or desirable to determine that the proposed transfer will meet the requirements of this Article and of the Code.

10.5 Allocations to Rollover Account. Upon approval by the Administrator, the amount transferred shall be deposited in the Trust Fund and shall be allocated to the Employee's Rollover Account.

10.6 Vesting of Rollover Account. An Employee's Rollover Account shall be fully Vested at all times.

10.7 Distributions of Rollover Account. When a Participant terminates his employment with the Employer upon retirement, death or disability, or when the Plan is terminated, the total amount in his Rollover Account shall be distributed to him in accordance with ARTICLE VIII.

10.8 Eligible Employees. An Employee shall be eligible to make or direct the transfers permitted in this ARTICLE even though he is not yet eligible to participate in the Plan as required by ARTICLE V.

[End of Page]

## ARTICLE XI

### DIRECTED INVESTMENTS

11.1 Participant Direction in Investment Menu. The Trustee shall provide Participants with a menu of investment options which the Participant will select from to direct investment of his Accrued Benefit. Each option will have a different investment strategy and philosophy. The Trustee may, from time to time, add additional investment options or eliminate existing investment options. Subject to the limitations of this Section, each Participant must direct the Trustee to invest his Accrued Benefit into one or more of the investment options selected by the Trustee.

11.2 Time for Direction. A Participant may direct the investment of his Accrued Benefit at such regular intervals as the Administrator may establish (not less frequently than quarterly). The Administrator may impose on Participants such limitations as the Administrator deems necessary, including limits on transfers between investment funds, provided such limitations are applied to all Participants in a non-discriminatory manner. The Administrator will establish procedures and provide forms and information as may be necessary to implement the provisions of this ARTICLE.

11.3 Information Provided to Participants. The Administrator shall establish procedures to provide periodic information, not less frequently than annually, to a Participant which reflects the portion of his Accrued Benefit invested in each fund or option according to the Participant's direction.

[End of Page]

## ARTICLE XII

### FIDUCIARY RESPONSIBILITIES

#### 12.1 Allocation of Responsibilities Among Fiduciaries.

(a) Trustee:

(i) The Trustee shall have exclusive responsibility for the control and management of the Trust Fund as provided in the Trust Agreement and specifically, but not in limitation of its general authority, investment and reinvestment of the Trust Fund.

(ii) The Trustee shall have the authority and responsibility for (i) the design of the Plan, including the right to amend the Plan; (ii) the qualification under applicable law of the Plan, any amendments to the Plan, and any document relating to the Plan; (iii) the funding of the Plan; (iv) the designation of the Named Fiduciary; (v) review of disallowed claims of Participants; (vi) appointment of an Investment Manager; and (vii) the exercise of all fiduciary functions provided in the Plan or in the Trust Agreement or necessary to the operation of the Plan except such functions as are assigned to other fiduciaries pursuant to the Plan or Trust Agreement, including the authority to allocate or delegate fiduciary responsibilities which do not involve the management and control of the Trust Fund.

(iii) Any authority assigned or reserved to the Trustee under the Plan and Trust Agreement shall be exercised by resolution of the Trustees and shall become effective, with respect to the Trustee, upon written notice to the Trustee signed by the President, Treasurer or Secretary of the Employer advising the Trustee of such exercise.

(iv) The Trustee as Named Fiduciary shall allocate and delegate fiduciary responsibilities by giving written notice thereof to the Plan Administrator and the Trustee of the responsibilities to be allocated and the person or persons to whom the responsibilities are to be allocated. In implementing the procedure for the allocation and delegation of fiduciary responsibilities, the Employer shall discharge its duties with respect to such allocation and delegation with the care, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character with like aims; and it shall discharge its duties solely in the interest of the Participants and their Beneficiaries. The Employer shall make a formal periodic review of the performance of any fiduciary to whom it allocates or delegates fiduciary responsibilities and of any person which it employs to render advice in regard to any fiduciary responsibility which it has under the Plan and Trust Agreement.

(b) Administrator: The Administrator shall have responsibility and authority to control the operation and administration of the Plan as specifically set forth in ARTICLE IV of the Plan.

12.2 Advisor to Named Fiduciary. The Named Fiduciary may employ one or more persons to render advice concerning any responsibility of the Named Fiduciary under the Plan or Trust Agreement, and all other fiduciaries may rely on such advice, any written opinions or certificates without further investigation.

[End of Page]

## ARTICLE XIII

### AMENDMENT AND TERMINATION

#### 13.1 Amendments.

(a) The Trustees shall have the right at any time and from time to time, to amend, in whole or in part, any or all of the provisions of this Plan, so long as such amendment or amendments in no way reduce the value of a Participant's Accrued Benefit or eliminate an optional form of distribution. In addition, no such amendment shall authorize or permit any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries. The provisions of this Section shall be deemed a procedure for amending the Plan and for identifying the persons who have authority to amend the Plan and is intended to satisfy the requirements of Section 402(b)(3) of ERISA.

(b) No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his account balance under a particular optional form of benefit if the Amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

13.2 Election of Pre-Amendment Vesting Schedule. In the event the Plan is amended to change or modify Section 9.1, a Participant with at least three (3) Years of Vesting Service, as defined for purposes of ARTICLE IX, as of the expiration of the election period described below, may elect to be subject to the pre-amendment vesting schedule. If a Participant fails to make such an election, then such Participant shall be subject to the new vesting schedule. The election of the pre-amendment vesting schedule shall be made by giving written notice to the Plan Administrator during the election period. The election period shall begin on the date such amendment is adopted and shall end no earlier than the latest of the following dates:

(a) The date which is sixty (60) days after the date the amendment is adopted;

(b) The date which is sixty (60) days after the date the Plan amendment becomes effective; or

(c) The date which is sixty (60) days after the date the Participant is issued written notice of the amendment by the Employer or Administrator.

Such election shall be made only by an individual who is a Participant at the time such election is made and such election shall be irrevocable. Such amendment shall not reduce the Vested percentage of a Participant's Accrued Benefit as of the later of the date on which such amendment is adopted or the effective date of such amendment.

13.3 Termination. The Trustees shall have the right at any time to terminate this Plan. Upon any such termination or upon a partial termination, or upon a complete discontinuance of contributions to the Trust Fund, the rights of all affected Participants or their Beneficiaries to benefits accrued to the date of such termination, partial termination or discontinuance, shall be fully Vested in

accordance with the terms and provisions of the Plan. At such time that the Trust is liquidated and distributions are to be made, the Trustee may distribute a Participant's accrued benefit without the Participant's consent, provided: (1) the Plan does not offer an annuity option, purchased from a commercial provider, and (2) the Employer or any entity within the same Controlled Group as the Employer does not maintain another defined contribution plan, other than an employee stock ownership plan defined in Code Section 4975(e)(7). If another such plan is maintained, the Participant's accrued benefit may be transferred without consent to the other plan if the Participant does not consent to an immediate distribution from the terminating plan.

[End of Page]

## ARTICLE XIV

### CLAIMS PROCEDURE

14.1 Notice of Claim. In the event a Participant has a claim for any benefits under this Plan, then such Participant shall file a claim with the Trustees on a form or forms provided for such purpose.

14.2 Determination of Claim. The Trustees shall make all determinations as to the right of any person to a benefit provided hereunder. If the claim is denied, within ninety (90) days after receipt of the claim by the Trustees, the Trustees shall furnish to claimant written notice of this decision. If special circumstances require an extension of time of no more than ninety (90) additional days, then written notice will be given to the claimant before the end of the original ninety (90) day period and will (a) explain the reasons for the delay; and (b) when a determination of the claim is expected to be made. If the claim is wholly or partially denied, the written notice shall set forth in a manner reasonably calculated to be understood by the claimant: (a) the specific reason or reasons for the denial; (b) specific reference to pertinent Plan provisions on which the denial is based; (c) a description of additional material or information that should have been included with the claim, if any, and explain its importance in the determination of the claim; and (d) an explanation of the Plan's review procedures and applicable time limits.

14.3 Review of Claim Determination.

(a) Within sixty (60) days after receipt by the claimant of written notification of denial of a claim, the claimant may appeal such denial by filing with the Trustees a written application for a review of the denial of the claim. In connection with such appeal, the claimant: (i) will have access to all written comments, documents, and records relating to the claim upon request of the claimant and at no cost to the claimant; (ii) may submit all information, documents, and records, regardless of whether such information was submitted or considered in the initial claim determination; and (iii) may request a hearing with the Trustees.

(b) A decision on review shall be made by the Trustees within sixty (60) days after receipt of a written request unless a hearing has been requested and will be issued to the claimant in written or electronic form. If special circumstances require an extension of time for processing of the appeal, in which case the Trustees' decision on review shall be rendered no later than one hundred twenty (120) days after receipt of the request for review. If special circumstances require an extension, written notice will be given to the claimant before the end of the original sixty (60) day period and will (i) explain the reasons for the delay; and (ii) when a determination of the claim on review is expected to be made. In the event that the claim is denied on appeal, the claimant will have access to and be permitted to obtain a copy of all documents and records pertaining to his or her appeal. Furthermore, the notification of the claimant will include (i) specific reasons for the decision, written in a manner reasonably calculated to be understood by the claimant; (ii) contain specific references to the pertinent portions of the documents governing the Plan on which the decision is based; (iii) a statement informing the claimant that he or she may access or obtain copies of all relevant documents and records; and (iv) his or her right to bring a civil action after an appeal.

[End of Page]

## ARTICLE XV

### MISCELLANEOUS

15.1 Participant's Rights; Acquittance. Neither the establishment of the Plan hereby created, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer, or any officer or employee thereof, or the Trustee, or any insurance company, except as provided herein. Under no circumstances shall the terms of employment of any Participant be modified or in any way affected hereby.

Nothing contained in this Plan shall be construed to add directly or indirectly to the rights of the Employees against the Employer. The action of the Trustees in creating this Plan or any other action contemplated by either the Employer or its Employees, shall not be construed to constitute or evidence any contractual relationship between the Employer and any Employee, or as a right of any Employee to continue in the employment of the Employer, or as a limitation of the right of the Employer to discharge any of its Employees, with or without cause. The Employer shall have the absolute right to deal with any Employee who may be a Participant hereunder at any time as if the Plan had never been created. Nothing herein contained shall be construed as placing any obligation whatever upon the Employer to see that any distribution to a Participant is made at any time from the Trust Fund herein created, and the Employer shall not be liable to any person whatever in respect to payments from the Trust Fund.

15.2 ERISA Pre-Emption. This Plan shall be administered in the United States of America, and its validity, construction and all rights hereunder shall be governed by the laws of the United States under ERISA. To the extent the ERISA shall not be held to have pre-empted local law, the Plan shall be administered and construed under and governed by the laws of the State of Alabama.

15.3 Exclusive Benefit Rule. The Trust Fund shall never inure to the benefit of any Employer and shall be held for the exclusive purpose of providing benefits to Participants in the Plan and their Beneficiaries and for any reasonable expenses of administering the Plan, except that:

(a) Contributions made by an Employer under a mistake of fact shall be returned to the Employer within one (1) calendar year of the payment of such contribution. 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 or nondeductible 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 or nondeductible amount not been contributed, then the amount to be returned to the employer must be limited so as to avoid such reduction.

(b) If a contribution is conditioned upon the deductibility of such contribution under Section 404 of the Internal Revenue Code of 1986, as amended, then, to the extent the deduction is disallowed, the contribution shall be returned to the Employer within one (1) calendar year after the disallowance of the deduction.

15.4 Merger or Consolidation. In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant shall, if the Plan then terminated, receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer, if the Plan had been terminated.

15.5 Non-Assignment Provision.

(a) In General. Except as may be provided in this Section, neither the Trust nor any of the assets, nor any interest herein shall be subject to any conveyance, transfer, assignment, sequestration, garnishment, attachment, levy, encumbrance, or other judicial process or order of any kind to satisfy the claims of creditors, and the Trustee shall not give any effect to such conveyance, transfer, assignment, sequestration, garnishment, attachment, levy, encumbrance, or other judicial process or order. The interests of Participants and their Beneficiaries under the Plan and Trust shall not be subject to the claims of any creditors and shall not be liable for their debts, contracts or torts. Participants and their Beneficiaries shall not in any way convey, transfer, assign, sequester, garnish, attach, levy, or otherwise encumber their interests in the Plan in law or in equity, and any such conveyance, transfer, assignment, sequestration, garnishment, attachment, levy, or encumbrance shall be void.

(b) Domestic Relations Orders.

(i) The Plan Administrator shall comply with the terms of a Qualified Domestic Relations Order as defined in Section 414(p) of the Code.

(ii) Any such domestic relations order shall not require the Plan to provide any type or form of benefit, or any option not otherwise provided under the Plan, nor to provide increased benefits (determined on the basis of actuarial value) or the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(iii) The Plan Administrator shall promptly notify the Participant and each alternate payee of the receipt of a domestic relations order by the Plan and the Plan's procedures for determining the qualified status of domestic relations orders. Within a reasonable period after receipt of a domestic relations order, the Plan Administrator shall determine whether such order is a qualified domestic relations order and shall notify the Participant and each alternate payee of such determination. If the Participant or any affected alternate payee disagrees with the determinations of the Plan Administrator, the disagreeing party shall be treated as a claimant and the claims procedure of the Plan shall be followed. The Plan Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan.

(iv) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the Plan Administrator, by a court of competent jurisdiction or otherwise), the Plan Administrator shall separately account for the amounts which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order. If, within the eighteen (18) month period beginning on the date on which the first payment would be required to be made under the domestic relations order, the order (or modification thereof) is determined to be a qualified domestic relations order, the Plan Administrator shall pay the segregated amounts, including any interest thereon, to the person or persons entitled thereto. If within such eighteen (18) month period it is determined that the order is not a qualified domestic relations order or the issue as to whether such order is a qualified domestic relations order is not resolved, then the Plan Administrator shall pay the segregated amounts, including any interest thereon, to the person or persons who would have been entitled to such amounts if there had been no order. Any determination that an order is a qualified domestic relations order which is made after the close of the eighteen (18) month period shall be applied prospectively only.

(v) The Plan Administrator shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under qualified orders.

(vi) In the event the alternate payee dies prior to the commencement or completion of the distribution of the segregated amounts to which he is entitled, and if the terms of the qualified domestic relations order do not address the disposition of such amounts in the event of the alternate payee's death, and if there is no designated Beneficiary surviving at the alternate payee's death, the Administrator shall be empowered to designate a Beneficiary or Beneficiaries on his behalf, but only from among the following, in the order named: (1) spouse, (2) children, in equal shares, (3) parents, in equal shares or survivor (4) brothers and sisters, per stirpes, and (5) estate of the alternate payee. In the event any of the above shall be under the age of majority, then the proceeds shall be paid in accordance with the provisions of Section 8.24.

(vii) Upon the issuance of a valid Qualified Domestic Relations Order (as defined in Section 414(p) of the Code), payment of the alternate payee's portion of the Participant's Accrued Benefit shall commence as soon as administratively possible after such Order is approved, unless such Order specifies a later date. The alternate payee's portion of the Participant's Accrued Benefit shall be valued as of the Valuation Date immediately preceding the distribution. If the value of the alternate payee's benefit exceeds \$1,000, payment may not be made without the prior written consent of the alternate payee on forms approved by the Administrator. If the alternate payee is also a Participant in the Plan, such alternate payee may elect to defer distribution until such time as he or she is otherwise entitled to receive a distribution of his or her own Accrued Benefit.

(c) The provisions of subparagraph (a) above shall not apply to any offset of a Participant's benefit pursuant to certain judgments and settlements as defined in Section 401(a)(13)(C) of the Code.

15.6 USERRA Military Service Credit. 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(r) of the Code.

15.7 Delegation of Responsibilities by Named Fiduciary. The Named Fiduciary may designate any other person or persons, including the Trustee, to perform and carry out the responsibilities and duties herein imposed on the Administrator, and the Named Fiduciary may revoke any such delegation of responsibility. Any action of such person or persons in the exercise of such delegated responsibility shall have the same force and effect for all purposes as if such action had been taken by the Administrator.

15.8 Trust. The Contractors Association, the Union and the Trustee have entered into a Trust Agreement which provides for the holding of funds necessary to fund the benefits set forth in this Plan. The Trust Fund shall be received, held and disbursed in accordance with the provisions of the Trust Agreement and this Plan. No part of the Trust Fund shall be used for or diverted to purposes other than for the exclusive benefit of the Participants, former Participants and their Beneficiaries.

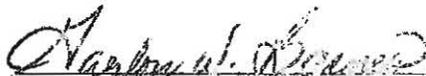
15.9 Basis for Payments From the Plan. The basis for making payments from the Plan is contained in ARTICLE VII which are intended to satisfy the requirements of ERISA.

15.10 Funding Policy. ARTICLE VI shall be deemed the procedure for establishing and carrying out the funding policy and method of this Plan. The Named Fiduciary shall be authorized to adopt such additional procedures and methods as necessary, which shall be communicated in writing to the Administrator and Trustee. Such funding policy and method shall be consistent with the objectives of this Plan and with the requirements of Title I of ERISA. In addition, the provisions of ARTICLE VI shall be deemed the basis on which payments are made to this Plan.

THE TRUSTEES hereby adopt this Amended and Restated Plumbers & Steamfitters Local 377 Retirement Plan, effective January 1, 2009.

UNION TRUSTEES

EMPLOYER TRUSTEES

  
Gaylon W. Barnes \_\_\_\_\_ Date

  
L. F. Pierce, Jr. \_\_\_\_\_ Date

  
Carl L. Lovett \_\_\_\_\_ Date

  
William Strickland, Jr. \_\_\_\_\_ Date

# **Plumbers & Steamfitters Local 377 Retirement Plan**

## **Exhibit A**

### **Schedule of Contributions**

**Participants covered under the Local Construction Collective Bargaining Agreement:**

Effective October 1, 2008, \$2.45 per hour.

Effective October 1, 2009, \$2.55 per hour.

**Participants covered under the Maintenance Agreement as Center Operations Support Services:**

Effective July 1, 2008, \$1.94 per hour.

Effective July 1, 2009, \$2.20 per hour.

**Participants covered under the Maintenance Agreement as Test Operations Support:**

Effective May 12, 2008, \$2.90 per hour.

Effective May 16, 2009, \$3.30 per hour.

**Participants who are covered under the Maintenance Agreement as Boiler Operators and Mechanics:**

Effective July 1, 2008: \$0.25 per hour.

Effective July 1, 2009: \$0.50 per hour.

Effective July 1, 2010: \$0.75 per hour.

**FIRST AMENDMENT**

**PLUMBERS & STEAMFITTERS LOCAL 377  
RETIREMENT PLAN**

(PENSION PROTECTION ACT OF 2006 AND HEART ACT)

LOCAL 377, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (hereinafter called the "Union") hereby adopts and publishes on this the 10<sup>th</sup> day of July, 2009, this Amendment to the Plumbers & Steamfitters Local 377 Retirement Plan, as follows:

PREAMBLE

WHEREAS, the Plumbers & Steamfitters Local 377 Retirement Plan ("Plan") provides that the Trustees reserve the right at any time and from time to time to amend, in whole or in part, any and all provisions of the Plan; and

WHEREAS, the Trustees did specifically approve and adopt by resolution the amendment hereinafter set forth; and

WHEREAS, this Amendment of the Plan is: (a) adopted to comply in form with various laws including the: (1) Pension Protection Act of 2006 (PPA), except for provisions relating to the establishment of an eligible automatic contribution arrangement ("EACA") or a qualified automatic contribution arrangement ("QACA"); (2) Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act); and (3) Worker, Retiree, and Employer Recovery Act of 2008 (PPA Technical Corrections Act) (other than the waiver of required minimum distributions under Code Section 401(a)(9)); (b) intended as good faith compliance with the requirements of said laws; and (c) to be construed in accordance with regulations and guidance issued thereunder; and

WHEREAS, in the event of an inconsistency between this Amendment and the provisions of the Plan, the provisions of this Amendment shall be controlling; and

WHEREAS, this Amendment is effective as indicated herein for the respective provisions;

NOW, THEREFORE, in consideration of the premises hereinabove set forth, Employer hereby amends said Plan, as follows:

ARTICLE I

INTRODUCTION

1.1 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.

1.2 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates PPA provisions)

## ARTICLE II

### PARTICIPANT DISTRIBUTION NOTIFICATION

2.1 **180-Day Notification Period.** For any distribution notice issued in Plan Years beginning after December 31, 2006, any reference to the 90-day maximum notice period prior to distribution in applying the notice requirements of Code §§402(f) (the rollover notice), 411(a)(11) (Participant's consent to distribution), and 417 (notice under the joint and survivor annuity rules) will become 180 days.

2.2 **Notice of Right to Defer Distribution.** For any distribution notice issued in Plan Years beginning after December 31, 2006, the description of a Participant's right, if any, to defer receipt of a distribution also will describe the consequences of failing to defer receipt of the distribution. For notices issued before the 90th day after the issuance of Treasury regulations (unless future Revenue Service guidance otherwise requires), the notice will include: (i) a description indicating the investment options available under the Plan (including fees) that will be available if the Participant defers distribution; and (ii) the portion of the summary plan description that contains any special rules that might affect materially a Participant's decision to defer.

## ARTICLE III

### ROLLOVER OF AFTER-TAX/ROTH AMOUNTS

**Direct Rollover to Qualified Plan/403(b) Plan.** For taxable years beginning after December 31, 2006, a Participant may elect to transfer employee (after-tax) contributions (if any) or Roth elective deferral contributions (if any) by means of a direct rollover to a qualified plan or to a 403(b) plan that: (1) agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income, and (2) in the case of the transfer of Roth elective deferrals, contains a Roth elective deferral feature.

## ARTICLE IV

### DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION

This provisions of this Article are required for distributions on and after January 1, 2010, and are optional for distributions between January 1, 2007, and December 31, 2009.

4.1 **Non-spouse beneficiary rollover right.** A non-spouse beneficiary who is a "designated beneficiary" under Code §401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

4.2 **Certain requirements not applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 4.1, any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c)). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.

4.3 **Trust beneficiary.** If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).

4.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-1, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

**Employer Adoption of Direct Rollover of Non-Spousal Distribution:**

- Adopted effective for distributions on and after January 1, 2010**
- Adopted effective for distributions on and after \_\_\_\_\_ (enter a date not earlier than January 1, 2007, and not later than January 1, 2010).**

**ARTICLE V**

**QUALIFIED OPTIONAL SURVIVOR ANNUITY**

5.1 **Right to Elect Qualified Optional Survivor Annuity.** Effective with respect to Plan Years beginning after December 31, 2007, a participant who elects to waive the qualified joint and survivor annuity form of benefit offered under the Plan, is entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity shall explain the terms and conditions of the "qualified optional survivor annuity."

5.2 **Definition of Qualified Optional Survivor Annuity.**

(a) **General.** For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:

(i) For the life of the participant with a survivor annuity for the life of the spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the spouse; and

(ii) Which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(b) **Applicable percentage.** For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse). If the survivor annuity percentage is less than 75 percent, then the "applicable percentage" is 75 percent; otherwise, the "applicable percentage" is 50 percent.

## ARTICLE VI

### ROTH ROLLOVER TO ROTH IRA

**Roth IRA rollover.** For distributions made after December 31, 2007, a participant or spousal beneficiary may elect to roll over directly or indirectly an eligible rollover distribution to a Roth IRA described in Code §408A(b). A non-spouse beneficiary may roll over directly an eligible rollover distribution to a Roth IRA described in Code §408A(b). Amounts transferred under this Article will be taxable in the year in which the transfer occurs.

## ARTICLE VII

### QUALIFIED DOMESTIC RELATIONS ORDERS

**7.1 Permissible QDROs.** Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.

**7.2 Other QDRO requirements apply.** A domestic relations order described in Section 7.1 is subject to the same requirements and protections that apply to QDROs.

## ARTICLE VIII

### HEART ACT PROVISIONS

**8.1 Death Benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code § 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.

**3.2 Benefit accrual (optional).**      Adopted                      Not adopted

**(a) Application.** For benefit accrual purposes, the Plan treats an individual who dies or becomes disabled on or after January 1, 2007 (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

**(b) Determination of Benefits.** The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 3.2 for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.

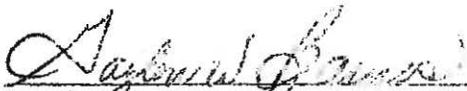
**3.3 Differential wage payments.** For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an

employee of the employer making the payment, (ii) the differential wage payment is treated as compensation, and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(a)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

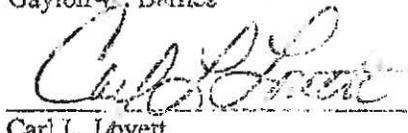
THE TRUSTEES hereby adopt this Amendment to the Plumbers & Steamfitters Local 377 Retirement Plan.

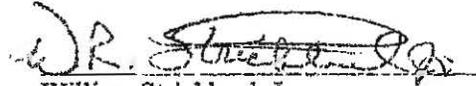
UNION TRUSTEES

EMPLOYER TRUSTEES

  
\_\_\_\_\_  
Gaylon W. Barnes Date

  
\_\_\_\_\_  
L. F. Pierce, Jr. Date

  
\_\_\_\_\_  
Carl L. Lovett Date

  
\_\_\_\_\_  
William Strickland, Jr. Date

FIRST AMENDMENT

PLUMBERS & STEAMFITTERS LOCAL 377  
RETIREMENT PLAN

(PENSION PROTECTION ACT OF 2006 AND HEART ACT)

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WHEREAS, the Trustees did specifically approve and adopt by resolution the amendment hereinafter set forth; and

WHEREAS, this Amendment of the Plan is: (a) adopted to comply in form with various laws including the: (1) Pension Protection Act of 2006 (PPA), except for provisions relating to the establishment of an eligible automatic contribution arrangement ("EACA") or a qualified automatic contribution arrangement ("QACA"); (2) Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act); and (3) Worker, Retiree, and Employer Recovery Act of 2008 (PPA Technical Corrections Act) (other than the waiver of required minimum distributions under Code Section 401(a)(9)); (b) intended as good faith compliance with the requirements of said laws; and (c) to be construed in accordance with regulations and guidance issued thereunder; and

WHEREAS, in the event of an inconsistency between this Amendment and the provisions of the Plan, the provisions of this Amendment shall be controlling; and

WHEREAS, this Amendment is effective as indicated herein for the respective provisions;

NOW, THEREFORE, in consideration of the promises hereinabove set forth, Employer hereby amends said Plan, as follows:

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(ii) Which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(b) **Applicable percentage.** For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse). If the survivor annuity percentage is less than 75 percent, then the "applicable percentage" is 75 percent; otherwise, the "applicable percentage" is 50 percent.

ARTICLE VI

DIRECT ROLLOVER TO ROTH IRA

**Roth IRA rollover.** For distributions made after December 31, 2007, a participant or spousal beneficiary may elect to roll over directly or indirectly an eligible rollover distribution to a Roth IRA described in Code §408A(5). A non-spousal beneficiary may roll over directly an eligible rollover distribution to a Roth IRA described in Code §408A(6). Amounts transferred under this Article will be taxable in the year in which the transfer occurs.

ARTICLE VII

QUALIFIED DOMESTIC RELATIONS ORDERS

7.1 **Permissible QDROs.** Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.

7.2 **Other QDRO requirements apply.** A domestic relations order described in Section 7.1 is subject to the same requirements and protections that apply to QDROs.

ARTICLE VIII

HEALT CARE PROVISIONS

8.1 **Death Benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code § 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.

8.2 **Benefit accrual (optional).**         Adopted                     Not adopted

(i) **Application.** For benefit accrual purposes, the Plan treats an individual who dies or becomes disabled on or after January 1, 2007 (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

(ii) **Amputation of Benefits.** The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 8.2 for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual employer contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.

8.3 **Differential wage payments.** For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an

employee of the employer making the payment, (ii) the differential wage payment is treated as compensation, and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code Section 401(c) by reason of any contribution or benefit which is based on the differential wage payment.

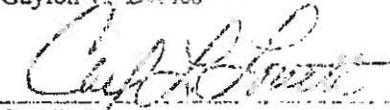
THE TRUSTEES hereby adopt this Amendment to the Plumbers & Steamfitters Local 377 Retirement Plan.

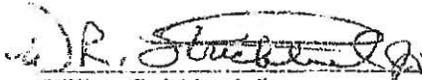
UNION TRUSTEES

EMPLOYER TRUSTEES

  
\_\_\_\_\_  
Gaylon E. Barnes Date

  
\_\_\_\_\_  
L. E. Pierce, Jr. Date

  
\_\_\_\_\_  
Carl L. Ivers Date

  
\_\_\_\_\_  
William Strickland, Jr. Date

UNANIMOUS WRITTEN CONSENT  
IN LIEU OF A SPECIAL MEETING  
OF TRUSTEES OF THE  
PLUMBERS & STEAMFITTERS LOCAL 377 RETIREMENT PLAN

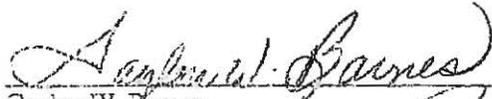
The undersigned, being all of the Trustees of the Plumbers & Steamfitters Local 377 Retirement Plan, do hereby consent to the adoption of the following resolutions:

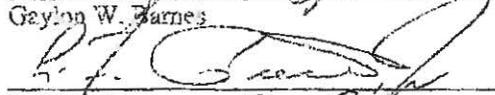
"BE IT RESOLVED, That the Trustees hereby approve and adopt an Amendment to the Plumbers & Steamfitters Local 377 Retirement Plan to comply with applicable provisions of the Pension Protection Act of 2006, the FICA Act of 2008 and other law changes as required by the Internal Revenue Service; and

"BE IT FURTHER RESOLVED, That the Trustees are authorized to execute said Amendment by virtue of the Collective Bargaining Agreement entered into between the Union and Contribution Employers."

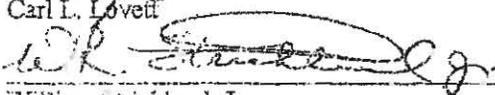
This written consent is to be placed with the minutes of proceedings of the Trustees, and the action taken herein is as fully effective as if enacted at a meeting duly called and held.

Dated July 10<sup>th</sup>, 2009.

  
\_\_\_\_\_  
Gaylon W. Barnes

  
\_\_\_\_\_  
L. F. Pierce, Jr.

  
\_\_\_\_\_  
Carl L. Lovett

  
\_\_\_\_\_  
William Strickland, Jr.