

**SEVENTH AMENDMENT TO THE  
NECA-IBEW MEMPHIS RETIREMENT PLAN  
As Amended and Restated Effective April 1, 2014  
(Amended through January 1, 2015)**

This Amendment to the NECA-IBEW Memphis Retirement Plan (the "Plan") is effective January 1, 2023, in the following respects.

\* \* \* \*

1. Section 4.5 of the Plan is amended and restated to read as follows:

**Section 4.5. Required Beginning Date**

- (a) Regardless of any other provisions herein contained to the contrary, an Employee's (other than a 5% owner) Accumulated Share shall be paid in accordance with the previous Sections no later than April 1 of the calendar year following the calendar year in which the later of the following occurs:
  - (i) the Employee attains age 70½ for Participants who attained age 70½ prior to January 1, 2020; age 72 for Participants who attained age 70½ after December 31, 2019 and attained age 72 on or before December 31, 2022; and age 73 for Participants who attain age 72 after December 31, 2022; or
  - (ii) the Employee retires.
- (b) The Accumulated Share of an Employee who is a 5% owner shall be paid no later than the April 1 of the calendar year following the calendar year in which the Employee attains age 70½ for Participants who attained age 70½ prior to January 1, 2020; age 72 for Participants who attained age 70½ after December 31, 2019 and attained age 72 on or before December 31, 2022; and age 73 for Participants who attain age 72 after December 31, 2022.
- (c) Effective January 1, 2020, a Participant may elect to voluntarily commence benefits on or after April 1 of the calendar year following the calendar year in which the Participant attains age 70½ even though the Participant has not yet retired.

\* \* \* \*

2. Section 4.6(b)(ii)(B) of the Plan is amended as follows:

**Section 4.6. Additional Requirements Regarding Distribution of Benefits.**

\* \* \* \* \*

(b) Time and Manner of Distribution

\* \* \* \* \*

(ii) Death of Participant Before Distributions Begin

\* \* \* \* \*

(B) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, then, the Participant's Spouse may elect, in lieu of paragraph (b)(ii)(A), to have distributions to the surviving Spouse begin by the later of the following:

(1) December 31 of the calendar year immediately following the calendar year in which the Participant died, or

(2) December 31 of the calendar year in which the Participant would have attained:

(I) for a Participant who is not a 5% owner, the later of (a) age 70½ for Participants who attained age 70½ prior to January 1, 2020; age 72 for Participants who attained age 70½ after December 31, 2019 and attained age 72 on or before December 31, 2022; and age 73 for Participants who attain age 72 after December 31, 2022, or (b) the date the Participant retires, if that date is later, and

(II) for a Participant who is a 5% owner, age 70½ for Participants who attained age 70½ prior to January 1, 2020; age 72 for Participants who attained age 70½ after December 31, 2019 and attained age 72 on or before December 31, 2022; and age 73 for Participants who attain age 72 after December 31, 2022.

The election must be made no later than September 30 of the calendar year in which distributions would be required under this paragraph (b)(ii)(B), or if earlier, paragraph (b)(ii)(A).

\* \* \* \*

3. A new Section 4.7 shall be added to read as follows:

**Section 4.7. Overpayments**

- (a) No Participant or Beneficiary shall be entitled to receive a benefit in excess of that which is provided for by the terms of the Plan. In the event a Participant or Beneficiary is overpaid by the Plan, the Board of Trustees shall determine whether to recoup the overpayment and, if so, the amount and the manner of recoupment. The Trustees may consider the financial hardship of recoupment on the Participant or Beneficiary. If the Trustees determine that the overpayment will be recouped, the Trustees shall next determine whether the Participant or Beneficiary is culpable. Culpable conduct may include, but is not limited to, misrepresentation or omission of fact by the Participant or Beneficiary.
- (i) If the Trustees determine that the Participant or Beneficiary is not culpable, the Board of Trustees may recoup the overpayment through one, or a combination of, the following methods: an offset of the remaining Individual Account balance; return transfer from the Eligible Retirement Plan which received the overpayment in an Eligible Rollover Distribution; the reduction of future periodic benefit payments; a repayment agreement; or any other procedure deemed reasonable and appropriate by the Board of Trustees. No interest or fees shall be recouped. Recoupment may not be sought if the first overpayment occurred more than 3 years before the Participant or Beneficiary is first notified in writing of the error.
- Recoupment by the reduction or offset of future benefits shall be subject to the following limitations:
- (A) No more than 10 percent of the total overpayment shall be recouped in a calendar year; and,
- (B) The Employee or Beneficiary's benefit shall not be reduced to below 90 percent of the benefit which would otherwise be payable.

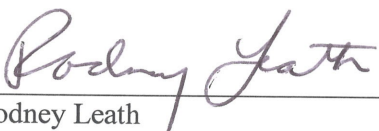
An agreement for recoupment by one or more installment payments shall not require total payments in a calendar year which exceed the sum of the reductions that would be permitted under the foregoing limitations.


- (ii) Recoupment of past overpayments to a Participant may not be sought from any Beneficiary of the Participant, including a spouse, surviving spouse, former spouse, or other Beneficiary.
  - (iii) In the event an overpayment is made to a Participant or Beneficiary who is culpable, the overpayment may be recouped through any method described above, or a combination of such methods, without limitation.
- (b) Any Employee or Beneficiary, upon being notified of the reduction or offset, shall have the right and obligation to appeal the decision to the Board of Trustees prior to commencing any other legal or administrative action.
- (c) Under no circumstances will an overpayment become or be considered a vested benefit.


\* \* \* \*

**IN WITNESS WHEREOF**, this seventh Amendment is adopted September 6, 2023.

**EMPLOYER TRUSTEES**

  
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Rodney Leath

  
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Chris McLemore

  
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Michael Hawkins

**UNION TRUSTEES**

  
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Paul Shaffer

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Andrew Hood

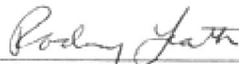
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Michael A. Belue


- (ii) Recoupment of past overpayments to a Participant may not be sought from any Beneficiary of the Participant, including a spouse, surviving spouse, former spouse, or other Beneficiary.
  - (iii) In the event an overpayment is made to a Participant or Beneficiary who is culpable, the overpayment may be recouped through any method described above, or a combination of such methods, without limitation.
- (b) Any Employee or Beneficiary, upon being notified of the reduction or offset, shall have the right and obligation to appeal the decision to the Board of Trustees prior to commencing any other legal or administrative action.
- (c) Under no circumstances will an overpayment become or be considered a vested benefit.


\* \* \* \*

IN WITNESS WHEREOF, this seventh Amendment is adopted September 6, 2023.

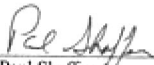
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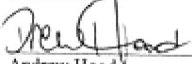
  
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**UNION TRUSTEES**

  
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**SIXTH AMENDMENT TO THE  
NECA-IBEW MEMPHIS RETIREMENT PLAN  
As Amended and Restated Effective April 1, 2014  
(Amended through January 1, 2015)**

This Amendment to the NECA-IBEW Memphis Retirement Plan (the "Plan") is effective June 7, 2023, in the following respects.

1. Section 10.4 (d) of the Plan is amended to read as follows:

*(d) Notify the Claimant of the right to bring a civil action under ERISA as set forth in Section 10.7.*

2. Section 10.5 (c)(v) of the Plan is amended to read as follows:

*Statement of the right to bring a civil action under ERISA Section 502(a) after all administrative remedies have been exhausted as referenced in Section 10.7.*

3. Section 10.6 (e)(iv) of the Plan is amended to read as follows:

*Notify the Claimant of the right to bring a civil action under ERISA as referenced in Section 10.7.*

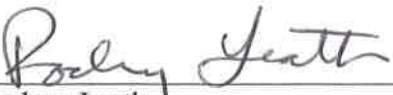
4. A new Section 10.7 will be added to read as follows:


***Section 10.7 Exhaustion, Two Year Limitation Period, Restriction on Venue***


- (a) Consistent with the above-referenced Claims and Appeal Procedures, the claimant will be required to exhaust these appeals procedures before proceeding to litigation.*
- (b) No action at law or in equity shall be brought by any Participant or Beneficiary more than two (2) years from the date the Board provides written notice of a decision on an appeal of an adverse benefit determination. Failure to bring an action within this two (2) year period shall forever bar such action.*
- (c) A Participant or Beneficiary shall only bring an action in connection with this Plan in the United States Court for the Western District of Tennessee.*

IN WITNESS WHEREOF, this sixth Amendment is adopted June 7, 2023.

**EMPLOYER TRUSTEES**

  
Rodney Leath

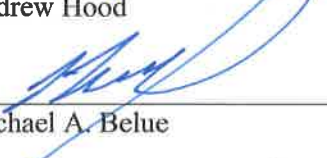
  
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**FIFTH AMENDMENT TO THE  
NECA-IBEW MEMPHIS RETIREMENT PLAN  
As Amended and Restated Effective April 1, 2014  
(Amended through January 1, 2015)**

The Board of Trustees hereby adopts the following amendment, effective January 1, 2020 unless otherwise specified herein, to the NECA-IBEW Memphis Retirement Plan, as Amended and Restated Effective April 1, 2014, Amended through January 1, 2015 (the "Plan"). The amendment reflects (a) the Trustees' good faith effort, pending further guidance from Treasury, to comply with Internal Revenue Code Section 401(a)(9) rules, as amended by the Setting Every Community Up for Retirement Enhancement (SECURE) Act, enacted December 20, 2019, (b) implementation of provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and (c) clarification of the required beginning date for 5% owners, in the following respects:

1. The preamble to the Plan, as Amended and Restated Effective April 1, 2014, is amended effective January 1, 2022, by adding the following two paragraphs after the third paragraph, to read as follows:

\* \* \* \* \*

WHEREAS, the Trustees are desirous of amending and restating said Plan in order to comply with the requirements of the Employee Retirement Income Security Act of 1974 and regulations issued pursuant thereto, and in order to continue to operate said Plan in compliance with the U.S. Internal Revenue Code, the Pension Protection Act of 2006 ("PPA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act"), the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), the Small Business Jobs Act of 2020 ("SBJA") and other applicable rules and regulations;

WHEREAS, the Plan is hereby further amended to comply with applicable provisions of the Setting Every Community Up for Retirement Enhancement Act (SECURE Act or Act), enacted on December 20, 2019. The Act changed the age portion of the statutory Required Beginning Date effective January 1, 2020, and changed certain portions of the required minimum distribution rules for Designated Beneficiaries of Participants who die in calendar years beginning after January 1, 2022 and provided a special rule for Designated Beneficiaries of Participants who died before January 1, 2022, if such Designated Beneficiary dies on or after the January 1, 2022.

WHEREAS, the new provisions for designated beneficiary distributions are set out in Appendix B to the Plan. The provisions are intended to constitute good faith compliance with the

applicable requirements of Title IV, Section 401 and Title VI, Section 601 of the SECURE Act, and shall be construed in good faith in accordance with the Act and any guidance issued. The language in Appendix B is intended to be consistent with the language of the SECURE Act and is not intended to be inconsistent with any sample or model language issued by the Internal Revenue Service or Treasury. If in the future, the Internal Revenue Service or Treasury provides guidance in the form of sample or model amendments, Appendix B will be revised to reflect that guidance; and

2. Section 4.6(a) of the Plan is amended by adding a new paragraph (v) to read as follows:

**Section 4.6. Additional Requirements Regarding Distribution of Benefits.**

(a) General Rules

\* \* \* \* \*

(v) Waiver of 2020 Required Minimum Distributions

Notwithstanding this Section 4.6 of the Plan, whether a Participant or beneficiary who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 1, 2021) but for the enactment of Section 401(a)(9)(I) of the Code (2020 RMDs), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2020 RMDs, or (2) one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancies) of the Participant and the Participant's designated beneficiary, or for a period of at least 10 years (Extended 2020 RMDs), will have the option of whether to receive a 2020 RMD as of January 1, 2020 as determined by this subparagraph (v). In the absence of a Participant or beneficiary election in accordance with this subparagraph (v), a Participant or beneficiary who would have been required to receive a 2020 RMD will not receive such distribution unless the Participant or beneficiary chooses to receive the distribution.

In addition, solely for purposes of applying the direct rollover provisions of the Plan, all 2020 RMDs will be treated as eligible rollover distributions in 2020.

3. Section 4.6(b)(ii)(B) of the Plan is clarified to reflect the required distribution date for 5% owners as follows:

**Section 4.6. Additional Requirements Regarding Distribution of Benefits.**

\* \* \* \* \*

(b) Time and Manner of Distribution

\* \* \* \* \*

(ii) Death of Participant Before Distributions Begin

\* \* \* \* \*

(B) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, then, the Participant's Spouse may elect, in lieu of paragraph (b)(ii)(A), to have distributions to the surviving Spouse begin by the later of the following:

(1) December 31 of the calendar year immediately following the calendar year in which the Participant died, or

(2) December 31 of the calendar year in which the Participant would have attained:

(I) for a Participant who is not a 5% owner, the later of (a) age 70-1/2 for Participants who attained age 70-1/2 prior to January 1, 2020 and age 72 for Participants who attain age 70-1/2 after December 31, 2019 or (b) the date the Participant retires, if that date is later, and

(II) for a Participant who is a 5% owner, age 70-1/2 for Participants who attained age 70-1/2 prior to January 1, 2020 and age 72 for Participants who attain age 70-1/2 after December 31, 2019.

The election must be made no later than September 30 of the calendar year in which distributions would be required under this paragraph (b)(ii)(B), or if earlier, paragraph (b)(ii)(A).

\* \* \* \* \*

4. The Plan is amended, effective January 1, 2022, to add Appendix B to the end thereof to read as follows:

**Appendix B: SECURE Act Beneficiary Distribution Rules**

(a) **Applicability and Scope of Appendix B**

The provisions set forth in this Appendix B are adopted to reflect certain provisions of the SECURE Act. These provisions are intended to constitute good faith compliance with the requirements of the SECURE Act and are to be construed in good faith in accordance with the Act and any guidance issued. The language in Appendix B is intended to be consistent with the language of the SECURE Act and is not intended to be inconsistent with any sample or model language issued by the Internal Revenue Service or Treasury. If in the future, the Internal Revenue Service or Treasury provides guidance in the form of sample or model amendments, Appendix B will be revised to reflect that guidance.

The provisions contained in this Appendix B shall be effective as of the dates specified and shall supersede the provisions of Section 4.6 and of the Plan to the extent those provisions are inconsistent with the provisions of this Appendix B, unless the context indicates otherwise. Terms defined in the Plan have the same meaning in this Appendix B unless this Appendix B provides a different definition.

(b) **Effective Dates**

- (i) Unless otherwise specified, the provisions of Appendix B are effective for distributions with respect to Participants who die in calendar years beginning on or after January 1, 2022.
- (ii) The provision in Section (d)(vii) of this Appendix B is effective for distributions with respect to designated beneficiaries of Participants who die on or before December 31, 2021, if such designated beneficiary dies on or after January 1, 2022.

(c) **Definitions and Rules Relating to Designated Beneficiaries**

- (i) A “designated beneficiary” shall mean the individual who is designated as the beneficiary under Section 5.2 of the Plan and is a designated beneficiary under Section 401(a)(9)(E) of the Code and applicable Sections of the Treasury regulations.

(ii) An “eligible designated beneficiary” shall mean, with respect to any Participant, any designated beneficiary who is:

- (A) the surviving Spouse of the Participant,
- (B) subject to subsection (c)(iii) hereof, a child of the Participant who has not reached majority (within the meaning of Section 401(a)(9)(F) of the Code),
- (C) disabled (within the meaning of Section 72(m)(7) of the Code),
- (D) a chronically ill individual (within the meaning of Section 7702B(c)(2) of the Code, except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature), or
- (E) an individual not described in any of the preceding clauses who is not more than 10 years younger than the Participant.

The determination of whether a designated beneficiary is an eligible designated beneficiary shall be made as of the date of death of the Participant.

(iii) Special rule for children. Subject to Section 401(a)(9)(F) of the Code, an individual described in subsection (c)(ii)(B), above, shall cease to be an eligible designated beneficiary as of the date the individual reaches majority and any remainder of the portion of the individual’s interest shall be distributed within 10 years after such date.

(d) Death of Participant Before Distribution of Entire Interest

- (i) In the case of a beneficiary who is a designated beneficiary, Section 401(a)(9)(B)(ii) of the Code (the 5-year rule) shall be applied by substituting “10 years” for “5 years,” and shall apply whether or not distributions have begun in accordance with Section 401(a)(9)(A) of the Code.
- (ii) In the case of a beneficiary who is not a designated beneficiary, Section 401(a)(9)(B)(ii) of the Code (the 5-year rule) continues to apply without change.
- (iii) Section 401(a)(9)(B)(iii) of the Code (the life or life expectancy exception to the 5-year rule) shall apply only in the case of an eligible designated beneficiary.

- (iv) If the eligible designated beneficiary dies before the Participant's entire interest is distributed, Section 401(a)(9)(B)(iii) of the Code (the life or life expectancy exception to the 5-year rule) shall not apply to any beneficiary of the eligible designated beneficiary, and the remaining interest shall be distributed within 10 years after the death of the eligible designated beneficiary.
- (v) In the case of an applicable multi-beneficiary trust, if under the terms of the trust:
  - (A) it is to be divided immediately upon the death of the Participant into separate trusts for each beneficiary, or
  - (B) no individual (other than an eligible designated beneficiary described in Section (c)(ii)(C) (disabled) or (c)(ii)(D) (chronically ill) of this Appendix B) has any right to the Participant's interest in the Plan until the death of all such eligible designated beneficiaries with respect to the trust, for purposes of a trust described in Section (d)(v)(A), above, Section 401(a)(9)(H)(ii) of the Code (eligibility for the life or life expectancy exception to the 5-year rule) shall be applied separately with respect to the portion of the Participant's interest that is payable to any eligible designated beneficiary described in Section (c)(ii)(C) (disabled) or (c)(ii)(D) (chronically ill) of this Appendix B; and, for purposes of a trust described in Section (d)(v)(B), above, Section 401(a)(9)(B)(iii) of the Code (the life or life expectancy exception to the 5-year rule) shall apply to the distribution of the Participant's interest and upon the death of such eligible designated beneficiary, any beneficiary who is not such an eligible designated beneficiary shall be treated as a beneficiary of the eligible designated beneficiary upon the death of such eligible designated beneficiary, and the remaining interest shall be distributed within 10 years after the death of the eligible designated beneficiary.
- (vi) Applicable multi-beneficiary trust. For purposes of Section (d) of this Appendix B, the term "applicable multi-beneficiary trust" means a trust:
  - (A) that has more than one beneficiary,
  - (B) all of the beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to Section 401(a)(9) of the Code, and


- (C) at least one of the beneficiaries of which is an eligible designated beneficiary described in Section (c)(ii)(C) (disabled) or (c)(ii)(D) (chronically ill) of this Appendix B.
- (vii) Special Beneficiary Rule. If the Participant dies on or before December 31, 2021, but the Participant's designated beneficiary dies on or after January 1, 2022, the above provisions shall apply to any beneficiary of such designated beneficiary and the designated beneficiary shall be treated as an eligible designated beneficiary for purposes of Section 401(a)(9)(H)(ii) of the Code (eligibility for the life or life expectancy exception to the 5-year rule).
- (viii) Special rule for certain existing annuity contracts. The amendments made by Section 401 of the SECURE Act, described above, do not apply to a qualified annuity that is a binding annuity contract in effect on December 20, 2019.
- (ix) A qualified annuity is:
  - (A) A commercial annuity as defined in Section 3405(e)(6) of the Code;
  - (B) Under which annuity payments over the life of the Participant or the joint lives of the Participant and a designated beneficiary (or over a period not extending beyond the life expectancy of the Participant or the joint life expectancy of the Participant and a designated beneficiary) in accordance with the Treasury regulations under Section 401(a)(9)(A)(ii) of the Code (as in effect before the SECURE Act), and other applicable requirements of Section 401(a)(9) of the Code (as so in effect);
  - (C) With respect to which
    - (1) Annuity payments have begun before December 20, 2019, and the Participant has made an irrevocable election before such date as to the method and amount of payments to the Participant or any designated beneficiaries; or
    - (2) If subparagraph A above does not apply, the Participant has made an irrevocable election before December 20, 2019, as to the method and amount of payments to the Participant or any designated beneficiaries.

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IN WITNESS WHEREOF, this Fifth Amendment is adopted December 9, 2020.

**EMPLOYER TRUSTEES**

  
Lonnice E. Loeffler

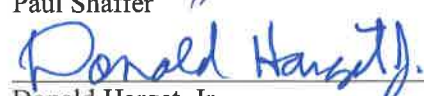
  
Rodney Leath

  
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**UNION TRUSTEES**

  
Paul Shaffer

  
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Michael A. Belue

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**FOURTH AMENDMENT TO THE  
NECA-IBEW MEMPHIS RETIREMENT PLAN  
As Amended and Restated Effective April 1, 2014  
(Amended through January 1, 2015)**

The Board of Trustees hereby adopts the following amendment effective January 1, 2020 to the NECA-IBEW Memphis Retirement Plan, as Amended and Restated effective April 1, 2014, Amended through January 1, 2015 (the "Plan"). The Board of Trustees has determined it necessary to amend the Plan in good faith and consistent with the guidance in IRS Notice 2020-51 concerning the waiver and repayment of 2020 Required Minimum Distributions, in the following respects:

1. A new Section 4.6(f) will be added to the Plan to read as follows:

(f) Waiver of 2020 Required Minimum Distributions


Notwithstanding the remainder of Article IV of the Plan, whether a participant or beneficiary who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a participant with a required beginning date of April 1, 2021) but for the enactment of section 401(a)(9)(I) of the Code (2020 RMDs), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2020 RMDs, or (2) one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or for a period of at least 10 years (Extended 2020 RMDs), will receive those distributions as determined by this subsection 4.6(f). Notwithstanding the default rule selected by the Board of Trustees, a participant or beneficiary will be given an opportunity to make an election as to whether or not to receive those distributions.


In addition, solely for purposes of applying the direct rollover provisions of the Plan, all 2020 RMDs will be treated as eligible rollover distributions in 2020.


1. This subsection 4.6(f) will be effective and allow participants and beneficiaries the option whether to receive a 2020 RMD as of January 1, 2020.
2. In the absence of a participant or beneficiary election, a participant or beneficiary who would have been required to receive a 2020 RMD will not receive such distribution unless he or she affirmatively elects to receive the distribution.

IN WITNESS WHEREOF, this **Fourth** Amendment is adopted this 9<sup>th</sup> day of September, 2020.

**EMPLOYER TRUSTEES**

  
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Lonnie E. Loeffel *Rodney Leath*

  
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Chris McEmore

  
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Michael Hawkins

**UNION TRUSTEES**

  
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Paul Shaffer

  
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Donald Harget, Jr.

  
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Michael A. Belue

**THIRD AMENDMENT TO THE  
NECA-IBEW MEMPHIS RETIREMENT PLAN  
As Amended and Restated Effective April 1, 2014  
(Amended through January 1, 2015)**

The Board of Trustees hereby adopts the following amendment effective January 1, 2020 to the NECA-IBEW Memphis Retirement Plan, as Amended and Restated Effective April 1, 2014, Amended through January 1, 2015 (the "Plan"). The amendment reflects the Trustees' good faith effort, pending further guidance from Treasury, to comply with Internal Revenue Code Section 401(a)(9) rules, as amended by the Setting Every Community Up for Retirement Enhancement (SECURE) Act, enacted December 20, 2019, in the following respects:

1. Section 4.4 of the Plan is amended effective January 1, 2020 to read as follows:

**Section 4.4. Payment of Benefit.**

Benefits outlined hereunder shall become payable immediately and shall commence not later than 60 days after the date on which the Employee or beneficiary has both satisfied the eligibility requirements for a benefit and filed a proper written application for such benefit on a form prescribed by the Trustees. Notwithstanding any other provision in this Plan to the contrary, the failure of an Employee or beneficiary to submit a benefit application while a benefit under the Plan is immediately distributable shall be deemed an election to defer commencement of payment of the benefit. However, payment of the benefits will in no case commence later than the Employee's Required Beginning Date, as defined in Section 4.5.

2. Section 4.5 of the Plan is amended effective January 1, 2020 to read as follows:

**Section 4.5. Required Beginning Date.**

- (a) Regardless of any other provisions herein contained to the contrary, an Employee's (other than a 5% owner) Accumulated Share shall be paid in accordance with the previous Sections no later than April 1 of the calendar year following the calendar year in which the later of the following occurs:
  - (i) the Employee attains age 70-1/2 for Participants who attained age 70-1/2 prior to January 1, 2020, and age 72 for Participants who attain age 70-1/2 after December 31, 2019, or
  - (ii) the Employee retires.

- (b) The Accumulated Share of an Employee who is a 5% owner shall be paid no later than the April 1st of the calendar year following the calendar year in which the Employee attains age 70-1/2 if the Participant attained age 70-1/2 prior to January 1, 2020 and age 72 if the Participant attains age 70-1/2 after December 31, 2019.
- (c) Effective January 1, 2020, a Participant may elect to voluntarily commence benefits on or after April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2 even though the Participant has not retired.

3. Section 4.6(b)(ii)(B) of the Plan is amended effective January 1, 2020 to read as follows:

**Section 4.6. Additional Requirements Regarding Distribution of Benefits.**

\* \* \* \*

(b) Time and Manner of Distribution

\* \* \* \*

(ii) Death of Participant Before Distributions Begin

\* \* \* \*

(B) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, then, the Participant's Spouse may elect, in lieu of paragraph (b)(ii)(A), to have distributions to the surviving Spouse begin by the later of the following:

- (1) December 31 of the calendar year immediately following the calendar year in which the Participant died, or
- (2) December 31 of the calendar year in which the Participant would have attained age 70-1/2 for Participants who attained age 70-1/2 prior to January 1, 2020 and age 72 for Participants who attain age 70-1/2 after December 31, 2019.

The election must be made no later than September 30 of the calendar year in which distribution would be required to begin under this paragraph (b)(ii)(B), or if earlier, paragraph (b)(ii)(A).

\* \* \* \*

IN WITNESS WHEREOF, this Third Amendment is adopted June 3, 2020.

**EMPLOYER TRUSTEES**


  
\_\_\_\_\_  
Lonnie E. Leath *Rodney Leath*


  
\_\_\_\_\_  
Chris McLemore

  
\_\_\_\_\_  
Michael Hawkins

**UNION TRUSTEES**

  
\_\_\_\_\_  
Paul Shaffer

  
\_\_\_\_\_  
Donald Hargett, Jr.

  
\_\_\_\_\_  
Michael A. Belue

5949734v5/05623.020

**SECOND AMENDMENT TO THE  
NECA-IBEW MEMPHIS RETIREMENT PLAN  
As Amended and Restated Effective April 1, 2014  
(Amended through January 1, 2015)**

This Amendment to the NECA-IBEW Memphis Retirement Plan (the “Plan”) is effective as of the dates specified herein in the following respects.

1. Section 5.4 of the Plan is amended as follows and shall apply to Qualified Domestic Relations Order entered on and after January 1, 2018:

**Section 5.4. Non-Alienation of Benefits.**

Benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind of a voluntary or involuntary nature including any such liability which is for alimony or other payments for the support of a Spouse or former Spouse, or for any other relative of the Employee prior to actually being received by the person entitled to the benefit under the terms of the Plan, except as may be required under a Qualified Domestic Relations Order as that term is defined in the Retirement Equity Act of 1984, and any other such attempt to assign any right to benefits payable hereunder shall be void. With respect to any Qualified Domestic Relations Order relating to this Plan, the Plan shall also permit distribution to an Alternate payee, at any time, if the Alternate Payee has reached 65 years of age, irrespective of whether the Participant has attained his or her “earliest retirement age” (within the meaning of Code Section 414(p)(4)(B)) under the Plan.

2. Section 10.5(c) of the Plan is amended by adding the following paragraphs to the end thereof to read as follows:

Effective for claims filed on or after April 1, 2018, for Disability Retirement benefits, in the case where the claim for a Disability Retirement benefit has been denied, notice of the adverse determination shall:

- (i) Include an explanation for disagreeing with or not following:
  - (A) The views presented by the Claimant to the Plan of the health care professionals treating the Claimant and vocational professionals who evaluated the Claimant;

- (B) The views of the medical or vocational experts whose advice was obtained on behalf of the Plan in connection with the Claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination;
- (C) A disability determination regarding the Claimant presented by the Claimant to the Plan made by the Social Security Administration.

For purposes of Sections 10.5 and 10.6, an "adverse determination" shall mean a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for a benefit provided under the Plan, and shall also mean any rescission of disability coverage with respect to a Participant or beneficiary (whether or not in connection with the rescission, there is an adverse effect on any particular benefit at that time). For this purpose, the term "rescission" means a cancellation or discontinuance of coverage that has retroactive effect, except to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage.

- (ii) Be provided in a culturally and linguistically appropriate manner pursuant to Department of Labor Regulation Section 2560.503-1(o).

3. Section 10.6 of the Plan is amended by adding new paragraphs (f) and (h) to the end thereof to read as follows:

- (f) The following shall apply for claims for Disability Retirement benefits filed on or after April 1, 2018.
  - (i) Prior to the date that the Plan issues an adverse determination on an appeal of a claim for Disability Retirement benefits, the Plan shall provide the Claimant, free of charge, with any new or additional evidence considered, relied upon, or generated by the Plan, insurer or other person making the benefit determination (or at the discretion of the Plan, insurer or such other person) with respect to the claim. The new or additional evidence must be provided as soon as possible and sufficiently in advance of the date on which the notice of the adverse determination on review of the appeal is required to be provided to the Claimant to give the Claimant a reasonable opportunity to respond prior to that date.
  - (ii) Prior to the date the Plan can issue an adverse determination on an appeal of a claim for Disability Retirement benefits that is based on a new or additional rationale, the Plan must provide the Claimant, free of charge, with the new or

additional rationale. The information must be provided as soon as possible and sufficiently in advance of the date on which the notice of the adverse benefit determination on review is required to be provided to the Claimant to give the Claimant a reasonable opportunity to respond prior to that date.

(iii) The adverse benefit determination on appeal with respect to the claim for Disability Retirement benefits shall include:

(A) A discussion of the decision, including an explanation of the basis for disagreeing with or not following:

(1) The views presented by the Claimant to the Plan of the health care professionals treating the Claimant and vocational professionals who evaluated the Claimant;

(2) The views of the medical or vocational experts whose advice was obtained on behalf of the Plan in connection with the Claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination;

(3) A disability determination regarding the Claimant presented by the Claimant to the Plan made by the Social Security Administration.

**IN WITNESS WHEREOF**, this Second Amendment is adopted March 7, 2018.

**EMPLOYER TRUSTEES**

\_\_\_\_\_  
Lonnie E. Loeffel

\_\_\_\_\_  
Chris McLemore

\_\_\_\_\_  
Michael Hawkins

**UNION TRUSTEES**

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Paul Shaffer

\_\_\_\_\_  
Donald Harget, Jr.

\_\_\_\_\_  
Michael A. Belue

5721008v1/05623.012

**FIRST AMENDMENT TO THE  
NECA-IBEW MEMPHIS RETIREMENT PLAN  
As Amended and Restated Effective April 1, 2014  
(Amended through January 1, 2015)**

This Amendment to the NECA-IBEW Memphis Retirement Plan (the "Plan") is effective April 1, 2014, unless otherwise specified herein, and revises the Plan in order to obtain a favorable determination letter from the IRS in the following respect.

The Plan is amended to add an Appendix A relating to employer contributions under the Plan as follows:

The provisions from the Inside Agreement Between Local Union No. 474 of the International Brotherhood of Electrical Workers and the Memphis Chapter of the National Electrical Contractors' Association (Effective August 1, 2015 through July 31, 2018), the "Agreement," relating to employer contributions under the Plan are incorporated into this Plan and are attached as Appendix A.

**IN WITNESS WHEREOF**, this First Amendment is adopted June 1, 2016.

**CHAIRMAN**

A handwritten signature in blue ink, appearing to read "Pee Shup", written over a horizontal line.

5575529v1/05623.019

**SECRETARY**

A handwritten signature in blue ink, appearing to read "C. M. Lee", written over a horizontal line.

# APPENDIX A

**INSIDE AGREEMENT**

**BETWEEN**

**LOCAL UNION NO. 474**

**OF THE**

**INTERNATIONAL BROTHERHOOD OF**

**ELECTRICAL WORKERS**

**AND**

**THE MEMPHIS CHAPTER**

**OF THE**

**NATIONAL ELECTRICAL**

**CONTRACTORS' ASSOCIATION**

**EFFECTIVE AUGUST 1, 2015 THROUGH JULY 31, 2018**

**SECTION 3.06. WAGE AND FRINGE BENEFIT RATES 08/03/15 - 01/03/16**

The minimum hourly rate of wages shall be as follows:

**Wireman**

General Foreman	\$29.55
Foreman	\$27.65
Journeyman Wireman (when splicing)	\$25.80
Journeyman Wireman	\$25.70
Journeyman Technician	\$25.70

**Apprentice**

1 <sup>st</sup> Period	\$11.20
2 <sup>nd</sup> Period	\$12.45
3 <sup>rd</sup> Period	\$12.85
4 <sup>th</sup> Period	\$15.40
5 <sup>th</sup> Period	\$18.00
6 <sup>th</sup> Period	\$20.55

**Fringe Benefits**

Medical Care for 1 <sup>st</sup> & 2 <sup>nd</sup> Period Apprentice	\$3.84*
Medical Care for Journeyman and 3 <sup>rd</sup> – 6 <sup>th</sup> Period Apprentice	\$6.55

Retirement for Journeyman	\$4.50
Retirement for 3 <sup>rd</sup> Period Apprentice	\$1.10
Retirement 4 <sup>th</sup> Period Apprentice	\$1.35
Retirement 5 <sup>th</sup> Period Apprentice	\$1.55
Retirement 6 <sup>th</sup> Period Apprentice and CE	\$1.75

Receiving Trust \$0.10 per hour

N.L.M.C.C. \$0.01 per hour

J.A.T.C.  $\frac{3}{4}$  of 1% of Gross Labor Payroll plus either;  
\$0.40 per hour on Journeyman and 3<sup>rd</sup> – 6<sup>th</sup> Period Apprentice or;  
\$0.20 per hour on 1<sup>st</sup> and 2<sup>nd</sup> Period Apprentice

N.E.B.F. 3% of Gross Labor Payroll

National Electrical Industry Fund (Paid by NECA Members Only) 1% of Gross Labor Payroll

*\*Full family coverage may be purchased by this group for \$131.00 per month.*

**SECTION 3.06. WAGE AND FRINGE BENEFIT RATES 01/04/16 - 07/31/16**

The minimum hourly rate of wages shall be as follows:

**Wireman**

General Foreman	\$29.55
Foreman	\$27.65
Journeyman Wireman (when splicing)	\$25.80
Journeyman Wireman	\$25.70
Journeyman Technician	\$25.70

**Apprentice**

1 <sup>st</sup> Period	\$11.20
2 <sup>nd</sup> Period	\$12.45
3 <sup>rd</sup> Period	\$12.85
4 <sup>th</sup> Period	\$15.40
5 <sup>th</sup> Period	\$18.00
6 <sup>th</sup> Period	\$20.55

**Fringe Benefits**

Medical Care for 1 <sup>st</sup> & 2 <sup>nd</sup> Period Apprentice	\$3.99*
Medical Care for Journeyman and 3 <sup>rd</sup> – 6 <sup>th</sup> Period Apprentice	\$6.80

Retirement for Journeyman	\$4.50
Retirement for 3 <sup>rd</sup> Period Apprentice	\$1.10
Retirement 4 <sup>th</sup> Period Apprentice	\$1.35
Retirement 5 <sup>th</sup> Period Apprentice	\$1.55
Retirement 6 <sup>th</sup> Period Apprentice and CE	\$1.75

Receiving Trust \$0.10 per hour

N.L.M.C.C. \$0.01 per hour

J.A.T.C.  $\frac{3}{4}$  of 1% of Gross Labor Payroll plus either;  
\$0.40 per hour on Journeyman and 3<sup>rd</sup> – 6<sup>th</sup> Period Apprentice or;  
\$0.20 per hour on 1<sup>st</sup> and 2<sup>nd</sup> Period Apprentice

N.E.B.F. 3% of Gross Labor Payroll

National Electrical Industry Fund (Paid by NECA Members Only) 1% of Gross Labor Payroll

*\*Full family coverage may be purchased by this group for \$131.00 per month.*

**SECTION 3.06. WAGE AND FRINGE BENEFIT RATES 08/01/16 - 07/30/17**

The minimum hourly rate of wages shall be as follows:

**Wireman**

General Foreman	\$30.35
Foreman	\$28.40
Journeyman Wireman (when splicing)	\$26.50
Journeyman Wireman	\$26.40
Journeyman Technician	\$26.40

**Apprentice**

1 <sup>st</sup> Period	\$11.45
2 <sup>nd</sup> Period	\$12.80
3 <sup>rd</sup> Period	\$13.20
4 <sup>th</sup> Period	\$15.85
5 <sup>th</sup> Period	\$18.50
6 <sup>th</sup> Period	\$21.10

**Fringe Benefits**

Medical Care for 1 <sup>st</sup> & 2 <sup>nd</sup> Period Apprentice	\$3.99*
Medical Care for Journeyman and 3 <sup>rd</sup> – 6 <sup>th</sup> Period Apprentice	\$6.80

Retirement for Journeyman	\$4.50
Retirement for 3 <sup>rd</sup> Period Apprentice	\$1.10
Retirement 4 <sup>th</sup> Period Apprentice	\$1.35
Retirement 5 <sup>th</sup> Period Apprentice	\$1.55
Retirement 6 <sup>th</sup> Period Apprentice and CE	\$1.75

Receiving Trust \$0.10 per hour

N.L.M.C.C. \$0.01 per hour

J.A.T.C.  $\frac{3}{4}$  of 1% of Gross Labor Payroll plus either;  
\$0.40 per hour on Journeyman and 3<sup>rd</sup> – 6<sup>th</sup> Period Apprentice or;  
\$0.20 per hour on 1<sup>st</sup> and 2<sup>nd</sup> Period Apprentice

N.E.B.F. 3% of Gross Labor Payroll

National Electrical Industry Fund (Paid by NECA Members Only) 1% of Gross Labor Payroll

*\*Full family coverage may be purchased by this group for \$131.00 per month.*

**SECTION 3.06. WAGE AND FRINGE BENEFIT RATES 07/31/17 - 07/31/18**

The minimum hourly rate of wages shall be as follows:

**Wireman**

General Foreman	\$31.15
Foreman	\$29.15
Journeyman Wireman (when splicing)	\$27.20
Journeyman Wireman	\$27.10
Journeyman Technician	\$27.10

**Apprentice**

1 <sup>st</sup> Period	\$11.75
2 <sup>nd</sup> Period	\$13.10
3 <sup>rd</sup> Period	\$13.55
4 <sup>th</sup> Period	\$16.25
5 <sup>th</sup> Period	\$18.95
6 <sup>th</sup> Period	\$21.70

**Fringe Benefits**

Medical Care for 1 <sup>st</sup> & 2 <sup>nd</sup> Period Apprentice	\$3.99*
Medical Care for Journeyman and 3 <sup>rd</sup> – 6 <sup>th</sup> Period Apprentice	\$6.80

Retirement for Journeyman	\$4.50
Retirement for 3 <sup>rd</sup> Period Apprentice	\$1.10
Retirement 4 <sup>th</sup> Period Apprentice	\$1.35
Retirement 5 <sup>th</sup> Period Apprentice	\$1.55
Retirement 6 <sup>th</sup> Period Apprentice and CE	\$1.75

Receiving Trust \$0.10 per hour

N.L.M.C.C. \$0.01 per hour

J.A.T.C.  $\frac{3}{4}$  of 1% of Gross Labor Payroll plus either;  
\$0.40 per hour on Journeyman and 3<sup>rd</sup> – 6<sup>th</sup> Period Apprentice or;  
\$0.20 per hour on 1<sup>st</sup> and 2<sup>nd</sup> Period Apprentice

N.E.B.F. 3% of Gross Labor Payroll

National Electrical Industry Fund (Paid by NECA Members Only) 1% of Gross Labor Payroll

*\*Full family coverage may be purchased by this group for \$131.00 per month.*

(k) This Agreement accepts the NECA/IBEW Family Medical Care Plan Trust as it exists August 1, 2010.

#### **NECA - IBEW MEMPHIS RETIREMENT TRUST FUND**

##### **Section 6.03**

(a) To provide retirement benefits for employees, their dependents, each individual Employer agrees to contribute, based on each employees' weekly hours worked, and transmit the contribution monthly to the NECA-IBEW Memphis Retirement Trust Fund in accordance with the following provisions:

(b) The contribution rates shall be those listed in Article III, section 3.06 of this agreement.

(c) There shall not be any contributions made on first and second period apprentices indentured after June 1, 1994.

(d) The Contributions shall be made on employees covered by this Agreement who are directed to work on jobs outside the jurisdiction of Local Union 474.

(e) The monthly transmittal shall cover every employee subject to this Agreement for all payroll weeks ending within the calendar month.

The Monthly Transmittal Form prescribed in Section 5 and accompanying check must be mailed in time to be received by the designated office not later than fifteen (15) calendar days following the end of each calendar month.

(g) The NECA-IBEW Memphis Retirement Trust Fund shall pay for all expenses incurred in the operation of this section other than those incurred within the individual Employers' own office.

(h) In conformity with Section 3.02 of Labor-Management Relations Act of 1947, as amended, the parties to this Agreement have created the NECA-IBEW Memphis Retirement Trust and each has designated trustees for administering the funds and operating the plan in a business like manner with fairness to all beneficiaries thereof.

(i) Individual Employers who fail to remit regularly to the NECA-IBEW Memphis Retirement Trust Fund shall be subject to having the Agreement terminated upon seventy-two (72) hours notice, in writing, being served by the Union, provided the Employer fails to show satisfactory proof that delinquent payments have been made to the NECA - IBEW Memphis Retirement Trust Fund.

(j) This plan shall become effective January 1, 1973 and shall remain in effect until deleted by amending the Agreement.

(k) The NECA - IBEW Memphis Retirement Trust Fund Agreement is incorporated fully herein as if it were set out verbatim.

(l) The parties to this Agreement are in no way responsible nor involved in the administration, management and policies of this Trust Fund.

(m) This Agreement accepts the NECA-IBEW Retirement Trust Fund as it exists June 1, 1979.

## **FORMS AND SURETY**

### **Section 6.04**

(a) The monthly transmittal for all funds (contributions and/or deductions) under this entire Agreement shall be made on the same form as prescribed by the National Electrical Benefit Fund and in accordance with its disbursement instruction, so that the one listing will serve all requirements.

Employers using automatic data processing (ADP) in the preparation of payrolls, etc., may furnish a legible copy of a printout as an attachment to the transmittal, the totals of which shall be filled in on page 1 of the NEBF form.

(b) Each individual employer shall furnish one of the following bonds prior to the signing of a Letter of Assent, employer with three or less electrical employees a \$5,000.00 bond, employer with four to twenty electrical employees a \$25,000.00 bond, employer with twenty-one to fifty electrical employees a \$50,000.00 bond, and employers with fifty-one or more electrical employees a \$75,000 bond to insure that all trust funds payments due under Article VI of this agreement will be paid by the surety when delinquent. Employers may place appropriate money in escrow in lieu of the bond. A copy of this bond shall be furnished to Local Union 474, NECA/IBEW Family Medical Care Plan Fund Office, Memphis Electrical Retirement Fund Office, Memphis Electrical Joint Apprenticeship and Training Committee, Electrical Workers 474 Federal Credit Union, and the Local Collection Agent for NEBF. An employer shall have the appropriate Bond before the Union refers any employee to that employer.

## **DELINQUENT PAYMENT**

### **Section 6.05**

(a) Insofar as the payment of fund contributions is concerned, time is of the essence. The Union and Employers recognize that the regular and prompt payment of the amounts due by Employers to the funds is essential to the operation of the funds and the provision of benefits. Any Employer who becomes delinquent in payment of the following funds:

1. DUES CHECKOFF AS PROVIDED IN ARTICLE II, SECTION 2.13
2. NECA/IBEW FAMILY MEDICAL CARE PLAN TRUST
3. MEMPHIS JOINT APPRENTICESHIP & TRAINING FUND
4. NEBF PENSION FUND
5. NECA-IBEW MEMPHIS RETIREMENT TRUST FUND
6. NATIONAL LABOR - MANAGEMENT COOPERATION FUND
7. \*ELECTRICAL WORKERS 474, IBEW FEDERAL CREDIT UNION\*

**AMENDMENT, RESTATEMENT AND CONTINUATION  
OF  
NECA-IBEW MEMPHIS RETIREMENT PLAN  
PLAN OF BENEFITS**

**As Amended and Restated  
Effective April 1, 2014  
(Amended through January 1, 2015)**

**AMENDMENT, RESTATEMENT AND CONTINUATION OF  
NECA-IBEW MEMPHIS RETIREMENT PLAN  
PLAN OF BENEFITS**

WHEREAS, by an Agreement and Declaration of Trust dated December 1, 1982, the NECA-IBEW MEMPHIS RETIREMENT TRUST FUND was established, pursuant to which a Plan of Benefits was adopted as of December 1, 1982 and last restated effective April 1, 2009; and

WHEREAS, the power to amend said Plan of Benefits was reserved to the Trustees, party to and designated as fiduciaries by the Agreement and Declaration of Trust; and

WHEREAS, the Trustees are desirous of amending and restating said Plan in order to comply with the requirements of the Employee Retirement Income Security Act of 1974 and regulations issued pursuant thereto, and in order to continue to operate said Plan in compliance with the U.S. Internal Revenue Code, the Pension Protection Act of 2006 ("PPA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act"), the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), the Small Business Jobs Act of 2010 ("SBJA") and other applicable rules and regulations; and

WHEREAS, the provisions of the Plan of Benefits shall apply only to an Employee who terminates employment with an Employer on or after the effective date of this restatement. Except as otherwise specifically provided herein, a former Employee's eligibility of benefits and the amount of benefits, if any, payable to or on behalf of a former Employee shall be determined in accordance with the provisions of the Plan of Benefits in effect on the date his employment is terminated. The benefit payable to or on behalf of the Participant included under the Plan of Benefits in accordance with the following provisions shall not be affected by the terms of an amendment to the Plan of Benefits adopted after such Participant's employment terminates, unless the amendment expressly provides otherwise.

NOW, THEREFORE, the Trustees, in exercise of the power reserved to them in the Agreement and Declaration of Trust, do hereby amend, restate and continue said Plan of Benefits effective April 1, 2014 (Amended through January 1, 2015), except as otherwise specified herein, as follows:

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## **ARTICLE 1            DEFINITIONS**

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Whenever a word or phrase defined in this Article 1 is used herein, it shall have the same meaning unless a different meaning is plainly required by the context.

### **Section 1.1.    Actuarial Equivalent.**

- (a)    The term "Actuarial Equivalent," or terms of similar import, as used herein shall mean a benefit of equivalent actuarial value as determined based on the 1971 Group Annuity Mortality Table and an assumed interest rate of 7.00%.
- (b)    For purposes of determining the amount of a distribution in a form other than an annual benefit that is either:
  - (i)    Non-decreasing for the life of the Participant or, in the case of a qualified pre-retirement survivor annuity, the life of the Participant's Spouse; or
  - (ii)   That decreases merely because of the death of the surviving annuitant (but only if the reduction is to a level not below 50%); or
  - (iii)   That decreases merely because of the cessation or reduction of social security supplements or benefit forms, or qualified disability payments,
  - (iv)   Actuarial equivalence will be determined on the basis of the applicable mortality table and applicable interest rate under Section 417(e) of the Code, if it produces a benefit greater than that determined under paragraph (a).
- (c)    The applicable mortality table used for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C), or (D) of the Code and the applicable mortality table used for purposes of satisfying the requirements of Section 417(e) of the Code is the table prescribed in Rev. Rul. 2001-62. Any reference in the Plan to the mortality table prescribed in Rev. Rul. 95-6 shall be construed as a reference to the mortality table prescribed in Rev. Rul. 2001-62 for all purposes under the Plan.
- (d)    Actuarial equivalence for joint and survivor annuities, and for contingent pensioner annuities, shall be determined as provided under Section 4.2.

## **Section 1.2. Alternate Payee.**

The term "Alternate Payee" as used herein shall mean any Spouse, former Spouse or other dependent who is recognized by a domestic relations order as having the right to receive all, or a portion of, the benefits payable to a Participant under the Plan.

## **Section 1.3. Code.**

The term "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

## **Section 1.4. Compensation.**

The term "Compensation" as used herein shall mean with respect to an Employee for a particular calendar year, all salary or wages paid to the Employee by all Employers, which are subject to withholding for purposes of Federal Income Taxes. For purposes of Article IX, Compensation shall mean wages within the meaning of Section 3401(a) of the Code (for purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed. For Plan Years beginning after December 31, 1988, an Employee's Compensation shall not exceed \$200,000.00 (or such higher amount as may be determined by the Secretary of the Treasury in accordance with Section 401(a)(17) of the Code to reflect increases in the cost of living).

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

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

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

Effective for Plan Years beginning on or after January 1, 2002, Compensation shall be limited to \$200,000 per Plan Year (as adjusted annually under Code Section 401(a)(17)).

For limitation years beginning on and after January 1, 1998, for purposes of applying the limitations described in Section 1.04 of Article I of the Plan, Compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Employee by reason of Code Sections 125, 402(g), 401(k), 403(b) and 457 and effective for Plan Years beginning on or after January 1, 2001, Code Section 132(f)(4).

### **Section 1.5. Contributions.**

The term "Contributions" shall mean:

- (a) The payment made to the Fund by the Employer as required by the terms of the collective bargaining agreement or participation agreement; or
- (b) Contributions received from a qualified IBEW retirement or pension plan, which represents a total distribution of the Participant's account with that fund. Receipt of these Contributions must be directly from the other qualified IBEW retirement or pension plan and cannot be made directly by the Employee unless the Participant furnishes satisfactory proof of total distribution from the qualified plan within the time prescribed by law. Any such Contribution shall be the Employee's "IBEW Plan transfer," shall become part of the Employee's Money-Purchase Pension Account and shall be subject to the distribution rules of the Money-Purchase Pension Account; or
- (c) Contributions received from a plan, individual account or contract described in paragraph (f) of Article IX for an Employee. The contribution must be made by either a direct plan-to-plan transfer or a rollover by the Employee; provided, the rollover by the Employee is made within the

time prescribed by law. Any such contribution shall be the Employee's "Rollover Contribution," shall become part of the Employee's Money-Purchase Pension Account and shall be subject to the distribution rules of the Money-Purchase Pension Account.

#### **Section 1.6. Covered Service.**

The term "Covered Service" as used herein shall mean any employment during which the Employee has been employed by an Employer who makes or is required to make Contributions with respect to such employment to the Fund under the terms of a collective bargaining agreement or other written agreement.

#### **Section 1.7. Default Plan.**

The term "Default Plan" shall mean that investment option to which Employer Contributions shall be allocated by the Record Keeper and Services Provider in the event a Participant fails to direct the investment of all or a part of said Contributions. Effective January 1, 2005, the "Default Plan" shall be called the "Default Investment Option."

#### **Section 1.8. Disability or Disabled.**

The terms "Disability" or "Disabled" shall mean a physical or mental condition, which totally and permanently prevents an Employee from engaging in any substantially gainful activity, as certified by a Physician. Eligibility for Social Security Disability Insurance Benefits shall be deemed sufficient proof of Disability hereunder.

#### **Section 1.9. Employee.**

The Term "Employee" shall mean:

- (a) All employees of an Employer on whose behalf the Employer is required by the terms of a collective bargaining agreement or other written agreement to make Contributions to the Fund;
- (b) All employees of the Union on behalf of whom the Union agrees to make, and the Trustees agree to accept, Contributions to the Fund;
- (c) All employees of any other legally constituted trust fund established by and between the Memphis Chapter, National Electrical Contractors Association (NECA) and the Union on behalf

of whom the trustees of such funds agree to make, and the Trustees agree to accept, Contributions to the Fund; and

- (d) All employees of NECA on behalf of whom NECA agrees to make, and the Trustees agree to accept, Contributions to the Fund.

#### **Section 1.10. Employer.**

The term "Employer" shall mean and include:

- (a) Any person, partnership, firm, corporation, or government agency which has become a party to the Trust Agreement and who has agreed by a collective bargaining agreement with the Union or participation agreement with the Trust Fund to make such contributions as the employer may be obligated to contribute in accordance with said collective bargaining agreement or participation agreement for each hour worked for such employer by an Employee;
- (b) The Union, in its capacity as an employer;
- (c) Any other legally constituted trust fund established by and between the NECA and the Union, and
- (d) NECA in its capacity as an employer.

#### **Section 1.11. ERISA.**

The term "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

#### **Section 1.12. Fund or Trust Fund.**

The terms "Fund" or "Trust Fund" shall mean the NECA-IBEW Memphis Retirement Trust Fund, and the entire assets thereof, including all funds received in the form of Employer Contributions together with all contracts (including dividends, interest, refunds, and other sums payable to the Trustees on account of such contracts), all investments made and held by the Trustees, all investments made by Participants in the Participant Directed Program, all income, increments, earnings and profits therefrom and any and all other equipment, property or funds received and held by the Trustees as set forth in the Agreement and Declaration of Trust establishing the Fund.

### **Section 1.13. Hours of Service.**

As used herein, "Hours of Service" shall include:

- (a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for an Employer, and
- (b) Each hour (as determined under Department of Labor Regulation Section 2530.200b-2(b)) for which an Employee is paid, or entitled to payment, by an Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence, and
- (c) Each hour for which back pay, irrespective of mitigation of damages, is awarded or agreed to by an Employer, if credit for such hour had not been accrued previously in (a) or (b) above.

Notwithstanding (b) above, no more than 501 Hours of Service will be credited under (b) above to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single Plan Year).

An hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed, will not be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workmen's Compensation, unemployment Compensation or disability insurance laws.

Hours worked will also not be credited for a payment which solely reimburses an Employee for medical or medically related expenses by the Employee.

Any ambiguity arising from the interpretation of the term "Hours of Service" shall be resolved in favor of crediting an Employee with Hours of Service.

The crediting of "Hours of Service" to Plan Years shall be determined under Department of Labor Regulations Section 2530.200b-2(c). No Employee shall accrue "Hours of Service" for employment with any partnership or proprietorship while he was a partner or proprietor.

All Hours of Service shall be credited to the Plan Year during which they are worked or to which they apply regardless of when they are reported to the Trustees.

Hours of Service as defined hereunder shall be used by the Trustees in determining whether Contributions will be credited to an Employee's Individual Account, in accordance with the provisions of Article II of this Plan.

**Section 1.14. Individual Account.**

The term "Individual Account" shall mean the account established and maintained for each Employee recording the Contributions made on his behalf plus any IBEW Plan Transfers, plus any Rollover Contributions and the adjustments thereto, as described in Article II of this Plan.

**Section 1.15. Investment Yield.**

The term "Investment Yield" shall mean the net gain or loss of the Fund from investments, as reflected by interest payments, dividends, realized or unrealized gains and losses on securities, and other investment transactions. In determining the Investment Yield of the Fund for any period, assets shall be valued on the basis of their market value.

**Section 1.16. Money-Purchase Pension Account.**

The term "Money-Purchase Pension Account" shall mean all Employer and Employee Contributions made to the Plan on behalf of a Participant prior to January 1, 2008 and all earnings on such Contributions plus any IBEW Plan Transfers and any Rollover Contributions and all earnings thereon.

**Section 1.17. Normal Retirement Age.**

"Normal Retirement Age" under the Plan shall be the date upon which an Employee has both attained age 60 and has ceased all employment under the jurisdiction of the Union.

**Section 1.18. Optional 75% Joint and Survivor Annuity.**

Effective January 1, 2008, the term "Optional 75% Joint and Survivor Annuity" as used herein shall mean an annuity for the life of the Eligible Spouse that is 75% of the amount that is payable during the joint lives of the Employee and Eligible Spouse and that is the Actuarial Equivalent of the normal form of payment.

**Section 1.19. Participant.**

The term "Participant" shall mean any Employee or former Employee on whose behalf the Trustees maintain an Individual Account.

**Section 1.20. Participant Account Balance.**

The term "Participant Account Balance" shall mean the balance of a Participant's Individual Account determined as of any Valuation Date and reflected by the records maintained by the Record Keeper. A Participant's Account Balance shall consist of all Contributions allocated to that account plus dividends and interest earned less any loss or charges thereto.

**Section 1.21. Participant Directed Plan.**

Each Participant shall be permitted to direct the investments of the Contributions allocated to the Individual Accounts in accordance with Section 404(c) of ERISA. The Participants who choose to direct the investments in their Individual Accounts will be permitted to change their designations on a daily basis. Effective January 1, 2005, the Participant Directed Plan shall be called the Participant Directed Investment Option.

**Section 1.22. Plan or Retirement Plan.**

The terms "Plan" or "Retirement Plan" shall mean the NECA-IBEW Memphis Retirement Plan established December 1, 1982. Effective January 1, 2008, the Plan was converted from a money-purchase pension plan to a profit-sharing plan.

**Section 1.23. Plan Year.**

The term "Plan Year" shall mean each 12-month period ending on March 31.

**Section 1.24. Profit-Sharing Account.**

The term "Profit-Sharing Account" shall mean all Employer and Employee Contributions made to the Plan on behalf of a Participant on or after January 1, 2008 and all earnings on such Contributions.

#### **Section 1.25. Qualified Domestic Relations Order or QDRO.**

The terms "Qualified Domestic Relations Order" or "QDRO" as used herein shall mean a judgment, decree, or order that creates or recognizes the existence of an Alternate Payee's right to receive all or a portion of a Plan Participant's benefits payable under an ERISA-qualified employee benefit plan.

#### **Section 1.26. Qualified Joint and Survivor Annuity.**

The term "Qualified Joint and Survivor Annuity" as used herein shall mean an annuity for the life of the Employee with a survivor annuity for the life of the Eligible Spouse that is 50% of the amount that is payable during the joint lives of the Employee and Eligible Spouse and that is the Actuarial Equivalent of the normal form of payment.

#### **Section 1.27. Record Keeper and Services Provider.**

The term "Record Keeper and Services Provider" shall mean the corporation or other entity appointed by the Trustees to keep the records and provide the required investment and educational services for the Plan.

#### **Section 1.28. Spouse.**

The term "Spouse" shall mean the spouse of a Participant who is legally married to the Participant on the Participant's Annuity Starting Date or on the date of the Participant's death. Effective June 26, 2013, this shall include the marriage of individuals of the same gender who are legally married in a state or foreign jurisdiction that recognizes same gender marriages, even if the individuals are domiciled in a state that does not recognize the validity of same gender marriages. A former Spouse will be treated as the Spouse to the extent provided under a Qualified Domestic Relations Order pursuant to Section 414(p) of the Code.

A domestic partner or individuals in civil unions shall not be considered a Spouse.

#### **Section 1.29. Trust Agreement.**

The term "Trust Agreement" shall mean the Agreement and Declaration of Trust establishing the NECA-IBEW Memphis Retirement Trust Fund and that document as from time to time amended or restated.

**Section 1.30. Trustees.**

The term "Trustees" shall mean the Trustees designated pursuant to the terms of the Trust Agreement together with such Trustees' successors.

**Section 1.31. Union.**

The term "Union" shall mean Local Union No. 474 of the International Brotherhood of Electrical Workers, AFL-CIO.

**Section 1.32. Valuation Date.**

The "Valuation Date" shall mean the end of each business day that the New York Stock Exchange is open for trading.

## **ARTICLE II      INDIVIDUAL ACCOUNTS**

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### **Section 2.1.    Maintenance of Accounts.**

The Trustees shall maintain an Individual Account on behalf of each Employee or Alternate Payee named in a Qualified Domestic Relations Order, for whom Contributions are credited under the Fund as explained below, for the purpose of recording all Contributions made on the Employee's behalf together with the appropriate share of the Investment Yield, minus administrative charges, as outlined in Section 2.4 hereunder.

### **Section 2.2.    Investment of Employer Contributions.**

#### **(a)      Amount of Investment Election**

An active Participant may direct the Record Keeper, by submission of proper instructions, in such form as the Record Keeper, in its discretion, may require from time to time, to investment his Employer Contributions in one or more of the available investment funds. All such Contributions will be invested in the Default Fund (effective January 1, 2005, the Default Investment Option) unless the active Participant designates the investment funds in which such Contributions are to be invested. If an active Participant elects to invest his Employer Contributions in more than one investment fund, he must designate the percentage in whole multiples of 1%.

#### **(b)      Effective Date of Investment Election**

An investment election hereunder (or a change of such election) with respect to Employer Contributions shall be effective at the close of business the same day, if the instruction is communicated to the Record Keeper before 4:00 p.m. Eastern Standard Time (3:00 p.m. Central Standard Time) of the business day.

#### **(c)      Change of Investment Election**

The investment election of a Participant shall continue in effect, notwithstanding any change in his Compensation, his contribution percentage or his status as an active Participant, until the date change of his investment election is effective.

The Trustees shall not be liable for any losses resulting from the investment directives of the Participants in the Participant Directed Program.

### **Section 2.3. Crediting of Contributions.**

Contributions remitted to the Fund shall be credited to the Individual Accounts of Employees in accordance with the following provisions:

- (a) For any Employee on whose behalf the Trustees maintained an Individual Account balance under the Plan as of March 31, 1989, all Contributions made to the Fund in that Employee's behalf shall be credited to his Individual Account in the Participant Directed Plan, subject to the provisions of paragraph (c) hereunder.
- (b) All other Employees shall be required to earn 300 Hours of Service under the Plan within a 12-month period before an Individual Account will be established in their behalf. Upon the establishment of an Individual Account, all Contributions made during the 12 month in which the Employee initially earned 300 Hours of Service, and during subsequent 12-month period, shall be credited to the Employee's Individual Account in the Participant Directed Plan, subject to the provisions of paragraph c. hereunder.
- (c) Once an Employee's total Individual Account balance has been paid to him, or in his behalf, he shall once again be required to earn 300 Hours of Service during a 12-month period before an Individual Account Balance will again be established in his behalf, and Contributions credited thereto.

Any Contributions made to the Fund in an Employee's behalf, which are not credited to the Employee's Individual Account, in accordance with these rules, shall be forfeited. Such forfeitures shall be used to offset administrative charges as determined in accordance with Section 2.5.

An Employee's Individual Account shall be credited with any IBEW Plan Transfer (as described in Section 1.5(b) of the Plan) and any Rollover Contribution made to this Plan. For purposes of the Plan, a "Rollover Contribution" means a rollover of the Employee's distribution to this Plan from any plan described in paragraph (f) of Article IX.

#### **Section 2.4. Valuation of Accounts.**

Each Employee's Individual Account shall be valued based on the amount in such Individual Account on a Valuation Date.

#### **Section 2.5. Vesting.**

Each Employee shall at all times be fully vested in his Individual Account balance. There is no break in service for participation, vesting or required Contributions. Therefore, an Employee will participate immediately upon returning to Covered Service regardless of the length of any absence. An Employee who returns to Covered Service will remain 100% vested and will not lose or forfeit any portion of his undistributed Individual Account balance regardless of the length of his absence from Covered Service.

Solely for purposes of determining whether a Participant has incurred a one year break-in-service, a Participant will be granted hours of service for maternity and paternity leaves of absence.

A "maternity or paternity leave of absence" shall mean, for Plan Years beginning after December 31, 1984, an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement. For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a one-year break in service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which would normally have been credited but for such absence, or, in any case in which the Trustees are unable to determine such hours normally credited, eight hours of service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed 501.

#### **Section 2.6. Restrictions on Individual Accounts.**

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

### **Section 2.7. Automatic Cash-Out Distribution of Individual Account Balance.**

The Trustees have provided for the automatic cash-out distribution of an Employee's Individual Account balance, under certain circumstances, where the employment of such Employee for an Employer has terminated. The Employee's employment for an Employer shall be deemed to have terminated as of the last day of any Plan Year during which the Employee failed to work any hours of employment for an Employer.

Prior to January 17, 2005, in the event the balance of an Individual Account of the Employee whose employment has terminated is not in excess of \$5,000 at the time of such termination, the Trustees shall arrange for the automatic distribution of the entire balance in the Employee's Individual Account to be paid within 12 months of the Employee's termination date, subject to receipt of proper documentation from such Employee as may be required by the Trustees. The amount to be distributed to the Employee shall be equal to the entire balance of the Employee's Individual Account as of the last Valuation Date preceding the distribution and shall be paid in a single lump sum.

Effective January 17, 2005, automatic cash-out distributions shall cease under this Section 2.7.

### **Section 2.8. Voluntary Cash-Out Distribution of Individual Account Balance in Excess of \$1,000.**

In the event an Employee shall fail to work any hours in covered employment for a contributing Employer during a period of 12 consecutive months, and provided the balance of the Individual Account of such Employee is in excess of \$1,000, the Employee may apply for and receive a distribution of the entire balance in his Individual Account.

Such distribution shall be made within 60 days after the date on which the Employee has both applied for such a distribution and has submitted the proper documentation as may be required by the Trustees.

The amount to be distributed to the Employee shall be equal to the entire balance of the Employee's Individual Account as of the last Valuation Date preceding the distribution, and shall be paid in a single lump sum.

In the event the amount to be distribution hereunder is in excess of \$5,000, and if the Participant is married on the date distribution is to be made, the written consent of the Participant's Spouse shall be required in order for such distribution to be made.

This Voluntary Cash-Out provision shall only apply to each Participant's Money-Purchase Pension Account (including the Participant's IBEW Plan Transfers and Rollover Contributions) and shall not apply to a Participant's Profit-Sharing Account.

For the period beginning November 19, 2008 and ending December 14, 2009, this Voluntary Cash-Out provision shall apply to each Participant's Money-Purchase Pension Account and Profit-Sharing Account. The foregoing sentence shall also apply to the Hollowell distribution made on May 28, 2010 and the Jennings distribution made on November 28, 2011.

## **ARTICLE III      ELIGIBILITY FOR BENEFITS**

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### **Section 3.1.      Normal Retirement.**

An Employee, on whose behalf the Trustees maintain an Individual Account, who ceases all employment for which Contributions are required to be made to the Fund shall be eligible to receive a "Normal Retirement" benefit upon attainment of Normal Retirement Age.

### **Section 3.2.      Disability Retirement.**

An Employee, on whose behalf the Trustees maintain an Individual Account, who becomes Disabled as defined herein shall be eligible to receive a "Disability Retirement" benefit. In the absence of an award of Social Security Disability Insurance Benefits, the Trustees may require that an Employee applying for a Disability Retirement benefit undergo a physical examination by a physician chosen by the Trustees.

### **Section 3.3.      Death Benefit.**

In the event a Participant dies before having received the entire amount of his Individual Account balance, a benefit shall be payable to his surviving Spouse or beneficiary as outlined under Section 4.2 hereunder. For purposes of the Plan, a Participant referenced herein shall include a Participant who dies while he is engaged in qualified military service.

## **ARTICLE IV     BENEFITS**

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### **Section 4.1.     Accumulated Share.**

When an Employee, or his surviving Spouse or other beneficiary, qualifies for a benefit under the Plan, such benefit shall equal the sum of the value of the Employee's Individual Account as of the last preceding Valuation Date plus any Employer Contributions, any IBEW Plan Transfer, and any Rollover Contributions made on the Employee's behalf after said Valuation Date, when applicable, the sum of which shall be known as the Employee's "Accumulated Share."

### **Section 4.2.     Method of Payment.**

#### **(a)     Normal Retirement and Disability Retirement Benefits**

When payment of an Employee's Accumulated Share is scheduled to commence, the Trustees shall purchase from a life insurance company, and distribute to the Employee, a single premium non-transferable contract, or, in lieu thereof, subject to the provision regarding spousal consent as outlined below, the Employee may elect the distribution of his Accumulated Share in a single lump sum payment, provided, however, the distribution is paid directly to the Employee and to no other parties. Should the Employee elect the receipt of his Accumulated Share through the purchase of an annuity contract, such contract shall be for such term and in such form as the Employee requests and as the Trustees shall make available and approve, provided that, for an Employee who is married at the time the annuity is purchased, and unless the Employee elects otherwise in writing, when eligible to do so, the contract purchased for the Employee shall be in the form of a Qualified Joint and Survivor Annuity or, if elected the Optional 75% Joint and Survivor Annuity, as defined below. If the contract provides for continuance of annuity payments after an Employee's death to a beneficiary other than the Employee's Spouse, the value of such death benefits shall be less than the value of the Employee's annuity.

Upon purchase of an annuity from an insurance company, the Trustees and the Plan shall have no further liability for any benefits or payments to the Participant, Spouse or any beneficiary.

(b) **Qualified Joint and Survivor Annuity**

(i) **Notification**

The Trustees shall furnish each Employee, at least 30 days but no earlier than 180 days prior to the date on which his benefit payments are to commence, or as soon thereafter as administratively practicable, a written explanation of the form of payment provided under the Qualified Joint and Survivor Annuity and of the difference in the amount of benefit payable under such form of payment, as compared to the amount otherwise payable.

(ii) **Election Procedures**

(A) If an Employee has an eligible Spouse at the date his benefits under this Plan are to commence, his benefit shall be paid in the form of a Qualified Joint and Survivor Annuity unless the Employee submits a written election to the Trustees for a different form of payment prior to the later of (but in no event earlier than 180 days prior to the date his benefits are to commence):

- (1) the date his benefits are to commence, or
- (2) the date his application for benefits is approved by the Trustees, or
- (3) a date within 180 days after the Trustees have furnished him with a written explanation of the Qualified Joint and Survivor Annuity form of payment and of the difference between such form of payment and the amount and form of payment otherwise applicable.

Any election of any form of payment under this Plan may be revoked at any time or any number of times prior to the date benefits are to commence by submission of a written revocation to the Trustees.

(B) Any election by the Employee not to take a Qualified Joint and Survivor Annuity shall be effective only if all of the following requirements are met:

- (1) The Employee's eligible Spouse consents to the election in writing and the Spouse's consent is witnessed by a notary public;

- (2) The election and the Spouse's consent state the specific non-Spouse beneficiary (including any class of beneficiaries or contingent beneficiaries) and the particular form of benefit payment being elected and consented to, and further provide that neither the non-Spouse beneficiary nor the form of benefit payment may be changed at a later date without subsequent spousal consent (as described in this Section), except that the form of benefit payment may be changed back to a Qualified Joint and Survivor Annuity, unless the Spouse has expressly permitted otherwise in the consent; and
- (3) The eligible Spouse's consent acknowledges the effect of the election.

Spousal consent shall not be required, however,

- (1) If the Employee establishes to the satisfaction of the Trustees that the consent required by the eligible Spouse may not be obtained because there is no eligible Spouse, the eligible Spouse cannot be located or because of other circumstances that the Secretary of the Treasury prescribes by regulation,
- (2) The Employee is legally separated pursuant to a court order from the otherwise eligible Spouse, or
- (3) The Employee has been abandoned by his or her otherwise eligible Spouse (within the meaning of local law) and the Employee has a court order to that effect.

Any consent by an eligible Spouse (or establishment that such consent may not be obtained) is effective only with respect to that eligible Spouse.

- (C) If the Trustees act in accordance with the fiduciary standards of ERISA in securing an eligible Spouse's consent to elect against a Qualified Joint and Survivor Annuity, then the Plan will not be liable for payments to the surviving eligible Spouse under such form of payment. This discharge from liability shall also apply in the case where the Trustees accept the representations of the Employee that the eligible Spouse's consent cannot be obtained or is otherwise not required.

(D) The Participant may elect in writing, with the consent of his eligible Spouse, to waive the requirement that the written explanation be provided at least 30 days before his Annuity Starting Date, provided distribution of his pension begins more than seven days after the written explanation was provided to the Participant and eligible Spouse.

(iii) If an Employee's benefit has commenced, he may not change the form of benefit payment at any subsequent date.

(iv) Benefit payments made under the Qualified Joint and Survivor Annuity form of payment will be subject to the following limitations:

(A) If an Employee dies prior to the date that his benefit commences under the Plan, no benefit will be payable under this Section, except as provided by (c) below.

(B) If the eligible Spouse of an Employee dies before the date that the Employee's benefit commences under the Plan, the Qualified Joint and Survivor Annuity form will be canceled automatically and the Employee shall elect another form of payment unless the Employee remarries prior to the date his benefit commences.

(v) The selection or rejection of any optional form of benefit shall be final and binding upon the Employee and the beneficiary (or beneficiaries) on the date that the Employee's benefit commences.

**(c) Death Benefits**

In the event of the death of a married Employee, his Accumulated Share shall be paid to his surviving Spouse in one (1) of the three (3) following forms:

(i) A monthly installment annuity payable for the remainder of the lifetime, as purchased in his/her behalf by the Trustees; or

(ii) A lump sum payment; or

(iii) A partial distribution of at least 10% of the account balance or \$5,000.

A surviving Spouse whose monthly installment annuity would exceed a minimum monthly amount established by the Trustees may elect to receive his/her benefit in accordance with either (1), (2), or (3) above. If the surviving Spouse's monthly installment annuity would not exceed the

minimum monthly amount established by the Trustees, he/she will be eligible for either (2) or (3) above.

Should a deceased Employee have been unmarried at the time of his death, his beneficiary shall be entitled to receive the deceased Employee's Accumulated Share in the same manner as that outlined above for surviving Spouses.

If a surviving Spouse or beneficiary elects a partial distribution, then the remaining account balance shall remain as part of the Accumulated Share. The surviving Spouse or beneficiary will continue to have the right to receive distributions under any of the three forms of payment listed above subject to the conditions in this Section 4.2(c).

**(d) Partial Withdrawals or Installment Payments**

When an Employee terminates employment with an Employer and meets the requirements of either a Normal Retirement or a Disability Retirement from the Plan, the Employee shall have the option to receive partial withdrawals or installments from the Employee's Individual Account.

There is no limit on the number of partial withdrawals. Each partial withdrawal must represent at least the lesser of 10% of the value of the Employee's Individual Account or \$5,000.

A Participant may also elect to receive a fixed installment payment each month provided the distributions are in compliance with Section 401(a)(9) of the Code. The minimum amount of any fixed installment must be at least \$100. A Participant who is receiving installment payments may elect to receive the remaining value of his or her Individual Account at any time.

In the event the Employee has a Spouse, the informed consent of his Spouse will be required in order for the Employee to elect to receive partial withdrawals or installment payments from the Plan. Such consent must be in writing and must be witnessed by a Notary Public or a representative of the Plan.

**(e) Optional 75% Joint and Survivor Annuity**

Effective January 1, 2008, if a Participant has an eligible Spouse at the date his benefits under this Plan are to commence, then the Participant may elect to receive such benefits in the form of an Optional 75% Joint and Survivor Annuity, subject to spousal consent.

- (f) The Participant shall have the right to make or revoke an election to waive payment of the monthly death benefit at any time during the period beginning on the first day of the Plan Year in which he reaches age 35 or on the date the Participant separates from employment (if earlier) and ending on the date of his death. The Plan must provide a written explanation of the Qualified Preretirement Survivor Annuity to the Participant within which ever of the following periods is applicable:
- (i) If an individual becomes a Participant after attaining age 32, the Plan must provide the written explanation before the later of (A) the last day of the Plan Year before the Plan Year in which the Participant reaches age 35 or (B) a reasonable period of time after the individual becomes a Participant;
  - (ii) If a Participant separates from employment before receiving the written explanation, the written explanation will be provided at the time of separation or within one year thereafter; or
  - (iii) In all other cases, the written explanation will be provided within the period beginning on the first day of the Plan Year in which the Participant reaches age 32 and ending on the last day of the Plan Year before the Plan Year in which the Plan Participant reaches age 35.

#### **Section 4.3. Minimum Benefit.**

An Employee or beneficiary will not be permitted to select any form of annuity which would result in a monthly benefit of less than such minimum monthly annuity benefit as the Trustees, in their discretion, may specify. If the monthly benefit would otherwise be less than such minimum, the entire Accumulated Share will be paid in a single lump sum payment.

#### **Section 4.4. Payment of Benefit.**

Benefits outlined hereunder shall become payable immediately and shall commence not later than 60 days after the date on which the Employee or beneficiary has both satisfied the eligibility requirements for a benefit and filed a proper written application for such benefit on a form prescribed by the Trustees.

#### **Section 4.5. Required Distribution Date.**

Regardless of any other provisions herein contained to the contrary, an Employee's (other than a 5% owner) Accumulated Share shall be paid in accordance with the previous Sections no later than April 1 of the calendar year following the calendar year in which the Employee attains age 70½, or April 1 of the calendar year following the calendar year in which the Employee retires, whichever is later. The Accumulated Share of an Employee who is a 5% owner shall be paid no later than the April 1st of the calendar year following the calendar year in which the Employee attains age 70½.

#### **Section 4.6. Additional Requirements Regarding Distribution of Benefits.**

##### **(a) General Rules**

##### **(i) Effective Date**

The provisions of this Section 4.6 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

##### **(ii) Precedence**

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

(B) Except to the extent inconsistent with this Article, all distribution options provided under the Plan are preserved.

(C) This Section does not authorize any distribution options not otherwise provided under the Plan.

##### **(iii) Requirements of Treasury Regulations Incorporated**

All distributions required under this Section will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code.

##### **(iv) TEFRA Section 242(b)(2) Elections**

Notwithstanding the other provisions of this Section, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the

Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

**(b) Time and Manner of Distribution**

**(i) 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 as defined in Section 4.5 of the Plan.

**(ii) Death of Participant Before Distributions Begin**

If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (A) If the Participant dies before distributions begin and there is a designated beneficiary, the Participant's entire interest must be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (B) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, then, the Participant's Spouse may elect, in lieu of paragraph (b)(ii)(A), to have distributions to the surviving Spouse 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. The election must be made no later than September 30 of the calendar year in which distribution would be required to begin under this paragraph (b)(ii)(B), or if earlier, paragraph (b)(ii)(A).
- (C) If the Participant's surviving Spouse is not the Participant's sole designated beneficiary, then, the designated beneficiary may elect, in lieu of paragraph (b)(ii)(A), to have distributions begin by December 31 of the calendar year immediately following the calendar year in which the Participant died. The election must be made no later than September 30 of the calendar year in which distribution would be required to begin under this paragraph (b)(ii)(C).

- (D) 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.
- (E) 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 paragraph (b)(ii), other than paragraph (b)(ii)(B), will apply as if the surviving Spouse were the Participant.

For purposes of this paragraph (b)(ii) and Section 4.6(d), unless paragraph (b)(ii)(E) applies, distributions are considered to begin on the Participant's required beginning date. If paragraph (b)(ii)(E) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under paragraph (b)(ii)(B), if such election is made. 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 an election made under paragraph (b)(ii)(B), the date distributions are considered to begin is the date distributions actually commence.

(iii) **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 paragraphs (c) and (d) of Section 4.6. If the Participant's or designated beneficiary'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**

(i) **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:

- (A) The quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- (B) If the Participant's sole designated beneficiary for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.

(ii) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death**

Required minimum distributions will be determined under this paragraph (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**

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

(A) **Participant Survived by Designated Beneficiary**

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

- (1) 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.
- (2) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the

Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

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

(B) No Designated Beneficiary

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

(ii) Death Before Date Distributions Begin

(A) Participant Survived by Designated Beneficiary

If the Participant dies before the date distributions begin and there is a designated beneficiary, if the designated beneficiary has made an election under paragraph (b)(ii)(B) or (b)(ii)(C), 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 paragraph (d)(i).

(B) No Designated Beneficiary

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

(C) Death of surviving Spouse Before Distributions to surviving Spouse Are Required to Begin

If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole designated beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse after having made an election under paragraph (b)(ii)(B), this paragraph (d)(ii) will apply as if the surviving Spouse were the Participant.

(e) Definitions

(i) Designated Beneficiary

The individual who is designated as the beneficiary under Section 5.2 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.

(ii) Distribution Calendar Year

A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under paragraph (b)(ii). 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.

## **ARTICLE V            GENERAL PROVISIONS**

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### **Section 5.1.    Application for Benefits.**

Application for all benefits must be made in writing on a form and in a manner prescribed by the Trustees.

### **Section 5.2.    Designation of Beneficiary.**

Each Participant may designate a primary beneficiary or beneficiaries and a contingent beneficiary or beneficiaries to receive any benefit that may become payable under this Plan by reason of the Participant's death, when such benefit is not otherwise payable to the Participant's surviving Spouse in accordance with the provisions of this Plan. Such designation shall be made upon forms furnished by the Trustees, and may at any time and from time to time, be changed or revoked without notice to the beneficiary or beneficiaries and shall not be effective unless and until filed with the Trustees. If any Employee or former Employee fails to designate a beneficiary or beneficiaries, or if all those designated predecease him, then the Employee shall be deemed to have designated the following as his beneficiaries and contingent beneficiaries with priority in the order named: (1) his widow or her widower, as the case may be; (2) his children and children of deceased children, per stripes; (3) his parents; and (4) his estate.

Regardless of the provisions of Section 4.2, and in accordance with the preceding paragraph, a married Participant may designate a beneficiary other than his or her Spouse to receive any death benefit payable under this Plan, provided such designation of beneficiary is accompanied by the written consent of the Employee's Spouse and such consent is witnessed by a Notary Public or a Plan representative.

Effective April 1, 2009, in the event of a divorce, the designation of a Participant's former Spouse as beneficiary is nullified at the time the divorce becomes final. Any benefit that may become payable upon the Participant's death following the divorce will be paid to the Participant's estate unless the Participant executes a new Beneficiary designation form and files such form with the Trustees.

### **Section 5.3.    Facility of Payment.**

Whenever, in the Trustee's opinion, a person entitled to receive any payment of a benefit hereunder is under a legal disability or is incapacitated in any way so as to be unable to manage his financial affairs,

the Trustees may make payments to such person or to his legal representatives or to a relative or to a friend of such person for his benefit, or the trustees may apply the payment for the benefit of such person in such manner as the Trustees consider advisable. Any payment of a benefit in accordance with the provisions of this paragraph shall be a complete discharge of any liability with the making of such payment under the provisions of the Plan.

#### **Section 5.4. Non-Alienation of Benefits.**

Benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind of a voluntary or involuntary nature including any such liability which is for alimony or other payments for the support of a Spouse or former Spouse, or for any other relative of the Employee prior to actually being received by the person entitled to the benefit under the terms of the Plan, except as may be required under a Qualified Domestic Relations Order as that term is defined in the Retirement Equity Act of 1984, and any other such attempt to assign any right to benefits payable hereunder shall be void.

#### **Section 5.5. Administration.**

The Trustees shall be responsible for the general administration of the Plan. The Trustees shall have all such power as may be necessary to carry out the provisions thereof and may, from time to time, establish rules for the administration of the Plan and the transaction of the Plan's business. In making any such determination or rule, the Trustees shall pursue uniform policies and shall not discriminate in favor of or against any Employee or group of Employees.

Effective April 1, 2001 the Participants will be permitted to direct the investment of their Individual Accounts for all Contributions received after April 1, 2002 under the provisions of Section 404(c) of ERISA.

The Trustees retain the authority to determine the number and type of investment funds available for the Participants to invest in and any future changes thereto.

#### **Section 5.6. USERRA – Military Service Credit.**

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

any other legislative requirements including the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act").

**Section 5.7. Qualified Domestic Relations Orders.**

Expenses incurred by this Plan relating to the approval of a Qualified Domestic Relations Order ("QDRO"), as it is defined under Section 1.25 herein, may, in the discretion of the Trustees, be charged to the Individual Account of the Participant named in the QDRO, to the extent permitted by law.

## **ARTICLE VI      APPROVAL UNDER INTERNAL REVENUE CODE**

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### **Section 6.1.      Approval Under Internal Revenue Code.**

This Plan is intended to qualify as a Plan and Trust meeting the requirements of Sections 401(a), 402(a) and 501(a) of the Code and ERISA, as now in effect or hereafter amended. Any modification or amendment of the Plan may be made retroactive, as necessary or appropriate, to establish or maintain such qualification.

### **Section 6.2.      Approval Under ERISA Section 404(c).**

The Plan provides for Participant directed investments in accordance with Section 404(c) of ERISA. Under Section 404(c), the Trustees shall not be liable for any losses resulting from the investment directives of the Participants

## **ARTICLE VII      AMENDMENT AND TERMINATION**

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### **Section 7.1.      Amendment.**

Subject to the provisions of the Trust Agreement, the Trustees reserve to themselves the right to alter, amend, modify, revoke, or suspend the Plan, provided that such action does not result in or permit the refund of Contributions under the Trust Agreement to the Employers either directly or indirectly.

### **Section 7.2.      Termination.**

In the event of termination, or partial termination, of the Plan, or in the event of the discontinuance of Contributions, each Employee shall have a non-forfeitable right in his Individual Account, and the assets then remaining, after providing for the expenses of the Plan and for the payment of an Accumulated Share theretofore approved, shall be distributed among the Employees. Each Employee shall receive that part of the total remaining assets at the same ratio as his Accumulated Share bears to the aggregated amount of the Accumulated Shares of all Employees. No part of the assets shall be returned to any Employer or inure to the benefit of any Employer or the Union.

### **Section 7.3.      Merger or Consolidations.**

In the event that this Plan should merge or be consolidated with another Qualified Plan, or if the assets and/or liabilities of this Plan are transferred to another such Plan, the benefits of anyone entitled thereto, immediately after such merger, consolidation or transfer, shall be at least as great as they were immediately prior to such merger, consolidation or transfer, as if the Plan had then terminated.

## **ARTICLE VIII    MAXIMUM ANNUAL LIMITATIONS ON RETIREMENT INCOME**

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### **(a)    Limitations on Annual Additions Under Section 415**

In addition to any other limitations set forth in the Plan and notwithstanding any other provisions of the Plan, effective for Limitation Years beginning on and after July 1, 2007, Contributions and other amounts ("annual additions") under the Plan shall be limited in accordance with Section 415 of the Code and the Treasury Regulations thereunder, in accordance with this Section. This Section is intended to incorporate the requirements of Section 415 of the Code by reference except as otherwise specified herein.

### **(b)    Definitions**

For purposes of this Section, the following terms shall have the following meanings.

#### **(i)    415 Compensation**

"415 Compensation" means Compensation as defined in Section 1.4 of the Plan. Such Compensation shall include payments made by the later of 2-1/2 months after Severance From Employment, or the end of the Limitation Year that includes the date of Severance From Employment, if, absent a Severance From Employment, such payments 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.

#### **(ii)    Limitation Year**

"Limitation Year" means Calendar Year.

#### **(iii)    Severance From Employment**

"Severance From Employment" has occurred when a Participant is no longer an Employee of any Employer maintaining the Plan.

(c) **Limit on Annual Additions**

For Limitation Years beginning on or after July 1, 2007, in no event shall the total annual additions credited with respect to any Participant for a Limitation Year exceed the limits determined in accordance with Section 415 of the Code and the Treasury Regulations thereunder (the "maximum annual addition"). If a Participant's total annual additions for a Limitation Year beginning on or after July 1, 2007 would exceed the maximum annual addition for that Limitation Year, annual additions with respect to the Participant shall be frozen or reduced so that the annual additions with respect to the Participant do not exceed the maximum annual addition for that Limitation Year.

(d) **Aggregation of Plans**

In the event that the aggregate annual addition in any Plan Year by a Participant exceeds the limits under Section 415 of the Code and the Treasury Regulations thereunder as a result of the mandatory aggregation of the annual additions under this Plan with the annual additions under another plan maintained by the Employer, the annual additions under such other Plan shall be reduced to the extent necessary to comply with Section 415 of the Code and the Treasury Regulations thereunder.

(e) **General**

- (i) To the extent that a Participant's annual additions are subject to provisions of Section 415 of the Code and the Treasury Regulations thereunder that have not been set forth in the Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.
- (ii) This Section is intended to satisfy the requirements imposed by Section 415 of the Code and the Treasury Regulations thereunder and shall be construed in a manner that will effectuate this intent. This Section shall not be construed in a manner that would impose limitations that are more stringent than those required by Section 415 of the Code and the Treasury Regulations thereunder.
- (iii) If and to the extent that the rules set forth in this Section are no longer required for qualification of the Plan under Section 401(a) and related provisions of the Code and the Treasury Regulations thereunder, they shall cease to apply without the necessity of an amendment to the Plan.

(f) **Interpretation or Definition of Other Terms**

The terms used in this Section that are not otherwise expressly defined for this Section, shall be defined as provided in the Plan, or if not defined in the Plan, shall be defined interpreted and applied for purposes of this Section as prescribed in Section 415 of the Code and the Treasury Regulations thereunder.

## **ARTICLE IX      ROLLOVERS**

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

**(a)      Eligible Rollover Distribution**

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

**(b)      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, a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution and, effective January 1, 2008, a Roth individual retirement account described in Section 408A of the Code. However, in the case of an eligible rollover distribution to the surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

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 a former Spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code.

**(c) Distributee**

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

**(d) Direct Rollover**

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

While the Plan will pay a distributee's benefit in the form of a direct rollover, as set forth in this Section, the Plan will neither recognize nor accept a rollover from another plan, individual retirement account or individual retirement annuity.

**(e) Non-Spousal Rollover**

Effective for distributions made on or after April 1, 2010, a non-spousal Beneficiary may elect a direct rollover into an inherited Individual Retirement Account (IRA).

**(f) Rollover Contribution to This Plan**

The Plan shall accept a Rollover Contribution made on behalf of an Employee through a direct plan-to-plan transfer or an Employee's rollover, within the time specified by law, from any of the following eligible plans:

- (i) A plan qualified under the terms of Code Section 401(a);
- (ii) An individual retirement account described in Code Section 403(a) or 403(b);
- (iii) An annuity contract described in Code Section 408(a) or 408(b); or
- (iv) An eligible plan described in Code Section 457(b), 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.

The Trustees shall ascertain that the Employee's Rollover Contribution is attributable to a distribution from any of the plans or retirement accounts named in subparagraphs (i) through (iv) above by requesting a statement from the administrator of the transferring plan indicating the qualified status of the plan that made the distribution.

Effective for Employee Rollover Contributions made on or after January 1, 2015, the Plan shall verify the validity of the Employee's Rollover Contribution by following the simplified due diligence procedures below:

- (i) Obtain Employee certification that the distribution:
  - (1) Does not include any after-tax contributions;
  - (2) Does not include any amounts attributable to Roth contributions;
  - (3) Does not include any hardship distribution amounts; and
  - (4) Is not a distribution from an Inherited IRA.
- (ii) Obtain verification that the distribution is from the Employee's former plan or IRA and made payable to the Trustees of this Plan for the benefit of the Employee.
- (iii) If the distribution is from a plan, look up the plan's latest Form 5500 or Form 5500-SF filing in the Department of Labor's EFAST2 database to make certain that the plan is intended to be a qualified plan. Check the entry on line 8a of the Form 5500 or Line 9a of the Form 5500-SF for a Code other than 3C.

In the case where the rollover is from the Employee's IRA or former plan that does not file a Form 5500 or Form 5500-SF, steps (i) and (ii) above shall be used to determine if the Employee Rollover Contribution is valid.

If it is determined later that the Employee Rollover Contribution was not valid, the Plan's qualified status will not be in jeopardy if the Plan Administrator:

- (i) Reasonably concluded that the Employee Rollover Contribution was valid; and
- (ii) Distributes any ineligible Employee Rollover Contribution, with earnings, within a reasonable time of discovering that the Employee Rollover Contribution was not valid.

## **ARTICLE X        CLAIMS AND APPEALS PROCEDURE**

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### **Section 10.1. Appeal of a Denial of Benefits.**

A Participant or beneficiary, or other person, who believes that he is being denied benefits to which he is entitled under the Plan (hereinafter referred to as "Claimant") may file a written request for such benefits with the Plan setting forth his claim. Claims and appeals for a Disability Benefit due to be received on or after January 1, 2002 shall be governed by Sections 10.5 and 10.6. All other claims are governed by Sections 10.2, 10.3 and 10.4.

### **Section 10.2. Trustee Action.**

Within 60 days after receipt of the request, the Trustees shall duly consider the claim. If the Trustees do not reach a determination within such 60 days, the Trustees may extend the period for an additional 90 days for reasonable cause by notifying the Claimant. If the claim is denied in whole or in part, the Trustees will mail or otherwise deliver notice of the denial to the Participant or beneficiary setting forth:

- (a) The specific reason or reasons for the denial,
- (b) Specific references to pertinent Plan provisions on which the denial is based,
- (c) A description of any additional material or information necessary for the Claimant to perfect the claim and an explanation why such material or such information is necessary, and
- (d) An explanation of the Plan's claim review procedure.

### **Section 10.3. Request for Review.**

Within 60 days after the receipt by the Claimant of the written notice of the denial under Section 10.2, the Claimant may request in writing that the Trustees review their initial determination. Such request must be addressed to the Trustees. The Claimant or his duly authorized representative may, but need not, review the pertinent documents and submit issues and comments in writing for consideration by the Trustees. If the Claimant does not request a review of the Trustees' determination within such 60 day period, the Claimant shall be barred and estopped from challenging the Trustees' determination.

#### **Section 10.4. Review by Trustees.**

Within 60 days after the Trustees' receipt of a request for review, the Trustees will consider all material presented by the Claimant, and will render a written opinion, setting forth the specific reasons for the decision and containing specific references to the pertinent Plan provisions on which the decision is based. If special circumstances indicate that the 60 day time period requires an extension, the Trustees will so notify the Claimant and will render the decision as soon as possible but not later than 120 days after receipt of the request for review.

If the claim is denied on appeal, the Trustees shall notify the Claimant in writing. Such notice shall

- (a) Contain the reason or reasons for the decision;
- (b) Refer to specific Plan provisions on which the decision is based;
- (c) Notify the Claimant of his right to access and copy (free of charge) all documents, records and other information relevant to the claim; and
- (d) Notify the Claimant of the right to bring a civil action under ERISA.

#### **Section 10.5 Claims for Disability Retirement Benefits**

(a) **General**

Section 10.5 and 10.6 cover claims for Disability Retirement benefits filed on or after January 1, 2002.

(b) **Application for Disability Retirement Benefits**

Any claim for a Disability Retirement benefit must be in writing on a form provided by the Trustees. Unless an extension applies, the Trustees must advise the Claimant of its initial decision within 45 days of actual receipt of the written claim.

- (i) The Trustees may extend the date for rendering an initial decision by two separate periods of 30 days each, provided any extension is due to circumstances beyond the control of the Plan. Such circumstances will include a delay in obtaining medical information from a physician or other provider.

The Plan will notify the Claimant in writing before the end of the 45 days if the first extension is utilized and prior to 75 days if the second extension is utilized.

- (ii) Any request to the Claimant for additional information must be made within the initial 45 day period. The Claimant then has 45 days to obtain the additional information. If the Claimant does not provide the requested information, then the claim must be denied within 30 days of the Claimant's deadline.
- (iii) The Trustees may delegate their responsibility to make the initial claim determination to committees, entities or individuals.

(c) **Notice of Adverse Determination**

Notice of adverse determination shall include the following:

- (i) Specific reason or reasons for the adverse determination.
- (ii) Reference to the specific Plan provision on which the determination is based.
- (iii) Description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material or information is necessary.
- (iv) Description of the Plan's review procedures and applicable time limits.
- (v) Statement of the right to bring a civil action under ERISA Section 502(a) after all administrative remedies have been exhausted.
- (vi) If an adverse determination based upon an internal rule, guideline, protocol or other similar criteria, a statement that the Claimant may obtain a free copy of such rule, guideline, protocol or other similar criteria upon request.

The Plan must be prepared to provide this information upon request.

- (vii) If an adverse determination is based on a medical opinion, a statement that the Claimant may obtain a free copy of an explanation of the scientific or clinical judgment for the determination upon request.

## **Section 10.6. Review of Denied Claim for Disability Benefits.**

### **(a) Claimant's Appeal**

A Claimant may file a written appeal of a denied claim for Disability benefits with the Trustees within 180 days after receiving notice that his claim has been denied. A Claimant may authorize a representative to act on the Claimant's behalf for this purpose. An authorization to use a representative must be provided to the Trustees on a written form provided by the Trustees. The Trustees may delegate their responsibilities to committees or individuals including an appeals review committee. The review must not be made by the same person(s) who made the initial claim determination or a subordinate to the person(s) who made the initial claim determination.

### **(b) Claimant's Rights on Appeal**

If the Claimant files a timely written appeal, he may:

- (i) Submit additional materials, including any comments, statements or documents; and
- (ii) Review all relevant information (free of charge) upon reasonable request to the Trustees. A document, record or other information is relevant if:
  - (A) It was relied upon by the Plan in making the decision;
  - (B) It was submitted, considered or generated (regardless of whether it was relied upon); or
  - (C) It demonstrates compliance with the claims processing requirements.
- (iii) Right to be advised of identity of any medical or vocational experts.

### **(c) Full and Fair Review on Appeal**

The Trustees' review shall consider all comments, documents, records and other information submitted or considered in the initial determination.

The review must consider all comments and records submitted by the Claimant. The appeal cannot defer to the initial claim determination.

If the determination is based on medical necessity or appropriateness, the Trustees (or appeals committee) must consult a medical professional who is not the same individual who consulted on the initial review of the claim or a subordinate of that individual.

**(d) Time Limits on Appeal**

Within 45 days after receipt of the written appeal, the Trustees shall render a determination on the appeal of the claim in a written statement. If special circumstances require a delay in the decision, the Trustees shall notify the Claimant of the reasons for the delay within the 45-day period. A delayed decision shall be issued no later than 90 days after the date the Trustees receive a request for review. The Plan shall notify the Claimant of its decision within 5 days of the date the decision is made.

Alternatively, the Trustees may also render the decision at the next Trustees' meeting. If a request for appeal is received within 30 days of a meeting, then the decision may be rendered at the subsequent Trustees' meeting or if there are special circumstances, at the third Trustees' meeting following receipt of the appeal.

**(e) Content of Decision on Appeal**

The Trustees' written decision on a Claimant's appeal shall:

- (i) Contain the reason or reasons for the decision;
- (ii) Refer to specific Plan provisions on which the decision is based;
- (iii) Notify the Claimant of his right to access and copy (free of charge) all documents, records and other information relevant to the claim; and
- (iv) Notify the Claimant of the right to bring a civil action under ERISA.

## **ARTICLE XI      TOP HEAVY PROVISIONS**

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### **Section 11.1. Definitions.**

For purposes of this Article XI, the following words and phrases shall have the meaning stated below unless a different meaning is clearly required by the context:

**(a)      Key Employee**

“Key Employee” means those Employees defined in Code Section 416(i) and the Treasury Regulations thereunder. They shall include any Employee or former Employee (and his Beneficiaries) who, at any time during the Plan Year or any of the preceding four Plan Years, is:

- (i)      An officer of the Employer (as that term is defined within the meaning of the regulations under Code Section 416) having annual Compensation greater than 50% of the amount in effect under Code Section 415(b)(1)(a).
- (ii)      One of the ten Employees having annual “415 Compensation” from the Employer for a Plan Year greater than the dollar limitation in effect under Code Section 415(c)(1)(A) for the calendar year in which such Plan Year ends and owning (or considered as owning within the meaning of Code Section 318) both more than one-half (1/2%) percent interest and the largest interest in the Employer.
- (iii)      A 5% owner of an Employer.
- (iv)      A 1% owner with annual Compensation over \$150,000.

**(b)      Non-Key Employee**

“Non-Key Employee” means any Employee who is not a Key Employee.

**(c)      Annual Compensation**

“Annual Compensation” used for determining a minimum benefit or minimum contribution and for all other top-heavy purposes means Compensation as defined in Section 1.415-2(d) of the Treasury Regulations. For purposes of determining whether an individual is a Key Employee, Annual Compensation means Compensation as defined in Section 415(c)(3) of the Code and also

includes amounts contributed by the Employer pursuant to a salary reduction agreement which are excludable from an Employee's gross income under Sections 125, 401(a)(8), 402(h), 457, or 403(b) of the Code or, effective for Plan Years beginning on or after January 1, 2001, Code Section 132(f)(4).

(d) **Determination Date**

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

**Section 11.2. Top Heavy Plan Requirements.**

Effective April 1, 1984, for any Top Heavy Plan Year, the Plan shall provide the following:

- (a) Special vesting requirements of Section 416(b) of the Code pursuant to Section 11.4.
- (b) Special minimum benefit requirements of Section 416(c) of the Code pursuant to Section 11.5.

**Section 11.3. Determination of Top Heavy Status.**

- (a) This Plan shall be a Top Heavy Plan for any Plan Year commencing after December 31, 1983, in which, as of the Determination Date:
  - (i) The present value of accrued benefits of Key Employees and
  - (ii) The sum of the aggregate accounts of Key Employees under this Plan and all plans of an Aggregation group exceeds 60% of the present value of accrued benefits and the aggregate accounts of all Key Employees and Non-Key Employees under this Plan and all plans of an Aggregation Group.

If any Participant is a Non-Key Employee for a Plan Year, but such Participant was a Key Employee for any prior Plan Year, such Participant's present value of accrued benefits and/or aggregate account balance shall not be taken into account for purposes of determining whether this Plan is a Top Heavy or Super Top Heavy Plan (or whether any Aggregation Group which includes this Plan is a Top Heavy Group). In addition, for Plan Year beginning after December 31, 1984, if a Participant or former Participant has not received any Annual Compensation from any Employer maintaining the Plan (other than

benefits under the Plan) at any time during the five-year period ending on the Determination Date, the aggregate account and/or present value of accrued benefit for such Participant or former Participant shall not be taken into account for the purposes of determining whether this Plan is a Top Heavy Plan or Super Top Heavy Plan.

(b) This Plan shall be a "Super Top Heavy Plan" for any Plan Year commencing after December 31, 1983, in which, as of the Determination Date:

- (i) The present value of accrued benefits of Key Employees and
- (ii) The sum of the aggregate accounts of Key Employees under this Plan and all plans of an Aggregation Group exceeds 90% of the present value of accrued benefits and the aggregate accounts of all Key Employees and Non-Key Employees under this Plan and all plans of an Aggregation Group.

(c) A Participant's aggregate account as of the Determination Date shall be determined under applicable provisions of the defined contribution plan used in determining Top Heavy Plan status.

(d) "Aggregation Group" means either a Required Aggregation Group or a Permissive Aggregation Group as hereinafter determined.

- (i) In determining a Required Aggregation Group hereunder, each plan of an Employer in which a Key Employee is a Participant and each other plan of an Employer which enables any plan in which an Employee participates to meet the requirements of Sections 401(a)(4) and 410(b) of the Code, will be required to be aggregated. Such group shall be known as a "Required Aggregation Group."

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

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

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

- (iii) Only those plans of an Employer in which the Determination Dates fall within the same Plan Year shall be aggregated in order to determine whether such plans are Top Heavy Plans.
- (e) In the case of a defined benefit plan, a Participant's present value of accrued benefits shall be determined:
  - (i) As of the most recent actuarial valuation date, which is the most recent valuation date within a twelve-month period ending on the Determination Date,
  - (ii) For the first Plan Year, as if:
    - (A) The Participant terminated service as of the Determination Date; or
    - (B) The Participant terminated service as of the actuarial valuation date, but taking into account the estimated present value of accrued benefits as of the Determination Date.
  - (iii) For any other Plan Year, as if the Participant terminated service as of the actuarial valuation date,
  - (iv) The actuarial valuation date must be the same date used for computing the defined benefit plan minimum funding costs, regardless of whether a valuation is performed in the Plan Year.
- (f) The calculation of a Participant's present value of accrued benefit as of a Determination Date shall be the sum of the following:
  - (i) The present value of accrued benefit using actuarial assumptions stated in the most recent actuarial valuation, and
  - (ii) Any Plan distributions made within the Plan Year that includes the Determination Date or within four preceding Plan Years. However, in the case of distributions made after the

valuation date and prior to the Determination Date, such distributions are not included as distributions for top heavy purposes to the extent that such distributions are already included in the Participant's present value or accrued benefit as of the valuation date.

Notwithstanding anything herein to the contrary, all distributions, including distributions made prior to April 1, 1984 and distributions under a terminated plan which if it had not been terminated would have been required to be included in an Aggregation Group, will be counted.

- (iii) Any Employee Contributions, whether voluntary or mandatory. However, amounts attributable to tax deductible Qualified Voluntary Employee Contributions shall not be considered to be a part of the Participant's present value of accrued benefits.
  - (iv) With respect to unrelated rollovers and plan-to-plan transfers (ones which are both initiated by the Employee and made from a plan maintained by one Employer to a plan maintained by another Employer), if this Plan provides for rollovers or plan-to-plan transfers, it shall always consider such rollover or plan-to-plan transfers as a distribution for purposes of this Section. If this Plan is the plan accepting such rollovers or plan-to-plan transfers, it shall not consider such rollovers or plan-to-plan transfers accepted after March 31, 1984, as part of the Participant's present value of accrued benefits. However, rollovers or plan-to-plan transfers accepted prior to April 1, 1984, shall be considered as part of the Participant's present value of accrued benefits.
  - (v) With respect to related rollovers and plan-to-plan transfers (ones either not initiated by the Employee or made to a plan maintained by the same Employer), if this Plan provides the rollover or plan-to-plan transfer, it shall not be counted as a distribution for purposes of this Section. If this Plan is the plan accepting such rollover or plan-to-plan transfer, it shall consider such rollover or plan-to-plan transfer as part of the Participant's present value of accrued benefits, irrespective of the date on which such rollover or plan-to-plan transfer is accepted.
- (g) "Top Heavy Group" means an Aggregation Group in which, as of the Determination Date, the sum of:
- (i) The present value of accrued benefits of Key Employees under all defined benefit plans included in the group, and

- (ii) The aggregate accounts of Key Employees under all defined contribution plans included in the group exceeds 60% of a similar sum determined for all Participants.

#### **Section 11.4. Top Heavy Vesting.**

As provided in Section 2.6, amounts properly credited to a Participant's Individual Account in accordance with this Plan shall be 100% vested and nonforfeitable.

#### **Section 11.5. Top Heavy Benefit Requirements.**

- (a) A Non-Key Employee who is a Participant and is not separated from service at the end of the Plan Year and is only covered by a defined contribution plan, the required Top Heavy contribution, shall equal the defined contribution minimum of 3% of Compensation for the Top Heavy year. If an Employer maintains more than one plan, non-key Employees covered only under a defined benefit plan must receive the defined benefit minimum. If the Employer maintains more than one defined contribution plan that is top-heavy, then this Plan will provide the minimum benefit.
- (b) For purposes of providing the minimum benefit under Section 416 of the Code, a Non-Key Employee who is not a Participant solely because:
  - (i) His Annual Compensation is below a stated amount, or
  - (ii) He declined to make mandatory Contributions to the Plan will be considered to be a Participant.
- (c) For purposes of this Section, Years of Vesting Service for any Plan Year ending prior to April 1, 1984, or for any Plan Year during which the Plan was not a Top Heavy Plan shall be disregarded.
- (d) For purposes of this Section, Annual Compensation for any "Limitation Year" ending prior to January 1, 1984, or subsequent to the last "Limitation Year" during which the Plan is a Top Heavy Plan shall be disregarded.
- (e) If the Plan provides for the normal retirement benefit to be paid in the form other than a single life annuity, the accrued benefit under this Section shall be the Actuarial Equivalent of the minimum accrued benefit under Subsection (a) above.

- (f) If a Non-Key Employee participates in this Plan and a defined benefit plan included in a Required Aggregation Group, which is top heavy, the minimum benefits shall be provided under the defined benefit plan.
- (g) To the extent required to be nonforfeitable under Section 2.6 of the Plan, the minimum accrued benefit under this Section may not be forfeited under Sections 411(a)(3)(B) or 411(a)(3)(D) of the Code.
- (h) If this Plan becomes a Top Heavy Plan, the defined benefit plan fraction and defined contribution plan fraction set forth in Code Section 415(e)(2)(B) and (3)(B) shall be amended by replacing the number "1.25" with the number "1.0" each time it appears therein.

#### **Section 11.6. Changes under EGTRRA.**

The following provisions are effective April 1, 2002 as "good faith" compliance with the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA):

- (a) An Employee will be a Key Employee for a Plan Year if he is:
  - (i) An officer with Annual Compensation over \$130,000 (as adjusted under Code Section 416);
  - (ii) A 1% owner with Annual Compensation over \$150,000; or
  - (iii) A 5% owner of an Employer.
- (b) The present values of accrued benefits and the amounts of 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 separation from service, or disability, this provision shall be applied by substituting "5-year period" for "1-year period."
- (c) 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.


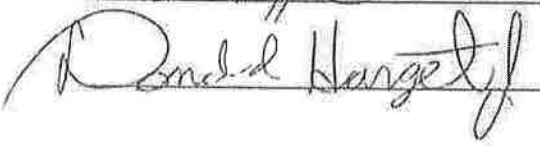
- (d) Employer matching Contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Section 416(c)(2) of the Code and the Plan. The preceding sentence shall apply with respect to matching Contributions under the Plan or, if the Plan provides that the minimum Contribution requirement shall be met in another plan, such other plan. Employer matching Contributions that are used to satisfy the minimum Contribution requirements shall be treated as matching Contributions for purposes of the actual Contribution percentage test and other requirements of Section 401(m) of the Code.

## SIGNATURE PAGE

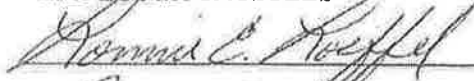


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IN WITNESS WHEREOF, this instrument evidencing the continuation of the NECA-IBEW Memphis Retirement Plan is executed by the Trustees serving under the Agreement and Declaration of Trust as of this 12th day of December 2014 to be effective April 1, 2014 (Amended through January 1, 2015).

UNION TRUSTEES

  
  
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EMPLOYER TRUSTEES

  
  
  
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