

**SHEET METAL WORKERS LOCAL NO. 71  
ANNUITY PLAN**

June 1, 2014

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**SHEET METAL WORKERS LOCAL UNION NO.71  
ANNUITY PLAN**

Restated Plan of Benefits adopted this 8<sup>th</sup> day of October, 2015 by the Board of Trustees of the Sheet Metal Workers Local Union No. 71 Annuity Fund (the "Fund").

**WITNESSETH:**

WHEREAS, Local Union No. 71 of the Sheet Metal Workers International Association (herein the "Union"), and SMACNA-Buffalo, Inc. (herein the "Association"), have entered into an Agreement and Declaration of Trust establishing a Profit Sharing Plan effective August 1, 2000, known as the Sheet Metal Workers Local Union No. 71 Annuity Fund; and

WHEREAS, the Trustees adopted a Plan of Benefits effective August 1, 2000; and

WHEREAS, the Trustees have previously adopted a Restated Plan of Benefits effective June 1, 2009 and are desirous of incorporating the Restated Plan of Benefits and amendments thereto into one instrument.

NOW THEREFORE, effective June 1, 2014, except as otherwise provided, the Trustees in accordance with the provisions of the Trust Agreement pertaining to amendments thereof, hereby amends the Plan in its entirety and restates the Plan to provide as follows:

**ARTICLE I  
PRELIMINARY MATTERS**

1.1 Plan of Benefits. This instrument constitutes a Plan of Benefits and is adopted by the Trustees for the purpose of providing pension benefits payable from the Trust Fund. This Plan shall be in the form, and for the purposes, necessary to qualify under the current provisions of the Internal Revenue Code of 1986, as amended, and the Employee Retirement Income Security Act of 1974, as amended, as a qualified profit-sharing plan and trust.

1.2 Governing Law. The terms of this instrument shall be construed in accordance with the appropriate sections of the Internal Revenue Code of 1986, as amended, and the Employee Retirement Income Security Act of 1974, as amended. To the extent not inconsistent with such Federal laws, the laws of the State of New York shall be applicable.

1.3 No Rights Except as Set Forth in Plan. Neither the adoption of this Plan nor the adoption or undertaking by any Participating Employer of any resolution or act relating thereto shall give any Employee the right to be retained in the service of such Employer nor give any Employee or other person any other legal or equitable right as against such Employer, the Plan Administrator or the Trustees, unless that right is specifically provided for herein.

1.4 No Alienation or Assignment. No benefit or interest available under this Plan shall be subject in any manner to assignment, discount, pledge as collateral, encumbrance or other alienation, nor to the extent permitted by applicable law, to attachment, execution, garnishment or other legal or equitable process by any creditor of any Participant or Beneficiary.

Notwithstanding the foregoing, benefits shall be paid in accordance with “Qualified Domestic Relations Orders,” as such term is defined under ERISA and the Internal Revenue Code, and with written procedures adopted by the Trustees in connection with such Orders, which shall be binding on all Participants, beneficiaries and other parties. In no event shall the existence or enforcement of a “Qualified Domestic Relations Order” cause the Pension Fund to pay benefits with respect to a Participant in a form that is not permitted under the Plan. Furthermore, a distribution to an “Alternate Payee,” as such a term is defined under Code Section 414(p), shall be permitted if such distribution is authorized by a “Qualified Domestic Relations Order” even if the effected Participant has not separated from service and has not reached the earliest retirement age under the Plan.

1.5 Exclusive Benefit of Employees. No part of the corpus or income of the Trust Fund shall be used for, or diverted to, purposes other than the exclusive benefit of the Participants and their Beneficiaries.

1.6 Severability. In the event that any provisions of this Plan shall be held illegal and void or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof; but the provision held illegal or invalid shall be fully severable and this Plan shall be construed and enforced as if said provision had never been contained herein.

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

## **ARTICLE II** **DEFINITIONS**

The following words and phrases, as used in this Plan and Trust, shall have the meanings set forth below:

2.1 Adjustment Factor. The term “Adjustment Factor” as used herein shall mean the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code applied to such items and in such manner as the Secretary shall prescribe.

2.2 Affiliated Employer. The term “Affiliated Employer” shall mean an Employer and any corporation which is a member of a controlled group of corporations (as defined in Section 415(b) of the Code) which includes such Employer; any trade or business (whether or not incorporated) which is a member of an affiliated service group (as defined in Section 414(m) of the Code) which includes the Employer; and any other entity required to be aggregated with such Employer pursuant to regulations under Section 414(o) of the Code.

2.3 Anniversary Date. The term “Anniversary Date” as used herein shall mean the last day of a Plan Year.

2.4 Annual Addition. The term “Annual Additions” as used herein shall mean the total of Employer Contributions allocated to a Participant’s Account under this Plan and any Related Plan during any Limitation Year.

2.5 Annuity Starting Date. The term “Annuity Starting Date” as used herein shall mean (i) the first day of the first period for which an amount is payable as an annuity (whether by reason of termination of employment, retirement, or disability) or (ii) if a Participant has elected a form of benefit other than an annuity, the first day on which all events have occurred which entitle the Participant to such benefit.

2.6 Beneficiary. The term “Beneficiary” as used herein shall mean the Participant’s spouse or the person or entity designated under Article X to receive a Participant’s Account upon the death of such Participant.

2.7 Code. The term “Code” as used herein shall mean the Internal Revenue Code of 1986, as amended or replaced from time to time.

2.8 Collective Bargaining Agreement. The term “Collective Bargaining Agreement” as used herein shall mean any agreement or agreements in force and effect between the Union and any Employer, which agreement or agreements provide for the payment of periodic contributions by the Employer to the Fund.

2.9 Compensation. “Compensation” with respect to any Participant means such Participant’s wages as defined in Code Section 3401(a) and all other payments of compensation by the Employer (in the course of the Employer’s trade or business) for a Plan Year for which the Employer is required to furnish the Participant a written statement under Code Sections 6041(d), 6051(a)(3) and 6052. Compensation must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

For Plan Years beginning on and after June 1, 2000, Compensation shall include elective amounts that are not includible in the gross income of the Employee under Code § 125, 132(f)(4), 402(e)(3), 402(h) or 403(b).

For a Participant’s initial year of participation, Compensation shall be recognized as of such Employee’s effective date of participation pursuant to Section 3.1.

Compensation in excess of \$200,000 shall be disregarded. Such amount shall be adjusted for increases in the cost of living in accordance with Code Section 401(a)(17), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any short Plan Year the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the Plan Year begins

multiplied by the ratio obtained by dividing the number of full months in the short Plan Year by twelve (12).

Compensation will include payments made within 2 ½ months after severance from employment (within the meaning of Code Section 401(k)(2)(B)(i)(I)) if they are payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation, and payments for accrued bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any payments not described above are not considered Compensation if paid after severance from employment, even if they are paid within 2 1/2 months following severance from employment, except for payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

For purposes of this Section, if the Plan is a plan described in Code Section 413(c) or 414(f) (a plan maintained by more than one Employer), the \$200,000 limitation applies separately with respect to the Compensation of any Participant from each Employer maintaining the Plan.

2.10 Contributions. "Contributions" or "Employer Contributions" as used herein means those payments to the Trust on behalf of Employees by Participating Employers.

2.11 Covered Employment. "Covered Employment" or "Employment" means employment under the provisions of a Collective Bargaining Agreement between a Participating Employer and the Union, or in the case of non-bargaining unit Employees, Covered Employment shall mean employment with the Participating Employer under the working conditions as set by the said Employer.

2.12 Defined Contribution Dollar Limitation. The term "Defined Contribution Dollar Limitation" shall mean:

- (a) \$40,000.00 as adjusted for increases under section 415(d) of the Code, or
- (b) 100% of the Participant's Compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from Service (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

2.13 Designated Investment Alternative. The term "Designated Investment Alternative" means a specific investment identified by name by the Trustees as an available investment under

the Plan which may be acquired or disposed of by the Trustees pursuant to the investment direction by a Participant.

2.14 Directed Investment Option. “Directed Investment Option” means one or more of the following:

- (a) A Designated Investment Alternative.
- (b) Any other investment permitted by the Plan and the Participant Direction Procedures and acquired or disposed of by the Trustees pursuant to the investment direction of a Participant.

2.15 Disability. “Disability” means a physical or mental condition of a Participant resulting from bodily injury, disease or mental disorder which renders him incapable of continuing his Covered Employment. The Disability of a Participant shall be determined by a licensed physician chosen by the Plan Administrator. The determination shall be applied uniformly to all Participants.

2.16 Effective Date. The term “Effective Date” as used herein shall mean August 1, 2000.

2.17 Employee. The term “Employee” as used herein shall mean:

- (a) any person, including part-time employees, for whom contributions are required to be made to the Fund pursuant to the Collective Bargaining Agreement between the Union and an Employer; and
- (b) with the consent of the Trustees, persons within the employ of the Union for whom the Union has become an Employer as defined herein; and
- (c) with the consent of the Trustees, persons within the employ of the Fund, for whom the Trustees have become an Employer, as defined herein.

The term “Employee” however, shall exclude any self-employed person, partner or proprietor.

The term “Employee” shall include any Leased Employee deemed to be an Employee of an Employer as provided in sub-Sections 414(n) or (o) of the Code.

2.18 Employer. The term “Employer” or “Participating Employer” as used herein shall mean:

- (a) any individual, firm, association, partnership or corporation, which is a party to a Collective Bargaining Agreement with the Union, and, in accordance therewith, agrees to participate in and contribute to the Fund; and

- (b) the Union to the extent, and solely to the extent, that it acts in the capacity of an Employer of Employees on whose behalf it makes contributions to the Fund; and
- (c) the Trustees to the extent that they act in the capacity of an Employer of Employees employed by the Fund on whose behalf they make contributions to the Fund.

2.19 ERISA. “ERISA” means the Employee Retirement Income Security Act of 1974 as it may be amended or replaced from time to time.

2.20 Fiduciary. “Fiduciary” means any person who is named as a Trustee herein, or who:

- (a) exercises any discretionary authority or discretionary control respecting management or disposition of the assets of the Trust Fund;
- (b) renders investment advice for a fee or other compensation directly or indirectly, with respect to any monies or other property of the Trust or has any authority or responsibility to do so; or
- (c) has any discretionary authority or discretionary responsibility in the administration of the Trust. The term Fiduciary shall not include any person who may be excluded under the provisions of Section 3(21)(b) of ERISA.

2.21 Fund. “Fund” shall mean the Sheet Metal Workers Local Union No. 71 Annuity Fund.

2.22 Gender. Any word(s) herein, though in a particular gender and used in the singular or plural shall be construed in the gender and the singular or plural as required by the context in which it is used.

2.23 Highly Compensated Employee. The term “Highly Compensated Employee” shall mean any Employee who (i) at any time during the Plan Year or the preceding Plan Year was a five percent (5%) owner of a contributing Employer or (ii) for the preceding Plan Year received compensation from contributing Employers in excess of \$85,000.000 (or such higher adjusted amount prescribed by the Secretary of Treasury).

For the purposes of this paragraph, “compensation” shall mean wages within the meaning of Section 3401(a) of the Code and all other payments of compensation to an Employee by an Employer (in the course of the Employer’s trade or business) for which the Employer is required to furnish the Employee a written statement under Sections 6041(d), 6051(a)(3), and 6052. Compensation must be determined without regard to any rules under Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment of the services performed (such as the exception for agricultural labor in Section 3401(a)(2)).

2.24 Hour of Service. “Hour of Service” shall mean each hour for which an Employee is paid, or entitled to payment, for the performance of duties for an Employer.



2.25 Limitation Year. The term “Limitation Year” as used herein shall be the same as the Plan Year.

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

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

2.27 Maximum Permissible Amount. The term “Maximum Permissible Amount” as used herein shall mean the lesser of:

- (a) The Defined Contribution Dollar Limitation, or
- (b) One hundred (100%) percent of the Participant’s Compensation for the Limitation Year.

2.28 Normal Retirement Age. “Normal Retirement Age or “Normal Retirement Date” means a Participant’s fifty-fifth (55th) birthday.

2.29 Participant Direction Procedures. The term “Participant Direction Procedures” means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 8.3, below, and observed by the Trustees and applied and provided to Participants who have Participant Directed Accounts.

2.30 Participant Directed Accounts. “Participant Directed Account” means that portion of a Participant’s interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedure.

2.31 Participant’s Account. “Participant’s Account,” “Participant’s Individual Account,” or “Individual Account,” means the account established and maintained for each Participant. Separate accounts shall be maintained for the portion of each Participant’s Account attributable to Employer Contributions and Rollover Contributions. Each such separate account will be adjusted for contributions, earnings, losses, expenses, distributions, and other applicable adjustments.

2.32 Plan. “Plan” means this document as adopted by the Trustees and as thereafter amended by the Trustees.

2.33 Plan Administrator. “Plan Administrator” means the person designated by the Trustees to administer the Plan. In the event that no Plan Administrator is appointed by the Trustees, the duties and obligations of the Plan Administrator shall be the duties and obligations of the Trustees collectively.

2.34 Plan Year. “Plan Year” means the Plan’s accounting year of twelve (12) months commencing on June 1<sup>st</sup> of each year and ending the following May 31<sup>st</sup>.

2.35 Regulation. “Regulation” means the Income Tax Regulations as promulgated by the Secretary of the Treasury or his delegate, and as amended or replaced from time to time.

2.36 Related Plan. The term “Related Plan” as used herein shall mean any other defined contribution plan (as defined in Section 415(k) of the Code), terminated or not, which is maintained by an Employer and an Affiliated Employer.

2.37 Retirement Date. The “Retirement Date” of each Participant shall be the date of his actual retirement on or after his Normal Retirement Age. Subject to Section 9.4, retirement benefits will commence within 60 days of his actual retirement date. Such election must be made by submitting to the Plan Administrator a written statement, signed by the Participant, which described the benefit and the date on which the payment of such benefit shall commence, and may be made only if such election complies with the requirements of Code section 401(a)(9) and the regulations thereunder, including incidental benefit requirements.

2.38 Surviving Spouse. The term “spouse” or “surviving spouse” is the spouse or surviving spouse of a Participant, provided that a former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in Section 414(p) of the Code.

2.39 Termination of Employment. A “Termination of Employment” shall occur upon the severance of the employment relationship between the Participant and Employer by reason of Disability or after a six (6) consecutive month period during which the Participant does not complete an Hour of Service.

2.40 Trust or Trust Fund. The terms “Trust” or “Trust Fund” as used herein shall mean all contributions to the Fund, together with the income therefrom and any other increment thereon, held, invested, reinvested and administered by the Trustees pursuant to the terms of the Trust Agreement.

2.41 Trust Agreement. “Trust Agreement” means the Agreement and Declaration of Trust of the Sheet Metal Workers Local Union No. 71 Annuity Fund.

2.42 Trustees. "Trustees" mean the persons named to serve in accordance with the terms of the Trust Agreement.

2.43 Union. "Union" means Local Union No. 71 of Sheet Metal Workers International Association.

2.44 Valuation Date. The term "Valuation Date" as used herein shall mean the last day of the Plan Year, and such other times during the Plan Year as the Trustees, in their discretion, may determine are appropriate.

### **ARTICLE III** **PARTICIPATION**

3.1 Conditions of Eligibility. Any Employee who is employed in Covered Employment shall participate in the Plan on the first day of the month following the date he becomes an Employee.

3.2 Reemployment. An Employee who terminates his employment and is reemployed by a Participating Employer prior to the date on which his Individual Account is distributed to him shall continue to participate in the Plan. An Employee who terminates his employment and is reemployed by a Participating Employer after the date on which his Individual Account is distributed to him shall become or again become a Participant on the first day of the month following the date he again becomes an Employee.

### **ARTICLE IV** **CONTRIBUTIONS**

4.1 Participating Employer Contributions. Commencing on the date that a Participating Employer participates in this Plan and Trust, each Participating Employer shall contribute to the Trust on behalf of each Employee, an amount for each hour worked as set forth in its Collective Bargaining Agreement. Payments of such amounts shall be made to the Trust not later than the fifteenth day of the following month and shall be computed on the basis of hours worked in the preceding month.

4.2 Vesting. Employer contributions required to be made by this Article shall immediately be 100 percent vested and nonforfeitable.

### **ARTICLE V** **ROLLOVERS AND TRANSFERS FROM OTHER PLANS**

5.1 Rollovers. The Plan will accept a direct rollover of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code. Rollover contributions may be made only within sixty (60) days following the date the Employee received the distribution from the former plan (or within such additional period as may be provided under

Section 408 of the Code if the Employee shall have made a timely deposit of the distribution in an individual retirement account).

5.2 Transfers from Other Plans. The Trustees, in their discretion, may receive directly from the trustee under a qualified retirement plan of a former employer, or of a terminated retirement plan, all or any portion (as designated by the Participant in writing to the Trustees) of the amount that would otherwise be distributable to a Participant by reason of his termination of employment with that employer, or by reason of termination of the retirement plan.

5.3 Transfer Account. The Trustees may establish rules and procedures to implement this Article, including, without limitation, such procedures as may be appropriate to permit the Trustees to verify the tax qualified status of the prior retirement plan in compliance with any applicable provisions of the Code relating to such contributions and transfers. The amount contributed or transferred to the Trustees pursuant to this Article should be placed in the Participant's Transfer Account for the benefit of the Participant. The Participant shall have a fully vested interest in the balance of his Transfer Account at all times and such account shall share in earnings, gains and losses of the Trust Fund as set forth in Article VI of the Plan and may be distributed at the same time and in the same manner as set forth in Articles IX and X of the Plan.

## **ARTICLE VI**

### **PARTICIPANT ACCOUNTS AND ALLOCATION OF EARNINGS**

6.1 Separate Records. The Plan Administrator shall maintain a Separate Account in the name of each Participant and each Beneficiary having a share in the Trust. Separate records shall be kept of:

- (a) The portion of each Participant's Account resulting from Employer Contributions (such amounts to be recorded in an "Employer Contribution Account"); and
- (b) The portion of each Participant's share or Account resulting from the Participant's Rollover Contributions and transfers from other plans pursuant to Article V (such amounts to be recorded in a "Transfer Account").

Wherever in this Agreement reference is made to the "Account" of an Employee, the word "Account" shall be deemed to refer severally to the Employer Contribution Account and the Transfer Account, each such account being adjusted for contributions and distributions and gains and losses credited or charged as hereinafter described.

6.2 Account Values. The value of an Account for all purposes of this Plan shall be its value as last determined under this Article on or before the date in question, increased by contributions thereafter credited to the Account and decreased by administrative expenses, withdrawals, and payouts from the Account. Administrative expenses shall be divided equally among Accounts prior to the allocation of earnings and losses pursuant to Section 6.3, below.

6.3 Allocation of Earnings and Losses. As of each Valuation Date, the Trustees shall determine the fair market value of the assets of the Trust Fund using such generally accepted methods and bases as the Trustees shall deem advisable. Except as provided in Section 8.2, below, if the fair market value of the assets of the Trust Fund as so determined is greater or less than the total of the aggregate Account balances determined pursuant to Section 6.2., above, the Trustees shall allocate the difference among the Separate Accounts in the ratio that an Participant's Account as determined pursuant to Section 6.2 bears to the total of all Participant's Accounts as determined pursuant to Section 6.2.

## **ARTICLE VII**

### **ALLOCATION OF CONTRIBUTIONS**

7.1 Allocation of Amounts to Participant Accounts. Employer Contributions shall be allocated to the Participant's Employer Contribution Account within 30 days after the date of receipt by the Trustees from the Employer of all information necessary to make a proper allocation of the Employer's Contribution for the month. In addition, from time to time, on the date of the Contribution, the Trustees shall credit to the other Accounts of each Participant the respective amounts contributed by him to the Plan which constitute Transfer Contributions.

#### 7.2 Limitation on Allocations.

- (a) For purposes of this Section, the term "Employer" shall include any Affiliated Employer as defined in Section 2.2, above.
  - (1) The Annual Addition to any Participant's Account for any Limitation Year shall not exceed the lesser of his Maximum Permissible Amount or any other limitation set forth in the Plan.
  - (2) Prior to determining the Participant's Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount on the basis of a reasonable estimate of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.
  - (3) As soon as administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year shall be determined on the basis of compensation for the Limitation Year.
- (b) If a Participant's Annual Addition would exceed his Maximum Permissible Amount, the Excess Amount shall be eliminated as follows:
  - (1) If the Participant is participating in the Plan at the end of the Limitation Year, the Excess Amount in the Participant's Account will be used to reduce Employer Contributions for such Participant

in the next Limitation Year, and each succeeding Limitation Year if necessary;

- (2) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is not participating in the Plan at the end of the Limitation Year, the Excess Amount will be held unallocated in a Suspense Account. The Suspense Account will be applied to reduce future Employer Contributions for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary. If a Suspense Account is in existence at any time during the Limitation Year pursuant to this paragraph, it will not participate in the allocation of the investment gains and losses.
- (3) Upon termination of the Fund, any amounts in the Suspense Accounts at the time of such termination shall be allocated among Participant's Accounts in the same ratio that each Participant's Account balance bears to the total of all Participant Account balances as of the termination date. Upon termination of the Fund, any amounts held in suspense that cannot be allocated due to the provisions of this Section, shall revert to the Employer.
- (4) 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.

### 7.3 Military Service.

- (a) Effective December 12, 1994 notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.
- (b) For Plan Years beginning after December 31, 2008, (1) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), shall be treated as an Employee of the Employer making the payment; (2) the differential wage payment shall be treated as compensation for purposes of Code §415 and any other Internal Revenue Code section that references the definition of compensation under Code §415; and (3) the Plan shall not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

Section 7.3(b)(3) shall apply only if all employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).

- (c) A Participant who leaves Covered Employment for military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”) shall, upon his return to Covered Employment within the time periods set forth in USERRA, be credited with the Contributions that would have been made on his behalf but for such military leave. The amount of Contributions that will be credited to the Participant’s account shall be determined based on the average daily Contributions that were received by the Participant during the twelve-month period immediately preceding the absence due to military service. Fifty (50%) percent of the Contributions due to the Participant shall be paid by SMACNA-Buffalo, Inc., and the remaining fifty (50%) percent shall be paid by the Employer that last employed the Participant just prior to the start of his or her military service.

## **ARTICLE VIII**

### **DIRECTED INVESTMENT ACCOUNTS**

8.1 Establishment. Participants may, subject to a procedure established by the Trustees (the Participant Direction Procedures) and applied in a uniform nondiscriminatory manner, direct the Trustees to invest all of their accounts in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the Account of any Participant so directing will thereupon be considered a Participant’s Directed Account.

8.2 Valuation. As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate.

- (a) To the extent that the assets in a Participant’s Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant’s Directed Account shall be based upon the total amount of funds so invested, in a manner proportionate to the Participant’s share of such pooled investment.
- (b) To the extent that the assets in the Participant’s Directed Account are accounted for as segregated assets, the allocation of earnings, gains and losses from such assets shall be made on a separate and distinct basis.

8.3 Procedure. The Participant Direction Procedures shall provide an explanation of the circumstances under which Participants and their Beneficiaries may give investment instructions, including, but need not be limited to, the following:

- (a) The conveyance of instructions by the Participants and their Beneficiaries to invest Participant Directed Accounts in Directed Investments;
- (b) The name, address and phone number of the person or persons designated by the Trustees as being responsible for providing information to the Participant or a Beneficiary upon request relating to the investments in Directed Investments;
- (c) Applicable restrictions on transfers to and from any Designated Investment Alternative;
- (d) Any restrictions on the exercise of voting, tender and similar rights related to a Directed Investment by the Participants or their Beneficiaries;
- (e) A description of any transaction fees and expenses which affect the balance in Participant Directed Accounts in connection with the purchase or sale of Directed Investments;
- (f) General procedures for the dissemination of investment and other information relating to the Designated Investment Alternatives as deemed necessary or appropriate, including but not limited to a description of the following:
  - (1) the investment vehicles available under the Plan, including specific information regarding any Designated Investment Alternative;
  - (2) any designated Investment Managers; and
  - (3) a description of the additional information which may be obtained upon request from the person or persons designated to provide such information.
- (g) Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to the Participant in one or more written documents which are separate from the Participant Direction Procedures and are not thereby incorporated by reference into this Plan; and
- (h) The Trustees may, at their discretion, include in or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as they deem necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.



**ARTICLE IX**  
**DISTRIBUTION OF BENEFITS UPON**  
**TERMINATION OF EMPLOYMENT OR RETIREMENT**

9.1 Normal Retirement Benefit. Upon the retirement of a Participant on or after his Normal Retirement Date, the Trustees shall make payment of the entire amount then credited to the Participant's Account in a method provided under Section 9.3.

9.2 Termination of Employment Distributions. Upon Termination of Employment, a Participant shall be entitled to distribution of the entire amount credited to his Account in a method provided under Section 9.3.

A Participant who terminates service and who subsequently resumes employment with an Employer will again become a Participant on the entry date determined in accordance with Section 3.2 of the Plan.

9.3 Payment and Timing of Benefits.

- (a) Methods of Payment. The standard method of payment of benefits hereunder shall be a single lump sum payment in cash. In lieu of the standard method of payment, however, a Participant may elect in writing to receive his Account over a period certain in monthly, quarterly, semiannual, or annual cash installments. In order to provide such installment payments, the Trustees may purchase a nontransferable annuity contract for a term certain (with no life contingencies) providing for such payment. The period over which such payment is to be made shall not extend beyond the Participant's life expectancy (or the life expectancy of the Participant and his designated Beneficiary).
- (b) Mandatory Consent. Notwithstanding the foregoing, distribution of Plan benefits to a Participant or Participant's spouse may not commence before the Participant attains (or would have attained if not deceased) the later of age 62 or Normal Retirement Age without:
- (i) the written consent of the Participant; or
  - (ii) the written consent of the Participant's spouse if the benefit is payable due to the death of the Participant.

The consent must be in writing and must be made and filed with the Plan Administrator during the 90 days prior to the date benefits commence.

However, to the extent that a distribution is required under Internal Revenue Code Sections 401(a)(9) or 415, such consent shall not be needed with respect to the amount of such required distribution.

- (c) Cash-Out. Notwithstanding anything stated above in this Section to the contrary, if the full amount credited to a Participant's Account (excluding that portion of his account attributable to Rollover Contributions) on his Retirement Date or Termination of Employment, if earlier, is \$5,000 or less the Participant shall receive a one sum payment equal to his vested Account balance, in lieu of any benefit hereinbefore described. No such distribution shall be made in absence of Participant consent if the full vested Account exceeds \$5,000.

In the event of a mandatory distribution greater than \$1,000 in accordance with the provisions of this Section 9.3(c), if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly in accordance with Section 9.3(a), then the Trustees will pay the distribution in a direct rollover to an individual retirement plan designated by the Trustees.

- (d) Minimum Distributions. Distributions made in other than a lump sum shall be in accordance with the regulations under Section 401(a) (9) of the Code, the requirements of which are set forth in Section 9.6, below.
- (e) Required Commencement Date. The required beginning date of a Participant is the first day of April of the calendar year following the calendar year in which the Participant attains age 70 1/2. However, a Participant who reaches age 70 1/2 after 1995, who is not a Five Percent Owner and who does not retire by the end of the calendar year in which such Participant reaches age 70 1/2, may elect to defer his required beginning date to the first day of April of the calendar year following the calendar year in which the Participant retires.
- (f) 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.

#### 9.4 Commencement of Benefits.

- (a) Upon a Participant's Retirement Date or upon his Termination of Employment, his benefit payments under the Plan will commence no later than sixty (60) days after the Valuation Date coinciding with or immediately following the date the Participant terminates his employment.

- (b) If the benefit amount cannot be determined before payment is required, or if it is not possible to pay when required because the Trustees have been unable to locate the Participant after making reasonable efforts to do so, a payment retroactive to the required date may be made no later than sixty (60) days after the earliest date on which the amount of that payment can be determined under this Plan or the date on which the Participant is located (whichever is applicable).

9.5 Advance Distribution for Hardship. At the election of the Participant, the Trustees shall distribute to any Participant in any one Plan Year up to the lesser of 100% of his Account valued as of the last Valuation Date or the amount necessary to satisfy the financial hardship of the Participant. Any distribution made pursuant to this Section shall be deemed to be made as of the Valuation Date immediately preceding the date of distribution, and the Participant's Account shall be reduced accordingly. Withdrawal under this Section shall qualify as a hardship if it is on account of:

- (a) Expenses for medical care described in the Code Section 213(d) previously incurred by the Participant, his spouse, or any of his dependents (as defined in Code Section 152) or necessary for these persons to obtain medical care;
- (b) The costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments);
- (c) Funeral expenses for a member of the Participant's family.
- (d) Payment of tuition, related educational fees, and room and board expenses for the next twelve (12) months of post-secondary education for the Participant, his spouse, children, or dependents; or
- (e) Payments necessary to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence.

Any distributions made pursuant to this Section shall be made in a single cash payment.

9.6 Loans to Participants.

- (a) The Trustees may, in their discretion, make loans to Participants and Beneficiaries under the following circumstances: (1) loans shall be made available to all Participants and Beneficiaries on a reasonably equivalent basis; (2) loans shall not be made available to Highly Compensated Employees in an amount greater than the amount made available to other Participants and Beneficiaries; (3) loans shall bear a reasonable rate of interest; (4) loans shall be adequately secured; and (5) shall provide for repayment over a reasonable period of time.

- (b) Loans shall not be made to any Shareholder-Employee unless an exemption for such loan is obtained pursuant to Act Section 408 and further provided that such loan would not be subject to tax pursuant to Code Section 4975.
- (c) Loans shall not be made to any Owner-Employee unless an exemption for such loan is obtained pursuant to Act Section 408 and further provided that such loan would not be subject to tax pursuant to Code Section 4975.
- (d) Loans made pursuant to this Section (when added to the outstanding balance of all other loans made by the Plan to the Participant) shall be limited to the lesser of:
  - (1) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Participant during the one year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Participant on the date of which such loan was made, or
  - (2) one-half (1/2) of the present value of the non-forfeitable accrued benefit of the Participant under the Plan.
- (e) The minimum amount of any loan shall be \$1,000.
- (f) Loans shall provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as principal residence of the Participant shall provide for periodic repayment over a reasonable period of time that may exceed five (5) years. For this purpose, a principal residence has the same meaning as a principal residence under Code Section 1034. Loan repayments will be suspended under this Plan as permitted under Code Section 414(u)(4).
- (g) Any loans granted or renewed shall be made pursuant to a Participant loan program. Such loan program shall be established in writing and must include, but need not be limited to, the following:
  - (1) the identity of the person or positions authorized to administer the Participant loan program;
  - (2) a procedure for applying for loans;
  - (3) the basis on which loans will be approved or denied;
  - (4) limitations, if any, on the types and amounts of loans offered;

- (5) the procedure under the program for determining a reasonable rate of interest; and
- (6) the types of collateral which may secure a Participant loan.

9.6 Minimum Distribution Rules. This Section sets forth certain rules which apply to all distributions from the Plan. In addition, the remainder of Section 9.6 establishes other rules with which specified distributions must comply. In the event of any conflict between rules set forth in this Section 9.6, and any other rules set forth in the Plan, making compliance with both rules impossible, this Section shall control which requires the earliest distribution(s) to be made from the Plan. All distributions required under this Section 9.6 will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

- (a) 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) If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (i) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.
  - (ii) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (iii) 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.
  - (iv) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 9.6(b), other than Subsection (b)(i), will apply as if the surviving spouse were the Participant.

For purposes of this Subsection (b), and Subsections (e) through (i), distributions are considered to begin on the Participant's required

beginning date. If Section 9.6(b)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 9.6(b)(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 9.6(b)), the date distributions are considered to begin is the date distributions actually commence.

- (c) 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 Subsection (d) and Subsections (e) through (i) of this Section 9.6. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations.
- (d) 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 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 of the Treasury regulations, using the Participant's and spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this Subsection (d) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

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

- (i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
  - (ii) 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 surviving 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.
  - (iii) 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.
- (f) 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.
- (g) If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Subsection (e) above.
- (h) 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.
- (i) If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the

surviving spouse under Section 9.6(b)(i) above, this Section will apply as if the surviving spouse were the Participant.

- (j) The following terms will apply for the purposes of this Section 9.6:
- (i) Designated Beneficiary. The term “Designated Beneficiary” means any person designated as a beneficiary by the Participant and is the Designated Beneficiary under section 1.401(a)(9)-4 of the Treasury regulations.
  - (ii) Distribution Calendar Year. The term “Distribution Calendar Year” means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant’s required beginning date. For distributions beginning after the Participant’s death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 9.3(e). 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.
  - (iii) Life Expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
  - (iv) Participant’s Account Balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of 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.
  - (v) Required Beginning Date. The term “Required Beginning Date” is defined in Section 9.3(e).



9.7 Waiver of 2009 Required Distributions.

- (a) The requirements of Code §401(a)(9) and the provisions of the Plan relating thereto, except as set forth in Section 9.7(d), will not apply for the distribution calendar year 2009.
- (b) For purposes of Code §401(a)(9) and the provisions of the Plan relating thereto: (a) the required beginning date with respect to any individual will be determined without regard to this Section 9.7 for purposes of applying Code §401(a)(9) for distribution calendar years other than 2009; and (b) if the 5-year rule of Code §401(a)(9)(B)(ii) applies, the 5-year period described therein shall be determined without regard to calendar year 2009.
- (c) If all or any portion of a distribution during 2009 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under Code §401(a)(9) had applied during 2009, then the Plan will not treat such distribution as an eligible rollover distribution for purposes of the direct rollover rules of Code §401(a)(31), the notice requirements of Code §402(f), or the 20% withholding requirement of Code §3405(c).
- (d) For the distribution calendar year 2009, the Plan will permit an affected Participant to elect whether to receive for 2009: (i) no distribution; (ii) the 2009 required distribution (the “2009 RMD”); or (iii) any amount other than the 2009 RMD. However, if the Participant fails to make an election, the Plan will distribute the 2009 RMD to the Participant. This affects Participants who otherwise would receive a 2009 RMD equal to or substantially similar to the amount Code §401(a)(9) would require the Plan to distribute for the 2009 distribution calendar year in the absence of this provision. This election does not affect lump sum distributions or other distributions determined without regard to Code §401(a)(9). For purposes of this Section 9.7(d), references to a Participant include alternate payees of a Participant and beneficiaries of a deceased Participant.

9.8 Spousal Consent to Hardship Advance, Loans. Any distribution for a hardship pursuant to Section 9.5, or any loan pursuant to Section 9.6, shall be subject to the written consent of the Participant’s Spouse unless it is established to the satisfaction of a Plan representative that such written consent cannot be obtained because:

- (a) there is no Spouse;
- (b) the Spouse cannot be located; or
- (c) the Participant is legally separated or has been abandoned within the meaning of local law, and the Participant has a court order to such effect.

**ARTICLE X**  
**DEATH BENEFITS**

10.1 Death Benefit Distributions.

- (a) If a Participant dies before his Annuity Starting Date, the Trustees shall pay his entire Account to his Beneficiary, in a method provided under Section 9.3, as the Beneficiary shall elect; provided, however, that the Beneficiary may not elect distribution over a period extending beyond the Beneficiary's life expectancy. Notwithstanding the above, if the value of the Participant's Account does not exceed \$5,000, the Trustees may make distribution of his Account to his Beneficiary in a cash lump sum.
- (b) If the Participant is married at the time of his death, his Beneficiary shall be his surviving spouse unless he has designated a Beneficiary other than his spouse pursuant to the provisions of Section 10.2. If the Participant is not married at the time of his death, or is married and has a Beneficiary designation in effect naming a Beneficiary other than his spouse, the Trustees, in accordance with the provisions of Section 9.3, shall distribute the value of such deceased Participant's Account to any surviving Beneficiary designated by the deceased Participant, or if none to the Participant's issue, per stirpes, or if neither the Participant's designated Beneficiary nor any of his issue are living, then to such Participant's estate. Distribution shall commence not later than sixty (60) days after the end of the Plan Year in which the death of the Participant occurs.
- (c) 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.

10.2 Designation of Beneficiary.

- (a) Each Participant or former Participant may designate, revoke and redesignate one or more Beneficiaries (including contingent Beneficiaries) with respect to the death benefits provided in this Section. Such actions shall be taken in writing on a form provided by the Trustees. However, a Participant who is married at the time he designates a Beneficiary may designate a Beneficiary other than his spouse only if: (i) the spouse has waived all rights to be the Participant's Beneficiary; or (ii) the spouse cannot be located. Any waiver by a spouse for the purpose of declining benefits must be in writing, witnessed by the Plan Administrator, a Plan representative, or a notary Public, and acknowledge the effect of such waiver. Any consent given under this Section is valid only with respect to the spouse who signed the consent and the particular designated Beneficiary.

If it is established that the consent of a spouse cannot be obtained, then such establishment is valid only with respect to that designated spouse.

- (b) Members of a class of Beneficiaries shall cease to be entitled to benefits upon the Trustees' determination that no members of the class can be located after reasonable efforts have been made to do so.

### 10.3 Account Value; Commencement of Benefits.

- (a) For purposes of computing the Participant's death benefit under this Article, his Account shall be valued as of the Valuation Date coinciding with or immediately following the date of his death and distributions shall commence as soon as practicable after such Valuation Date. In no event, however, shall distributions commence later than sixty (60) days after the close of the Plan Year in which the Trustees receive satisfactory proof of the Participant's death.
- (b) If the amount payable under this Article cannot be ascertained or the person to whom it is payable has not been determined or located and reasonable efforts to do so have been made within the time limits set forth in sub-Section (a), then distributions under this Article shall be made or shall commence no later than sixty (60) days after such amount is determined or such person is located.

## **ARTICLE XI ELIGIBLE ROLLOVER DISTRIBUTIONS AND OTHER DISTRIBUTION RULES – ROLLOVERS AND TRANSFERS TO OTHER PLANS**

11.1 Direct Rollover of Eligible Rollover Distributions. Notwithstanding any provision of this Plan to the contrary that would otherwise limit a distributee's election under Articles IX or X, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution that is equal to at least \$500.00 paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

11.2 Definitions – Eligible Rollover Distribution. An "eligible rollover distribution" is any distribution of all or any portion of the Account of the distributee, except that an eligible rollover distribution does not include: (i) 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; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) the portion of any distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); or, (iv) any other distribution(s) that is reasonably expected to total less than \$200.00 during a year. Any amount that is distributed

on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

11.3 Definitions – Eligible Retirement Plan. An “eligible retirement plan” is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified plan described in Section 401(a) of the Code, that accepts the distributee’s eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

An eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

Effective January 1, 2008 a Participant or Beneficiary may elect to roll over directly an “eligible rollover distribution” to a Roth IRA described in Code § 408A(b). For this purpose, the term “eligible rollover distribution” includes a rollover distribution described in section 11.8 of the Plan, if applicable.

11.4 Definitions – Distributee. A “distributee” includes an Employee or former Employee. In addition, the Employee’s or former Employee’s surviving spouse and the Employee’s or former Employee’s spouse or former spouse who is the alternative 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.

11.5 Definitions – Direct Rollover. A “direct rollover” is a payment by the Plan to the eligible retirement plan specified by the distributee.

11.6 Qualified Domestic Relations Order Distribution. All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any “alternate payee” under a “qualified domestic relations order.” Furthermore a distribution to an “alternate payee” shall be permitted if such distribution is authorized by a “qualified domestic relations order,” even if the affected Participant has not separated from service and has not reached the “earliest retirement age” under the Plan. For the purposes of this Section 11.6, “alternate payee,” “qualified domestic relations order” and “earliest retirement age” shall have the meaning set forth under Section 414(p) of the Code.

Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a 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.

11.7 Distribution for Minor Beneficiary. In the event a distribution is to be made to a minor, then the Plan Administrator may direct that such distribution be paid to the legal guardian, or if none, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains his residence, or to the custodian for such beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian, custodian, or parent of a minor Beneficiary shall fully discharge the Trustees and Plan from further liability on account thereof.

11.8 Distribution to Non-Spouse Beneficiary. For distributions after December 31, 2009, 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/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.

Although a non-spouse beneficiary may roll over directly a distribution as provided in this paragraph (c), the distribution is not subject to the direct rollover requirements of Code §401(a)(31) (including the automatic rollover provisions of 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.

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).

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/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)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary’s distribution.

## **ARTICLE XII**

### **PLAN ADMINISTRATOR**

12.1 Designation. The Trustees may designate that person or persons to serve as Fund Administrator and successor Administrators as required who shall signify their acceptance of this responsibility as a Named Fiduciary of the Trust by a writing specifically accepting the same. If no person is so designated, and at times when no designated individual is occupying the position of Plan Administrator, all reference in the Plan and Trust to the Plan Administrator shall be deemed to refer to the Trustees, collectively.

12.2 Removal. The Plan Administrator, if one is so named, may resign at any time by delivering to the Trustees a written notice of resignation to take effect at a date specified therein, which shall be not less than thirty (30) days after the delivery thereof, unless such notice shall be waived.

The Plan Administrator may be removed, with or without cause, by the Trustees by delivery of written notice of removal to take effect at a date specified therein, which shall be not less than thirty (30) days after delivery thereof, or in lieu of such period, the Trustees may remove the Plan Administrator immediately, paying him for his services for a like period.

12.3 Delegation of Duties. As a Named Fiduciary, the Plan Administrator may engage agents to assist him in carrying out his functions hereunder.

The Plan Administrator may appoint, in writing, an investment manager or managers and delegate to him the authority to manage, invest and/or reinvest all or any part of the Trust Assets. With regard to the assets entrusted to his care, the investment manager shall provide written instructions and directions to the Trustees who shall in turn be entitled to rely upon such written direction. This appointment and delegation shall be evidenced by a signed written agreement which must be retained with the other Plan documents.

12.4 Responsibilities. The primary responsibility of the Plan Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the terms of the Plan. The Plan Administrator shall construe this Plan and determine all questions of interpretation or policy in a manner not inconsistent with this Agreement or that of the Trustees and such construction or determination in good faith shall be final and conclusive. The Plan Administrator may correct any defect, supply any omission or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of this Agreement; provided, however, that any interpretation or construction shall be done in a nondiscriminatory manner and shall be consistent with the intent that the Plan shall continue to be deemed a qualified Plan under the terms of Section 401 of Code, as amended from time to time, and shall comply with the terms of ERISA and all regulations issued pursuant thereto. The Plan Administrator shall have all powers necessary or appropriate to accomplish his duties under this Plan.

The Plan Administrator shall be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

- (a) To determine all questions relating to the eligibility of Employees to participate in or to remain a Participant hereunder;
- (b) To compute, certify and advise the Trustees with respect to the amount and kind of benefits to which any Participant shall be entitled hereunder;
- (c) To authorize and advise the Trustees with respect to all disbursements from the Fund;
- (d) To maintain all the necessary records for the administration of the Plan;

- (e) To interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are not inconsistent with the terms hereof;
- (f) To determine the size and type of any contract to be purchased from an insurance company for any Participant hereunder;
- (g) To compute and certify to the Trustees initially and from time to time the sums of money necessary to be contributed to the Fund;
- (h) To advise the Trustees regarding the short and long-term liquidity needs of the plan in order that the Trustees might direct its investments accordingly;
- (i) To advise, counsel and direct the Trustees with respect to all investments of the principal and income and other matters concerning the Trust corpus; and
- (j) To advise, counsel and assist any Participant regarding any rights, benefits or elections available under the Plan.

The Plan Administrator shall also be responsible for preparing and filing such annual disclosure reports and tax forms as may be required from time to time by the Secretary of Labor or the Secretary of the Treasury under the authority granted by ERISA or the Code and any regulations issued pursuant thereto.

The Plan Administrator must furnish to each Participant covered under the Plan and to each Beneficiary who is entitled to receive benefits under the Plan such information and reports and under such circumstances as may be required by law or under the terms of the Plan.

The Plan Administrator shall make copies of the Plan description and the latest annual report and any Collective Bargaining Agreement, trust agreement, contract or other instruments under which the Plan was established or is operated available for examination by any Plan Participant or Beneficiary in the principal office of the Plan Administrator.

Whenever it is determined by the Plan Administrator to be in the best interest of the Plan and its Participants or Beneficiaries, the Plan Administrator may request such variances, deferrals, extensions or exemptions or make such elections for the Plan as may be available under the law.

The Plan Administrator shall be responsible for procuring bonding for any persons dealing with the Plan or its assets as may be required by law and shall be subject to all the terms and restrictions on fiduciaries as further explained in Article XII of this Trust.

### **ARTICLE XIII** **AMENDMENT OR TERMINATION**

13.1 Right to Amend. This Plan may be amended by the Trustees in writing from time to time, provided that such amendment complies with the terms of the Collective Bargaining

Agreements, has no effect on the amount to be contributed by a Participating Employer, and conforms to the Code and ERISA. Any amendment shall be conditioned upon the continuing approval of the Trust as a qualified Trust under the applicable Section of the Code. No amendment may permit any part of the Trust Fund to be diverted to purposes other than the exclusive benefit of the Covered Employees or their Beneficiaries or cause any reduction in the amount therefore credited to any Employee or cause or permit any portion of the Trust assets, other than Forfeitures, to revert to or become the property of a Participating Employer.

13.2 Termination. The Plan and Trust may be terminated by an instrument in writing duly executed by a majority of the Trustees when there is no longer in force and effect a Collective Bargaining Agreement between any Employer and the Union requiring contributions to the Fund.

13.3 Partial Termination. Upon termination of the Plan with respect to a group of Participants which constitutes a partial termination of the Plan, the Trustees shall allocate and segregate for the benefit of the Participants then or theretofore employed by the Participating Employer with respect to which the Plan is being terminated the Individual Accounts of such Participants in the Trust Fund. The funds so allocated and segregated shall be used by the trustees to pay benefits to or on behalf of the Participants in accordance with Paragraph 13.4, below.

13.4 Liquidation of Trust in Event of Termination. Notwithstanding any other provisions of this instrument, in the event of a complete or a partial termination of this Plan and the Trust, or upon complete discontinuance of contributions under this Plan by any or all of the Employers, the amounts credited to each Participant's Account for which there has been a termination or a discontinuance of contributions shall become vested. If either of these events should occur, the Trustee shall:

- (a) Reduce to cash part or all of the Trust Fund as they may deem appropriate;
- (b) Pay liabilities, if any, of the Trust;
- (c) Value the remaining assets of the terminated portion of the Trust and of the individual Participants' Accounts as of the date of termination in the same manner as provided in Section 6.3;
- (d) Distribute any remaining assets (in cash or in kind) in proportion to the amounts standing to the credit of each Participant's respective Account as of the termination date.

#### **ARTICLE XIV** **EMPLOYEE RIGHTS**

14.1 Regular Reports. Every Participant and Beneficiary covered under the Plan shall receive the following reports under the following circumstances:

- (a) A Participant or Beneficiary shall receive a summary plan description:



- (1) within one hundred twenty (120) days after the Plan is established;
  - (2) within ninety (90) days after he becomes a Participant or begins to receive benefits under the Plan; and;
  - (3) within five (5) years of the date he last received a summary plan description, or if there has been no intervening summary description of plan modifications and changes in plan description, within ten (10) years of such date.
- (b) A Participant or Beneficiary shall receive a summary description of plan modifications and changes in plan description within two hundred ten (210) days after the close of the Plan Year in which the modification of the Plan or change in information occurs;
  - (c) A Participant or Beneficiary shall receive a summary annual report in the form prescribed by the Department of Labor within nine (9) months after the close of each Plan Year, or if an extension of time is granted for the filing of the annual report, within two (2) months after the end of the period of such extension.

14.2 Benefit Statements. The Plan Administrator shall supply a benefit statement to each vested Participant who terminates his employment with a Participating Employer and, on written request made no more often than once each Plan Year, to any other Participant. Such benefit statement shall set forth the nature, amount, and form of the deferred vested benefit to which a terminated Participant is entitled, and shall set forth the total benefit accrued and either amount of vested benefit or earliest date on which a portion of accrued benefits will become vested in the case of a Participant who has not terminated.

14.3 Information Generally Available. The Plan Administrator shall make copies of the Plan, the Plan description and the latest annual report available for examination by any Participant or Beneficiary in the principal office of the Plan Administrator and such other locations as may be necessary to make such information reasonably accessible to all interested parties. Subject to a reasonable charge to defray the cost of furnishing such copies, the Plan Administrator shall, upon written request of any Participant or Beneficiary, furnish a copy of the Plan, the latest summary plan description, the plan description, the latest annual report, any terminal report or any other instrument under which the Plan is established or operated.

14.4 Claims Procedure. Each Person who shall make a claim under the Plan shall look only to the assets of the Trust fund in satisfaction thereof. The following procedures shall be followed in applying for benefits:

- (a) A Participant or Beneficiary shall notify the Plan Administrator of a claim for benefits. Such notification shall be in writing, shall set forth the basis of the claim and shall authorize the Plan Administrator to conduct such examinations as may be necessary to determine the validity of the claim and to take such steps as may be necessary to facilitate the payment of any

benefits to which the Participant or Beneficiary may be entitled under the terms of the Plan;

- (b) The Plan Administrator shall notify the Participant or Beneficiary within sixty (60) days after receipt of the claim if the claim has been denied or modified;
- (c) The Participant or Beneficiary shall thereafter have sixty (60) days within which to appeal the Plan Administrator decision to the Trustees. Such appeal shall be in writing, shall be delivered to the Trustees, and shall specify in detail the basis for the objection to the Plan Administrator's decision;
- (d) The Trustees shall act upon the appeal within sixty (60) days of their receipt of same. In the event that the Trustees deny the appeal, in whole or in part, or they have not acted upon it within the sixty (60) day period aforesaid, either party may request a determination by arbitration by delivering a written notice to that effect directed to the other party and to the American Arbitration Association. An arbitrator will be selected and a hearing conducted in accordance with the American Arbitration Association's rules for Voluntary Labor Arbitration. Any and all such hearings shall be held in the City of Buffalo, New York.

14.5 Protection from Reprisal. No Covered Employee, Participant or Beneficiary may be discharged, fined, suspended, expelled, disciplined or otherwise discriminated against for exercising any right to which he is entitled or for cooperation with any inquiry or investigation under the provisions of this Plan or any governing law or regulation.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

15.1 Plan Merger. This Plan shall not be merged or consolidated, nor its assets or liabilities transferred, unless the benefit each Participant or Beneficiary would receive immediately after such merger, consolidation or transfer is equal to or greater than the benefit he would have been entitled to receive immediately before such merger, consolidation or transfer if this Plan had then been terminated.

15.2 Return of Contributions. All contributions which may be paid into this Plan and Trust by either the Participating Employer or a Participant hereof shall be returned in the event that the Commissioner of Internal Revenue shall determine that the Plan does not initially qualify under Section 401(a) of the Code, or that the Trust is not exempt from Federal income tax under Section 501(a) of the Code.

15.3 Mistake of Fact. In the event that any amount is contributed to this Plan by a Participating Employer by reason of a mistake of fact of law, the amount so contributed less earnings thereon shall be returned to the Employer. However, such amount shall be reduced by any

losses thereon and any portion thereof the return of which would reduce any Participant's account balance to less than what it would have been had the mistaken amount not been contributed. In addition, such a return shall be made only if it can be accomplished within six (6) months after the date of discovery of the mistaken payment.

15.4 Allocation of Responsibilities. Either the Trustees or the Plan Administrator, if more than one (1), may allocate the responsibilities assigned to them hereunder among themselves in any manner they may deem appropriate pursuant to a written agreement signed by all of them. A copy of any such agreement shall be delivered to the Trustees. In the event that either the Trustees or Plan Administrator choose to so allocate their responsibilities, each such member shall be responsible only for those responsibilities either specifically allocated to him or not specifically allocated to any other member.

15.5 Liability. Neither the Trustees nor the Plan Administrator shall be liable for any action taken or not taken except by reason of failure to discharge their responsibilities solely in the interest of Participants and their Beneficiaries, in accordance with the Plan document, and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

15.6 Unclaimed Funds. Each Participant shall keep the Plan Administrator informed of his current address, his marital status, employment status and Beneficiary. Neither the Plan Administrator nor the Trustees shall be obligated to search for the whereabouts of any person.

If the location of a Participant is not made known to the Plan Administrator within three (3) years after the date on which distribution of the Participant's Separate Account may first be made, such distribution may be made as though the Participant had died at the end of such three-year period. If, within either (i) one additional year or (ii) three years after the actual death of a Participant, the Plan Administrator, pursuant to the guidelines set forth in Section 16.7, below, determines that no person who would receive a distribution under the Plan upon the death of such Participant pursuant to Article X, above, can be located, the Participant's Separate Account shall be eliminated and the proceeds thereof shall constitute an increase in value of the Trust fund since the Valuation Date immediately prior to the Account's elimination and shall be allocated pursuant to Section 6.3, above. However, in the event that the affected Participant, his spouse or his Beneficiary thereafter makes a claim for any amount which has been so allocated, the benefits which have been so allocated shall be reinstated.

15.7 Location of a Participant. For purposes of Section 16.6 above, the "location of a Participant is not made known to the Plan Administrator within three (3) years after the date on which distribution of the Participant's Separate Account may first be made" if all of the following shall occur:

- (a) Cessation of contributions on behalf of the Participant by any Participating Employer for a period of three (3) consecutive years coupled with his last known Employer's written confirmation that such Participant is no longer employed and that his whereabouts is unknown;

- (b) The failure of the Participant to keep the Plan Administrator informed of his current address, marital status, employment status and/or Beneficiary (either by written, oral or telephonic communication) for a period of at least three (3) years measured from the date on which contributions to the Plan on his behalf ceased;
- (c) The return of regular or special Plan mailings by the Post Office directed to the last known address of the Participant over the three (3) consecutive years commencing on the date on which contributions to the Plan on his behalf ceased; and
- (d) The failure of the Participant, the Participant's Spouse or Participant's Beneficiary, either by written, oral or telephonic communication, to contact the Plan Administrator, a Trustee, or any duly authorized representative or employee of the Plan concerning a claim for benefits, information as to the Participant, his Separate Account or the Plan during the three (3) year period commencing on the date on which contributions on his behalf ceased.

15.8 Headings. The headings and sub-headings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

## **ARTICLE XVI**

### **TOP-HEAVY PLAN RULES**

16.1 Application of Top-Heavy Rules. If the Plan is or becomes Top-Heavy after December 31, 1983, the provisions of this Article will supersede any conflicting provisions in the Plan.

16.2 Top-Heavy Definitions. For purposes of this Article XVI, the following terms will have the following meanings:

- (a) Key Employee: Key Employee means any employee or former employee (including any deceased employee) who at any time during the plan year that includes the determination date was an officer of the employer having annual compensation greater than \$130,000 (as adjusted under section 416(i)(1) of the code for plan years beginning after December 31, 2002), a 5-percent owner of the employer, or a 1-percent owner of the employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of section 415(c)(3) of the Code. The determination of who is a key employee will be made in accordance with section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.
- (b) Top-Heavy Plan: This plan will be a Top-Heavy Plan for any Plan Year beginning after December 31, 1983, if any of the following conditions exist:

- (i) If the Top-Heavy Ratio for this Plan exceeds 60% and this Plan is not part of a Required Aggregation Group or Permissive Aggregation Group of Plans,
  - (ii) If this Plan is a part of a Required Group of Plans but not part of a Permissive Aggregation Group and the Top-Heavy Ratio for the group of Plans exceeds 60%, or
  - (iii) If this Plan is a part of a Required Aggregation Group and part of a Permissive Aggregation Group of Plans and the Top-Heavy Ratio for the Permissive Aggregation Group exceeds 60%.
- (c) Top-Heavy Ratio:
- (i) If an Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and such Employer has not maintained any defined benefit plan that, during the five-year period ending on the Determination Date(s) has or has had accrued benefits, the Top-Heavy Ratio for this Plan alone or for the Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the Determination Date(s) (including any part of any account balance distributed in the five-year period ending on the Determination Date(s)). The denominator is the sum of the present value of all accrued benefits (including any part of any account balance distributed in the five-year period ending on the determination date(s)), determined in accordance with Code section 416 and the regulations thereunder. Both the numerator and the denominator will be computed in accordance with Code section 416 and the regulations thereunder. Both the numerator and the denominator of the Top-Heavy Ratio will be adjusted to reflect any contribution not actually made as of the Determination Date, but which is required to be taken into account on that date under Code section 416 and the regulations thereunder.
  - (ii) If an Employer maintains one or more defined contribution Plans (including simplified employee pension plans) and such Employer maintains or has maintained one or more defined benefit plans that, during the five-year period ending on the Determination Date(s) has or has had any accrued benefits, the Top-Heavy Ratio for any Required or Permissive Aggregation Group as appropriate is a fraction. The numerator is the sum of the account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (i) above, and the present value of accrued benefits under the aggregated defined benefit plan or account balances under the aggregated defined contribution plan or plans for all Participants as of the Determination Date(s). The

denominator is the sum of the account balances under the aggregated defined contribution plan or plans for all Participants as of the Determination Date(s) and an amount similarly determined with respect to such defined benefit plan or plans, all determined in accordance with Code section 416 and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and the denominator of the Top-Heavy Ratio will be adjusted for any distribution of an accrued benefit made in the five-year period ending on the Determination Date.

- (iii) For purposes of (i) and (ii) above, the value of account balances and the present value of accrued benefits will be determined as of the most recent Valuation Date that falls within or ends with the 12-month period ending on the Determination Date, except as provided in Code section 416 and the regulations thereunder for the first and second years of a defined benefit plan. The account balances and accrued benefits of a Participant:
  - (1) who is not a Key Employee but who was a Key Employee in a prior year or
  - (2) who has net received any compensation from the Employer maintaining the Plan at any time during the five-year period ending on the Determination Date will be disregarded.
- (iv) Severance from employment. Effective for any Plan Year beginning after December 31, 2001, the provisions of the Plan setting forth the determination of the "Top-Heavy Ratio" for purposes of Code Section 416 shall be modified to only include benefits distributed within the one-year period ending on the "determination date" (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or disability.)

The calculation of Top-Heavy Ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code section 416 and the regulations thereunder. Deductible employee contributions will not be taken into account in determining the Top-Heavy Ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the Determination Dates that fall within the same calendar year.

- (d) Permissive Aggregation Group: The Required Aggregation Group of plans plus any other plan or plans of an Employer which, when considered as a group with the Required Aggregation Group, would continue to satisfy the requirements of Code sections 401(a)(4) and 410.

- (e) Required Aggregation Group: (i) Each qualified plan of an Employer in which at least one Key Employee participates, and (ii) any other qualified plan of an Employer that enables a plan described in (ii), above, to satisfy Code sections 401(a)(4) or 410.
- (f) Determination Date: For any Plan Year after the First Plan Year, the 1st day of the preceding Plan Year. For the first Plan Year of the Plan, the last day of that year.
- (g) Valuation Date: The date that is used to calculate the value of account balances or accrued benefits for determining the Top-Heavy Ratio. For this Plan, the Valuation Date is the Determination Date.
- (h) Present Value: For calculating the present value of any accrued benefit in determining the Top-Heavy Ratio, the actuarial assumptions employed will be those that are specified in the plan under consideration.

### 16.3 Minimum Contribution Requirement.

- (a) Except as otherwise provided in (c) and (d) below, an Employer's Contributions and forfeitures allocated on behalf of any Participant who is not a Key Employee will not be less than the lesser of 3% of such Participant's Compensation or, if the Employer has no defined benefit plan that designates this Plan to satisfy Code section 401, the largest percentage of such Employer Contributions and forfeitures, as a percentage of the first \$200,000 of the Key Employee's Compensation, allocated on behalf of any Key Employee for that year. The minimum allocation is determined without regard to any Social Security contribution. This minimum allocation will be made even though, under other Plan provisions, the Participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the year because of:
  - (i) the Participant's failure to complete 1,000 Hours of Service (or any equivalent provided in the Plan),
  - (ii) the Participant's failure to make mandatory employee contributions to the plan, or
  - (iii) compensation less than a stated amount.
- (b) For purposes of the minimum allocation, the \$200,000 limit described in section 2.10, and for all other top-heavy purposes, including determining whether an Employee is a Key Employee, Compensation will mean the compensation as defined in Regs. Section 1.415-2(d).
- (c) The provision in (a) above will not apply to any Participant who was not employed by the Employer on the last day of the Plan Year.

- (d) The provision in (a), above, will not apply to any Participant to the extent the Participant is covered under any other plan or plans of such Employer, if such plan provides that the minimum allocation or benefit requirement applicable Top-Heavy Plans will be met in the other plan or plans.

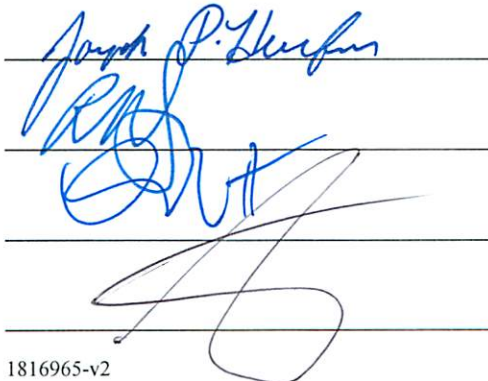
16.4 Determination of Present Values and Amounts. This section 16.4 shall apply for purposes of determining the present values of accrued benefits and the amounts of account balances of Employees as of the Determination Date.

- (a) Distributions during year ending on the Determination Date: The present values of accrued benefits and the amounts of the account balances of an employee as of the Determination Date shall be increased by the distributions made with respect to the employee under the plan and any plan aggregated with the plan under section 416(g)(2) of the Code during the 1-year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the plan under section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than severance from employment, death, or disability, this provisions shall be applied by substituting "5-year period" for "1-year period."
- (b) Employees not performing services during year ending on the Determination Date: The accrued benefits and accounts of any individual who has not performed services for the Employer during the 1-year period ending on the Determination Date shall not be taken into account.

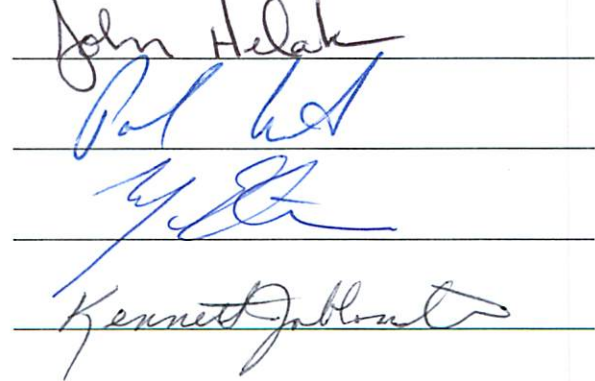
16.5 Minimum Benefits. For the purposes of satisfying the minimum benefit requirements of section 416(c)(1) of the Code and the Plan, in determining years of service with the Employer, any service with the Employer shall be disregarded to the extent that such service occurs during a Plan Year when the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

IN WITNESS WHEREOF, the Trustees have caused these presents to be signed as of the date first above written.

Employer  
~~UNION TRUSTEES~~



Union  
EMPLOYER TRUSTEES





**FIRST AMENDMENT  
TO THE  
SHEET METAL WORKERS LOCAL UNION NO. 71 ANNUITY FUND  
RESTATED PLAN OF BENEFITS**

**WHEREAS**, the Trustees of the Sheet Metal Workers Local Union No. 71 Annuity Fund have previously adopted a Restated Plan of Benefits (the “Plan”) effective the 1<sup>st</sup> day of June, 2014;

**WHEREAS**, pursuant to Section 13.1 of the Plan, the Trustees have the authority to amend the Plan and have determined that it is necessary to amend the Plan as set forth herein;

**NOW, THEREFORE**, the following shall constitute the First Amendment to the Sheet Metal Workers Local Union No. 71 Annuity Fund Restated Plan of Benefits, effective April 1, 2018.

**ARTICLE I  
CLAIMS PROCEDURE**

1.1 Section 14.4 of the Plan shall be amended to read as follows:

14.4 Claims Procedure. Each Participant who thinks he is entitled to a claim under the Plan shall look only to the assets of the Trust fund in satisfaction thereof. The following procedures shall be followed in filing a claim for benefits:

(a) Claims for benefits shall be made to the Plan Administrator in writing and shall set forth the basis of the claim and shall authorize the Plan Administrator to conduct such examinations as may be necessary to facilitate the payment of any benefits to which the claimant may be entitled under the terms of the Plan.

(b) The Plan Administrator shall notify the claimant within ninety (90) days after receipt of the claim (excluding a claim for disability benefits) if the claim has been denied or modified. If special circumstances require additional time for processing the claim, the Plan Administrator shall inform the claimant in writing indicating the special circumstances requiring an extension of time and the date by which a determination will be rendered. The additional time shall not exceed ninety (90) days.

(c) The Plan Administrator shall notify the claimant within forty-five (45) days after receipt of the claim for disability benefits if the claim has been denied or modified. If the Plan Administrator determines that an extension of time is necessary for processing the claim (due to circumstances beyond the control of the Fund), the 45-day period will be extended for an additional 30 days,

if additional time is still needed to make a determination, there may be an additional extension of 30 days. In such case the Plan Administrator must notify the claimant (within the initial 45-day period or prior to the expiration of the first 30-day extension) of the circumstances requiring the extension, the date by which the Plan expects to render a determination, the standard, on which entitlement to benefits is based, the unresolved issues that prevent a decision on the claim and additional information needed to resolve those issues. The claimant will have 45 days from receipt of the notice to provide the Plan Administrator with any additional information needed.

(d) In the event a claim is denied in whole or in part, (“an adverse benefit determination”) the claimant will be provided with written notification including:

(i) The specific reason or reasons for the adverse benefit determination and reference to the specific Plan provisions on which the determination is based;

(ii) A description of any additional material or information needed to complete the claim (including an explanation of why the information is needed);

(iii) A statement that you will be provided, upon written request and free of charge, with reasonable access to (and copies of) all documents, records and other information relevant to your claim; and

(iv) A description of the Plan’s appeal procedure and applicable time limits, as well as a statement of the claimants rights to bring suit under federal law (Section 502(a) of ERISA) following an adverse determination on appeal.

In addition to the above notification requirements, notification with regards to a disability claim shall also include:

(i) A discussion of the decision, including any reasons for disagreeing with the views of the claimant, any treating professionals, medical or vocational experts consulted, or a Social Security Administration determination; and

(ii) A description of any internal rule, guideline or similar standard that the Fund relied on in making a decision based on medical necessity, experimental treatment or a similar limitation, or statement that such explanation will be provided (without charge) upon the claimant’s request; and

(iii) A description of any scientific or clinical judgment that the Fund relied on in making a decision based on medical necessity, experimental treatment or a similar limitation, or a statement that such explanation will be provided (without charge) upon the claimant’s request.

1.2 Section 14.5 of the Plan will be designated Section 14.6, and a new Section 14.5 shall be inserted, to read as follows:

14.5 Claims Review Procedure.

If a claim is denied (in whole or in part), the claimant shall thereafter have sixty (60) days for claims other than disability and one hundred eighty (180) days for disability claims within which to appeal the determination to the Trustees. Such appeal shall be in writing, shall be delivered to the Trustees, and shall specify in detail the basis for the objection to their determination. The Board of Trustees shall thereby afford the claimant or his duly authorized representative the opportunity to review (free of charge) all documents, records and other information pertinent to the claim, to submit issues and comments in writing and discuss such documents and issues with the Trustees.

For disability benefit claims, a different person will review your claim than the one who originally denied the claim and the reviewer will not be a subordinate of the person who originally denied the claim. You will be advised of the identity of any medical or vocational expert who were consulted in connection with the initial denial. The reviewer will not give deference to the initial adverse benefit determination. The decision will be made on the basis of the record, including such additional documents and comments that may be submitted by you. In addition, if your claim was denied on the basis of a medical judgment, a health care professional who has appropriate training and experience in a relevant field of medicine will be consulted. The health care professional will not be the same person who was consulted with respect to the initial adverse benefit determination (or a subordinate of such person).

The Trustees shall act upon the appeal as soon as possible but no later than the date of the first Board meeting following the date the Plan receives a request for review, unless the request for review is filed within thirty (30) days prior to the date of such meeting. In such case, a determination will be made no later than the date of the second Board meeting following the date the Plan receives a request for review. If special circumstances (such as the need to hold a hearing) require a further extension of time for processing, the Trustees shall notify the claimant in writing describing the special circumstances and the date by which a determination will be rendered. The determination shall be rendered no later than the date of the third Board meeting following the date the Plan receives a request for review.

If the Trustees consider, rely upon or create any new or additional evidence during the review of the adverse benefit determination, they will provide such new or additional evidence to the claimant, free of charge, as soon as possible and sufficiently in advance of the time within which a determination on review is required to allow the claimant time to respond.


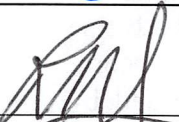
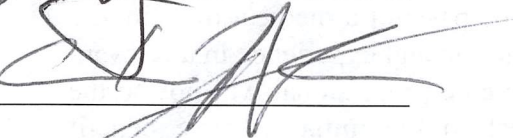

Before the Trustees issue an adverse benefit determination on review that

is based on a new or additional rationale, the claimant must be provided a copy of the rationale at no cost to the claimant. The rationale must be provided as soon as possible and sufficiently in advance of the time within which a final determination on appeal is required to allow the claimant time to respond.

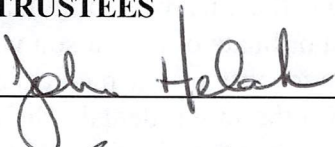
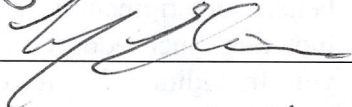
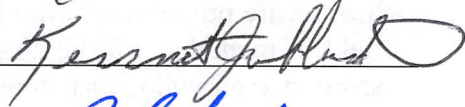

The Trustees shall notify the claimant of their determination as soon as possible but no later than five (5) days after the determination is made. Such notification shall include all of the information described in subsection (d) of this Article.

**IN WITNESS WHEREOF**, the Trustees of the Sheet Metal Workers Local Union No. 71 Annuity Fund hereby adopt this Amendment to the Restatement of the Sheet Metal Workers Local Union No. 71 Annuity Plan on this 5<sup>th</sup> day of June, 2018.

**EMPLOYER TRUSTEES:**

  
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**UNION TRUSTEES**

  
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**SECOND AMENDMENT  
TO THE  
SHEET METAL WORKERS LOCAL UNION NO. 71 ANNUITY FUND  
RESTATED PLAN OF BENEFITS**

**WHEREAS**, the Trustees of the Sheet Metal Workers Local Union No. 71 Annuity Fund have previously adopted a Restated Plan of Benefits (the "Plan") effective the 1<sup>st</sup> day of June, 2014;

**WHEREAS**, pursuant to Section 13.1 of the Plan, the Trustees have the authority to amend the Plan and have determined that it is necessary to amend the Plan as set forth herein;

**NOW, THEREFORE**, the following shall constitute the Second Amendment to the Sheet Metal Workers Local Union No. 71 Annuity Fund Restated Plan of Benefits, effective this 10<sup>th</sup> day of March, 2020.

1. Section 9.5 of the Plan shall be amended to read as follows:

9.5 Advance Distribution for Hardship. At the election of the Participant, the Trustees shall distribute to any Participant in any one Plan Year up to the lesser of 100% of his Account valued as of the last Valuation Date or the amount necessary to satisfy the financial hardship of the Participant. The minimum amount of any distribution under this Section 9.5 shall be \$1,000 and no more than two distributions may be made to a Participant under this Section 9.5 in any Plan Year.

Any distribution made pursuant to this Section shall be deemed to be made as of the Valuation Date immediately preceding the date of distribution, and the Participant's Account shall be reduced accordingly. Withdrawal under this Section shall qualify as a hardship if it is on account of:

- (a) Expenses for medical care described in the Code Section 213(d) previously incurred by the Participant, his spouse, or any of his dependents (as defined in Code Section 152) or necessary for these persons to obtain medical care;
- (b) The costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments);
- (c) Funeral expenses for a member of the Participant's family.
- (d) Payment of tuition, related educational fees, and room and board expenses for the next twelve (12) months of post-secondary education for the Participant, his spouse, children, or dependents;

(e) Payments necessary to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence;

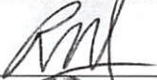

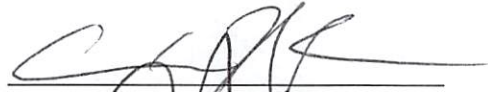
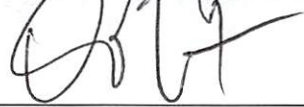
(f) Expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code §165, determined without regard to Code §165(h)(5); or

(g) Expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

Any distributions made pursuant to this Section shall be made in a single cash payment.

**IN WITNESS WHEREOF**, the Trustees of the Sheet Metal Workers Local Union No. 71 Annuity Fund hereby adopt this Amendment to the Restatement of the Sheet Metal Workers Local Union No. 71 Annuity Plan on this 10<sup>th</sup> day of March, 2020.

**EMPLOYER TRUSTEES:**

  
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**UNION TRUSTEES**

  
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**THIRD AMENDMENT  
TO THE  
SHEET METAL WORKERS LOCAL UNION NO. 71 ANNUITY FUND  
RESTATED PLAN OF BENEFITS**

**WHEREAS**, the Trustees of the Sheet Metal Workers Local Union No. 71 Annuity Fund have previously adopted a Restated Plan of Benefits (the “Plan”) effective the 1<sup>st</sup> day of June, 2014;

**WHEREAS**, pursuant to Section 13.1 of the Plan, the Trustees have the authority to amend the Plan and have determined that it is necessary to amend the Plan to comply with the Setting Every Community Up for Retirement Enhancement Act (“SECURE Act”) and the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”);

**NOW, THEREFORE**, the following shall constitute the Third Amendment to the Sheet Metal Workers Local Union No. 71 Annuity Fund Restated Plan of Benefits.

1. Sections 2.17 and 2.18 of the Plan are amended to read as follows:

2.17 Employee. The term “Employee” as used herein shall mean:

- (a) any person, including part-time employees, for whom contributions are required to be made to the Fund pursuant to the Collective Bargaining Agreement between the Union and an Employer; and
- (b) with the consent of the Trustees, persons within the employ of the Union for whom the Union has become an Employer as defined herein; and
- (c) with the consent of the Trustees, persons within the employ of the Fund, or other trust funds to which the Union is a party, and for whom the trustees have become an Employer, as defined herein.

The term “Employee” however, shall exclude any self-employed person, partner or proprietor.

The term “Employee” shall include any Leased Employee deemed to be an Employee of an Employer as provided in sub-Sections 414(n) or (o) of the Code.

2.18 Employer. The term “Employer” or “Participating Employer” as used herein shall mean:

- (a) any individual, firm, association, partnership or corporation, which is a party to a Collective Bargaining Agreement with the Union, and, in accordance therewith, agrees to participate in and contribute to the Fund; and

(b) the Union to the extent, and solely to the extent, that it acts in the capacity of an Employer of Employees on whose behalf it makes contributions to the Fund; and

(c) this Fund or other trust funds to which the Union is a party, for the purpose of making payments into this Fund as the employer of employees of such trust funds for which such trust funds agree to contribute to this Fund in accordance with the rules adopted by the Trustees.

2. Section 9.6 of the Plan is amended to read as follows:

9.6 Required Minimum Distributions. Distributions to a Participant will commence no later than the date determined in accordance with the provisions of this Section.

(a) General Rules –

(1) Effective Date –

The provisions of this Section will apply for purposes of determining required minimum distributions. Except as specifically set forth below, the rules in this Section for distributions after a Participant's death apply to distributions due and owing as a result of a Participant's death after December 31, 2021. The rules that apply as a result of a Participant's death before December 31, 2021 are set forth in the Plan document in effect prior to this amendment.

(2) Precedence -

The requirements of this Section will take precedence over any inconsistent provisions of the Plan.

(3) Requirements of Treasury Regulations Incorporated –

All distributions required under this Plan shall be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code including the minimum distribution incidental benefit requirement of Section 401(a)(9)(G) of the Code and Sections 1.401(a)(9)-2 through 1.401(a)(9)-9 of the Treasury regulations, as modified by changes in these rules made by the Setting Every Community Up for Retirement Enhancement Act ('SECURE Act') and the Coronavirus Aid, Relief and Economic Security Act ('CARES Act'). The provisions of this Section shall apply to any distribution of a Participant's benefit under this Plan and will take precedence over any distribution options in this Plan inconsistent with Section 401(a)(9) of the Code.

(b) Time and Manner of Distribution -

(1) Required Beginning Date –



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

(2) Forms of Distribution –

Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with subsections (c) and (d) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

(c) Required Minimum Distributions During Participant's Lifetime -

(1) Amount of Required Minimum Distribution for Each Distribution Calendar Year -

During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

- (i) The quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
- (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 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death –

Required minimum distributions will be determined under this Section 9.6(c) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

(d) Required Minimum Distributions After Participant's Death –

- (1) Distribution where there is no Designated Beneficiary. If a Participant dies before the Participant's entire interest is distributed, and there is no Designated Beneficiary, the Participant's entire interest will be distributed as follows:
  - (i) If distributions to the Participant had not begun prior to the Participant's death, by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death (determined without regard to the 2020 calendar year); or
  - (ii) If distributions to the Participant had begun prior to the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy, calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
  
- (2) Distribution where a Designated Beneficiary survives the Participant. If a Participant dies before the Participant's entire interest is distributed and a Designated Beneficiary survives the Participant, the Participant's entire interest will be distributed by December 31 of the calendar year containing the tenth (10<sup>th</sup>) anniversary of the Participant's death, whether or not distributions to the Participant had begun prior to the Participant's death, except if the Participant's Designated Beneficiary is an Eligible Designated Beneficiary, as defined below, the Participant's entire interest will be distributed, or begin to be distributed, as follows:
  - (i) If distributions to the Participant had not begun prior to the Participant's death, distributions will be made over the life of such Eligible Designated Beneficiary (or over a period not extending beyond the life expectancy of such Eligible Designated Beneficiary), subject to the limitations below, so long as such distribution to any Eligible Designated Beneficiary other than the Participant's surviving spouse begins by December 31 of the calendar year immediately following the calendar year in which the Participant died. If the Participant's Eligible Designated Beneficiary is the Participant's surviving spouse, Required Minimum Distributions due after December 31, 2019, shall begin by December 31 of the calendar year following the calendar year in which the Participant died or by December 31 of the calendar year in which the Participant would have attained age seventy-two (72), if later.
  - (ii) If the Participant's Eligible Designated Beneficiary is the Participant's minor child, the Participant's entire remaining interest

must be distributed to such Eligible Designated Beneficiary by December 31 of the calendar year containing the tenth (10<sup>th</sup>) anniversary of the calendar year in which the Eligible Designated Beneficiary attained majority age.

- (iii) If distributions to the Participant had begun prior to 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 longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Eligible Designated Beneficiary.
- (iv) If an Eligible Designated Beneficiary dies before distribution of the entire portion of the Participant's interest distributable to such Eligible Designated Beneficiary, the remainder of such portion shall be distributed by December 31 of the calendar year containing the tenth (10<sup>th</sup>) anniversary of the death of the Eligible Designated Beneficiary.

(e) Definitions -

(1) Designated Beneficiary -

Shall mean the individual who is designated as the Beneficiary under Article X of the Plan and is the Designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Treasury regulations. A Participant's Eligible Designated Beneficiary means, with respect to the Participant, any Designated Beneficiary who is, as of the date of the death of the Participant: (i) the surviving spouse of the Participant; (ii) a minor child of the Participant; (iii) disabled within the meaning of Code Section 72(m)(7); (iv) chronically ill within the meaning of Code Section 7702B(c)(2), provided there is a certification that, as of such date, the period of inability with respect to the individual is an indefinite one that is reasonably expected to be lengthy in nature; or (v) an individual not otherwise described in (i)-(iv) hereof who is not more than ten (10) years younger than the Participant.

(2) 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 that 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 subsection (d). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

(3) Life Expectancy –

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

(4) Participant's Account Balance –

Shall mean the balance to the credit of the Participant's Accounts 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 Participant's Accounts 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 Participant's Account Balance for the Valuation Calendar Year includes any amounts rolled over or transferred to the Plan either in the Valuation Calendar Year or in the Distribution Calendar Year if distributed or transferred in the Valuation Calendar Year.

(5) Required Beginning Date –

Shall mean April 1 of the calendar year following the calendar year in which the Participant attains age seventy-two (72). However, a Participant who is not a 5-percent owner and who does not retire by the end of the calendar year in which such Participant reaches age seventy-two (72), may elect to defer his required beginning date to the first day of April of the calendar year following the calendar year in which the Participant actually retires. A "5-percent owner" means a Participant who is a 5-percent owner as defined in Code Section 416 at any time during the Plan Year ending with or within the calendar year in which such owner attains age seventy-two (72). Once distributions have begun to a 5-percent owner under this Section they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year. However, if the Participant attained age seventy and one-half (70-1/2) before January 1, 2020, age seventy and one-half (70-1/2) shall be substituted for age seventy-two (72) in the preceding four (4) sentences.

(f) In accordance with section 401(a)(14) of the Internal Revenue Code, the Plan

currently does not prohibit, nor will it in the future adopt any amendment that will prohibit, a Participant from receiving payment of benefits any later than the 60th day after the end of the Plan Year in which the latest of the following events occur:

- (i) the earlier of his/her Normal Retirement Date or the date he/she attains age 65;
- (ii) the 10th anniversary of the date he/she commenced participation in the Plan; or
- (iii) the date he/she separates from service as an Employee.

Notwithstanding the above, however, all Participants under the Plan shall have the right to defer payments of their distributions subject to the requirements of the Internal Revenue Code, section 401(a)(9), as described in the preceding Subsections.

- (g) If a Participant is required under this Section to take a distribution of a portion of his/her interest in the Fund while in service as an Employee, then the Board of Trustees shall distribute his/her entire vested interest in accordance with the requirements of Section 9.3 (including any spousal consent rules referred to therein), as if his/her service as an Employee had terminated. Once distributions to a Participant have begun under this Subsection:
  - (i) such Participant's accounts shall be distributed at least annually in accordance with the preceding sentence; and
  - (ii) if the Participant dies while in service as an Employee, any amounts payable from his/her accounts after his/her death and not otherwise governed by an election made under Section 9.3 shall be payable in accordance with the provisions of Article X.
- (h) This Section shall be interpreted in a manner consistent with, and all distributions from the plan shall be made in accordance with, Section 401 (a)(9) of the Code and regulations issued thereunder.

- 2. A new Section 9.9 will be added to the Plan, effective March 27, 2020, to read as follows:

9.9 Amendment for CARES Act

a) Except as otherwise provided in this Amendment, terms defined in the Plan will have the same meaning in this Amendment. The following definitions apply specifically to this Amendment:

- i. The “**Act**” is the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act. This Amendment shall be interpreted and applied to comply with the Act.
  
- ii. A “**Qualified Individual**” means any individual who meets one or more of the criteria described in paragraphs (A), (B), (C), or (D). Participants, alternate payees and beneficiaries of deceased participants can be treated as Qualified Individuals. The Plan Administrator may rely on an individual’s certification that the individual satisfies a condition to be a Qualified Individual unless the Plan Administrator has actual knowledge to the contrary. In applying the criteria, “COVID-19” means either the virus SARS–CoV–2 or coronavirus disease 2019; “an approved test” means a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act); and a “member of the individual’s household” means someone who shares the individual’s principal residence. The criteria are as follows:
  - A. The individual was diagnosed with COVID-19 by an approved test;
  - B. The individual’s spouse or dependent (as defined in Code §152) was diagnosed with COVID-19 by an approved test;
  - C. The individual has experienced adverse financial consequences because: (a) the individual or the individual’s spouse, or a member of the individual’s household was quarantined, furloughed or laid off, or had work hours reduced due to COVID-19; (b) the individual, the individual’s spouse, or a member of the individual’s household was unable to work due to lack of childcare due to COVID-19; (c) A business owned or operated by the individual, the individual’s spouse, or a member of the individual’s household closed or reduced hours due to COVID-19; or (d) the individual, the individual’s spouse, or a member of the individual’s household had a reduction in pay (or self-employment income) due to COVID-19 or had a job offer rescinded or start date for a job delayed due to COVID-19; or
  - D. The individual satisfies any other criteria determined by the Treasury or the IRS.

b) If a Qualified Individual has an outstanding loan from the Plan on or after March 27, 2020, then: (1) if the date for any repayment of such loan occurs during the Suspension Period, the due date is extended for the Extension Period; (2) the due date of the loan will be extended by the Extension Period; (3) the Plan will adjust any subsequent repayments to reflect the extension of the due date and any interest accrued during the Suspension Period; and (4) the Plan will disregard the Extension Period in determining the 5-year period and the loan term under Code §72(p)(2)(B) or (C). The Suspension Period will begin March 27, 2020 and end December 31, 2020. The Extension Period will be one year. The provisions of this paragraph will be applied in accordance with Section 5.B. of Notice 2050-50, or any subsequent applicable guidance, and the adjustment described in (3) may reflect the “safe harbor” described therein.

3. A new Section 9.10 will be added to the Plan to read as follows:

9.10 2020 RMDs

A Participant or Beneficiary who would have been required to receive a 2020 RMD or Extended 2020 RMD will receive the distribution unless the Participant or Beneficiary chooses not to receive the distribution. A Participant or Beneficiary will be given an opportunity to make an election as to whether or not to receive those distributions. The deadline to make the election to use the 5-year rule or the life expectancy rule shall be extended to reflect the adoption of Code §401(a)(9)(I).

For purposes of this Section 9.10, “RMDs” means required minimum distributions described in Code §401(a)(9). “2020 RMDs” means required minimum distributions the Plan would have been required to distribute in 2020 (or permitted to pay in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 1, 2021) but for the enactment of Code §401(a)(9)(I). “Extended 2020 RMDs” means one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s designated Beneficiary, or for a period of at least 10 years.

A Participant or Beneficiary receiving payment of 2020 RMDs or 2020 Extended RMDs pursuant to this paragraph may receive them in any method (including installments or partial distributions) which would have been permitted under the terms of the Plan if the amounts would have been RMDs but for the enactment of Code §401(a)(9)(I).

**IN WITNESS WHEREOF**, the Trustees of the Sheet Metal Workers Local Union No. 71 Annuity Fund hereby adopt this Amendment to the Restatement of the Sheet Metal Workers Local Union No. 71 Annuity Plan on this 1st day of June, 2022.

**EMPLOYER TRUSTEES:**

Andrew Nowak

Andrew Nowak (Jul 5, 2022 11:01 EDT)

David W. Nieman

David W. Nieman (Jul 1, 2022 08:50 EDT)

John Embow

Richard DeLotto

Richard DeLotto (Jul 1, 2022 09:03 EDT)

**UNION TRUSTEES**

Paul Crist

Paul Crist (Jun 30, 2022 15:40 EDT)

Timothy Benes

Timothy Benes (Jun 30, 2022 15:36 EDT)

Jeffrey M. ...

Jeffrey M. ... (Jul 2022 14:30 EDT)

Jack DaFaro

Jack DaFaro (Jul 3, 2022 08:55 EDT)