

K#: 9996



# **AGREEMENT**

**between**

**Painters District Council No. 2**

**and**

**Painting Contractors**

**from**

**September 1, 2005**

**to**

**Midnight, August 31, 2010**



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**AGREEMENT**  
**between**  
**DISTRICT COUNCIL No. 2**  
**of the**  
**INTERNATIONAL UNION OF PAINTERS**  
**AND ALLIED TRADES, AFL-CIO**  
**and**

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This Agreement is entered into between District Council No. 2, of the International Union of Painters and Allied Trades, AFL-CIO, to be known as the "Union" and \_\_\_\_\_ (name of Employer to be inserted) to be known hereinafter as the "Employer", both of St. Louis, Missouri and Vicinity.

The geographic jurisdiction of District Council #2 shall be as follows: St. Louis (City), St. Louis County, St. Charles County, Jefferson County, Warren County, Franklin County, Lincoln County, Pike County, Ralls County, Marion County, Lewis County, Clark County, Washington County, Reynolds County, Perry County, Wayne County, Cape Girardeau County, Butler County, New Madrid County, St. Francis County, Iron County, Shannon County, Bollinger County, Oregon County, Stoddard County, Pemiscot County, Ste. Genevieve County, Madison County, Carter County, Scott County, Ripley County, Mississippi County, Dunklin County, Audrain County, Adair County, Boone County, Callaway County, Chariton County, Cole County, Gasconade County, Howard County, Knox County, Linn County, Macon County, Monroe County, Montgomery County, Osage County, Putnam County, Randolph County, Schuyler County, Scotland County and Sullivan County and the City of Boonville, Mo., Camden County, Crawford County, Dent County, Laclede County, Maries County, Miller County, Phelps County, Pulaski County, Texas County, and other counties and such areas as assigned by the International Union of Painters and Allied Trades. Sign and Pictorial Painters, Local #774 – has jurisdiction in the Illinois counties of: Pike, Calhoun, Greene, Jersey, Macoupin, Montgomery, Fayette, Madison., Bond, St. Clair, Clinton, Monroe, Washington, Randolph, Perry, Union, Franklin, Jackson, Williamson, Johnson, Alexander, and Pulaski. Territorial jurisdiction may be altered at any time by the General Executive Board in accordance with the General Constitution.

Due to the expanded geographic jurisdiction of District Council #2 the parties agree that when the area Agreements of Local Union #1185, Local Union #1265 and Local Union #1292 expire, every effort will be made to incorporate those agreements into this Collective Bargaining Agreement understanding that economic conditions may not be the same in those areas.

The Union is herewith recognized as the exclusive bargaining representative of all employees covered by this Agreement.

The Employer expressly agrees that the Painting and Decorating Contractors of America, Chapter #2 affiliated with the Finishing Contractors of America (FCA), (hereinafter referred to as "PDCA") will represent the Employer for all collective bargaining purposes during the term of this Agreement, specifically including any and all negotiations with the Union for any renewal or subsequent Agreements, unless the Employer serves timely and unequivocal notice otherwise in accordance with the provisions of applicable law.

## **Jurisdiction**

The jurisdiction of work covered by this agreement shall be as follows, notwithstanding any special agreements established by P.D.C. #2 with another trade performing work within the geographical jurisdiction of P.D.C. #2:

All drywall taping and painting of residences, buildings, structures, industrial and manufacturing plants, warehouses, tanks, towers, bridges, light and highway poles, scenic and murals, parking lots and highway striping, playgrounds and airport runways, decorating textures on all surfaces, foams, seamless and tile-like coatings or other materials used in various branches of the trade, and the cleaning and bleaching of all interior walls, ceilings, floors, air shafts, ovens, tanks and surfaces with liquid, steam, sandblast, waterblast, air blow and vacuum, with chemical treated cloths, soft brushes, wire brushes, sponges and soap and water. The polishing of all metals. The specialty cleaning of automobile factories, industrial plants and breweries, (referred to as deep cleaning), and exterior walls and surfaces with liquid, steam, sandblast, waterblast, bleaching or any other process.

The application of all wall and ceiling covering, muslin and canvas where decorative or preparatory as an integral part of the finish, the removal of old wall and ceiling covering by whatever means and such preparations as necessary.

The applying or removing of paints, pigments, extenders, primers, clear pigments, binders, thinners and dryers, primer and sealers, oil paint and enamels, chemical and epoxy coatings, water colors and emulsions, clear coatings, waxes, stains, mastics, cement enamels and other special coatings, plastics, adhesives, coating and sheet rubber and other linings, oils, varnishes, watercolors and all work relating to the preparation of all surfaces and clean up.

The painters shall maintain sand pots, spray pots and compressors and shall clean up after completion of their work regardless, puttying, caulking of all areas to be finished, taping, patch plastering and filling of porous surfaces where a finished surface is applied shall be the work of members of P.D.C.#2 covered by this agreement.

The Union agrees that, if during the term of this Agreement it grants or allows to any other Employer in the Painting and Decorating Construction Industry on work described in the Jurisdiction Clause of this Agreement, any better wages and fringe benefits than those set forth in this Agreement, such better wages, or fringe benefits shall be made available to Employers under this Agreement, and the Union shall immediately notify the PDCA of any such concession. It is expressly understood and agreed that the foregoing provisions in this Section shall not apply to Industrial and Commercial Employers with maintenance agreement, such as Anheuser-Busch and May Co.; and Sign and Scenic Artist Employers, unless the Employer in question undergoes a change in ownership (in which event the more favorable terms of the applicable agreement(s) shall be made available to Employers under this Agreement) and during organizational situations where the employer(s) have contractually entered into agreement providing less wages or fringe benefits for a period of time not to exceed six months, provided that the Union first obtains the approval of the PDCA for any such short term agreement.

**SECTION 1**  
**St. Louis Painters and Decorators**  
**Joint Board, Inc.**

A pro forma decree of incorporation has heretofore been issued by the Circuit Court of the City of St. Louis, Missouri, whereby the St. Louis Painters and Decorators Joint Board, Inc. (hereinafter "Joint Board"), was created a body politic and corporate under said name, and all requirements of law for the creation of a pro forma decree corporation have heretofore been duly complied with. By-Laws for the governing of said corporation have been heretofore duly adopted and are in full force and effect.

The control, direction and management of the affairs of the Joint Board shall be in the hands of a Board of Directors which shall consist of eight (8) members of the Joint Board, four (4) of whom shall be members in good standing of the Painting and Decorating Contractors of America, Chapter No. 2 (PDCA), and remaining four (4) of whom shall be members in good standing of the Union. Such members of the Board of Directors shall be elected in the manner provided for in the By-Laws of the Joint Board. Each group shall elect two (2) alternates.

**SECTION 2**  
**Officers**

The officers of the Joint Board shall be, President, Vice-President, Secretary and Treasurer elected by and from the members of the Joint Board.

Two officers each shall be elected from the members of the Painting and Decorating Contractors of America Chapter No. 2 (PDCA), and the Painters District Council No. 2 who are members of the Joint Board.

The term of office shall be for a period of one year.

**SECTION 3**  
**Administration**

The parties hereto, during the life of this Agreement, mutually agree that the Joint Board shall have and be vested with the following rights, powers and obligations:

The Joint Board shall have the power to adjust and settle all disputes, including safety disputes, and grievances that may arise under the terms of this Agreement, to resolve and determine all conflicts between the parties concerning the interpretation of the provisions of this Agreement, and to make and promulgate such rules and regulations as may be deemed necessary to give force and effect to the intent, purpose and meaning of this Agreement. The Joint Board shall also have the power to demand of the parties hereto the production of all records deemed relevant by the Joint Board to any case where an alleged violation of this Agreement is involved. With reference to the foregoing matters, the decisions, determinations, ruling and orders of a majority of the Joint Board shall be final and binding on the parties to this Agreement.

Additionally, the Joint Board shall have the authority to authorize the appointment of a working job steward (to be placed by a Joint Board decision from outside the Employer's work force by the Union), and to increase the requisite bonding, coverage of any employer who: 1) has engaged in repeated violations of the collective bargaining agreement; and 2) has failed on two or more occasions to fully comply with a remedy (or remedies) prescribed by a ruling of the Joint Board.

Should any dispute or grievance arise under any of the terms of this Agreement, the aggrieved employee or employees must file the grievance in writing within fifteen (15) calendar days of the occurrence of said grievance in order for the grievance to be timely. The Union must file the grievance within ninety (90) calendar days of knowledge of violation of the Agreement.

When a grievance has been timely filed, the Employer's Representative or Foreman and the District Council shall meet jointly within five (5) working days after the grievance has been filed in writing to resolve the dispute. The Union will make a report of all grievances filed and their resolution to the Joint Board.

If the parties of the aforesaid District Council and the Employer do not succeed in the solution of the matter, then the issue may be submitted to the Joint Board to be processed in the manner set forth under this Section.

If the Joint Board deadlocks or otherwise fails to decide any grievance or dispute, either party may, within 30 days following said deadlock or failure, refer the grievance or dispute to arbitration by filing a written request with the Secretary of the Board, with copy served on the opposing party. On receipt of such notice, the Joint Board shall choose an arbitrator. If the board cannot agree on an arbitrator, it shall promptly request a list of arbitrators from the Federal Mediation and Conciliation Service. On receipt of such a list, the Chairman and Secretary of the Board shall select an arbitrator from such list in accordance with the rules and regulations of the FMCS.

The arbitrator shall have no authority to alter in any way the terms and conditions of this Agreement, and shall confine his decision to determination of the facts and an interpretation and application of this Agreement.

The cost of the arbitrator's fee shall be borne equally by the parties.

There shall be no strike or lockout over any grievance. However, and notwithstanding any contrary provisions of the Agreement, the Union may take economic action including, but not limited to, a strike or picketing against any Employer who: (1) fails or refuses to pay wages or make fringe benefit contributions in accordance with the Agreement; (2) fails to post or maintain in effect the Surety Bond required by this Agreement, or fails to provide such other security for the Employer's wage and fringe benefit obligations as may be imposed by this Agreement; (3) refuses to comply with a final and binding decision issued by the Joint Board or subsequent arbitration; the Union may take economic action, including a strike.

Anything in this Agreement to the contrary notwithstanding, disputes concerning contributions for fringe benefits or administrative dues check-off, disputes concerning payment of wages and/or disputes concerning contributions to the Industry Fund need not be processed through the grievance procedure, and suit may be directly instituted.

The by-laws of the Joint Board shall be incorporated into this agreement by reference.

It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action, in the event and employee refuses to enter upon any property involved in a lawful primary labor dispute or refuses to go through or work behind any lawful primary picket line of the Union party to this Agreement, including lawful picket lines of the Employer's own place of business or jobs.

## **Section 4 Employer**

Employers shall have a signed agreement with Painters District Council No. 2 or a signed Memorandum of Understanding, carry Worker's Compensation Insurance, Unemployment Insurance, pay Social Security on employees in their employ, and make weekly contributions to the Painters District Council No. 2 Welfare Plan, Painters District Council No. 2 Pension Plan, Painters District Council No. 2 Vacation Fund, Painters District Council No. 2 Apprenticeship and Journeyman Training Fund, Administrative Dues Check-Off, Industry Advancement Fund and Labor Management Cooperation Fund (LMCF). Out of jurisdiction contractors will contribute to the applicable funds.

Each individual employer must post security in the form of a Surety Bond, Letter of Credit, or Certificate of Deposit with Painters District Council No. 2 guaranteeing payment of wages, administrative dues check-off and payment of all contributions to any approved fringe benefit plan which may be obligatory as a result of this Agreement. The Employer must post the Surety Bond, Letter of Credit or Certificate of Deposit on the date on which this Agreement becomes effective.

Bonds – Surety Bonds, Letters of Credit or Certificates of Deposit must be acceptable to the Union and the Trustees of the respective funds and shall be in accordance with the following schedule:

1 to 3 employees	\$15,000.00
4 to 10 employees	\$20,000.00
11 to 15 employees	\$30,000.00
16 to 20 employees	\$40,000.00
21 to 25 employees	\$50,000.00
26 to 50 employees	\$60,000.00
Over 50 employees	\$80,000.00

Employer classification shall be determined by average weekly number of employees for the immediate previous year.

If the employer has no violation of payment on wages and fringe benefits during a five (5) year period, the Employer would not be required to furnish security in excess of \$15,000.00.

Security requirements shall be based on immediate past five (5) years of experience to determine reduction qualification.

Due Date – An Employer shall be considered delinquent in contributions and shall be assessed liquidated damages of 10% up to thirty (30) days of delinquency, after which liquidated damages of 1-1/2% shall be assessed compounded monthly until the full contribution is made. Payments to the funds shall be due on the Friday after the previous pay week.

The Employers signatory to this Agreement or Memorandum of Understanding shall not subcontract out work under the jurisdiction of the Painters District Council No. 2 to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work to any contractor or other person not signatory to this Agreement. No contractor shall be permitted to

work for another signatory contractor as an employee performing work covered by this Agreement.

## **PRESERVATION OF WORK**

Section 1. To protect and preserve, for the employees covered by this Agreement, all work they have performed and all work covered by this Agreement, and to prevent any device or subterfuge to avoid the protection and preservation of such work, it is agreed as follows: If the Employer performs on site-construction work of the type covered by this Agreement, under its own name or the name of another, as a corporation, company, partnership, or other business entity, including a joint venture, wherein the Employer, through its officers, directors, partners, owners or stockholders, exercises directly or indirectly (through family members or otherwise), management control, or majority ownership, the terms and conditions of this Agreement shall be applicable to all such work.

Section 2. All charges of violations of Section 1 of this Article shall be considered as a dispute and shall be processed in accordance with the provisions of this Agreement on the handling of grievances and the final and binding resolution of disputes. As a remedy for violations of this Article, the Joint Trade Board or arbitrator shall be able, at the request of the Union, to require an Employer to pay 1) to affected employees covered by this Agreement, including registered applicants for employment, the equivalent of wages those employees have lost because of violations, and 2) into the affected Joint Trust Funds to which this Agreement requires contributions, any delinquent contributions that resulted from the violations. The Joint Trade Board or Arbitrator under this Article only through arbitral, judicial, or governmental (for example, the National Labor Relations Board) channel.

Section 3. If, after an employer has violated this Article, the Union and or the Trustees of one or more Joint Trust Funds to which this Agreement requires contributions institute legal action to enforce an award by an Arbitrator of the Joint Trade Board remedying such violations, or defend an action that seeks to vacate such award, the Employer shall pay any accountants' and/or attorneys' fees incurred by the Union and/or the Joint Trust Funds, plus cost of litigation, that have resulted from such legal action. This Section does not affect other remedies, whether provided by law or this Agreement that may be available to the Union and/or Joint Trust Funds.

No piece work will be required or permitted by employees covered by this Agreement.

In any action instituted to recover fringe benefit contributions, wages, union dues or Industry Fund contributions, or to recover unpaid liquidated damages, the Employer shall be obligated to pay reasonable attorney's fee and reasonable accounting fees in addition to all principal amounts due and in addition to other relief prescribed by law.

## **SECTION 5 Union Recognition**

The Union is recognized as the exclusive collective bargaining agent for all journeymen painters, tapers and drywall finishers, paper and wall covering hangers, apprentices, pre-apprentices, summer help and working foremen employed by the Employer.

The Employers agree to employ at least one non-contracting journeyman painter on all work.

## **SECTION 6**

### **Union Security**

It is understood and agreed by and between the parties hereto that as a condition of continued employment all persons who are hereafter employed by the Employer in the unit which is subject to this Agreement shall become members of the Union on the eighth day after their employment or the execution date of this Agreement, whichever is the later; that the continued employment by the Employer in said unit of persons who are already members in good standing of the Union shall be conditioned upon those persons continuing their payment of the periodic dues of the Union; and that the continued employment of persons who were in the employ of the Employer prior to the date of this Agreement and who are not now members of the Union, shall be conditioned upon those persons becoming members of the Union on the eighth day following the execution of this Agreement. The failure of any person to become a member of the Union at such required times shall obligate the employer, upon written notice from the Union to such effect and to the further effect that Union membership was available to such person on the same terms and conditions generally available to other members, forthwith to discharge such person. Furthermore, the failure of any person to maintain his union membership in good standing as required herein, upon written notice to the Employer by the Union to such effect, shall obligate the Employer to discharge such person.

## **SECTION 7**

### **Employment**

The parties recognize the fact to be that the Union's knowledge and experience with the industry involved herein, together with the sources of competent manpower available to it, can be of assistance to the Employer in recruiting needed employees. It is therefore agreed that, whenever employees are to be hired, the Employer shall include the Union among other persons, firms, or corporations to be notified and shall afford the Union an opportunity to recommend job applicants. The Employer further agrees to give such member due consideration, consistent with the provisions of the National Labor Relations act, as amended.

The aforesaid notification of needed employees shall specify the name and location of the job in question, the probable duration of the job, the class or classes of employees to be hired, the number of employees required in each class, the probable length of employment of those in each class and the experience and qualifications desired of same employees.

The Employer shall notify the Union whenever employees are hired, giving their names and addresses, date of employment and the job classifications to which they are assigned. The Employer shall notify the Union in writing whenever an employee performing work covered by this Agreement is to be transferred to a position in which he will be performing no work covered by this Agreement.

When qualified members are not available, the Employer agrees to notify the Union in advance of the desire to employ additional help. The Union shall refer applicants to the Employer from the Union's list of applicants available for that purpose.

Employers will contact the Union and find out if there are unemployed members available before resorting to advertising in the paper.

**SECTION 8**  
**Non-Discrimination**

The Employer and/or the Union shall not discriminate against any person because of or on account of age, race, color, sex, national origin, ancestry or religion in the hire, discharge, transfer, layoff, discipline or in the assignment of jobs or with respect to any other terms or conditions of employment.

Support of Primary Activity – employees covered by this Agreement shall have the right to respect any legal primary picket line validity established by any bona fide labor organization, and the Union party to this Agreement has the right to withdraw employees covered by this Agreement whenever the Employer party to the Agreement is involved in a legitimate primary labor dispute with any bona fide labor organization.

**SECTION 9**  
**Management Rights**

Members shall be free to select the Employer for whom they desire to work. The Employer shall be free to accept or reject any job applicant referred from any source. It is distinctly understood and agreed that the Employer reserves the right of management at all times and may select in case of reduction or replacement of forces those workmen who are, in the Employer's judgment, the best qualified. In addition, pursuant to the provisions of Section 11 of this Agreement, the Employer reserves the right to establish a program or policy of drug testing for its employees and applicants.

**SECTION 10**  
**Employer's Responsibility**

Employers shall be held responsible for failure to furnish proper and sufficient protection to Employees covered by this Agreement in their employ on all jobs.

The Employer must abide by OSHA and all rules and regulations thereunder and all other applicable safety rules and regulations.

In accordance with the requirements of the Occupational Safety and Health Act of 1980, it shall be the exclusive responsibility of the Employer to ensure safety of its employees and the compliance by them with any safety rules contained herein established by the Employer. Nothing in this Agreement will make the Union liable to any employees or to any persons in the event that work-related disease, sickness, death, injury or accident occurs.

All current and new employees of an Employer shall be offered the required hours of OSHA Safety Related Training. The training will be provided under the auspices of the Painters District Council #2 Apprenticeship and Journeyman Training Fund.

Painters District Council #2 shall provide Lead Certification Training to the greatest extent possible.

A Joint Safety Committee shall be formed equally of Labor and Management. This committee shall promulgate procedures and regulations governing the Painters District Council #2 Health

and Safety Program. The regulations of said program shall require approval of Painters District Council #2 and the Executive Board of the P.D.C.A.

The funding for the Safety and OSHA Related Training Program is being supplied by the Painters District Council #2 Apprenticeship and Journeyman Training Fund. It is expressly understood, however, that the responsibility to provide a safe working place and safety training remains the obligation of the Employer.

- A. On jobs where a swing stage is used the following equipment must be furnished and the following rules must be followed:
  - 1) A life line and safety belt for each man.
  - 2) Enough rope to tie back rigging safely.
  - 3) A back-railing on each stage.
  - 4) A makeshift ladder stage will not be permitted.
  - 5) Metal counterweights must be used on all outriggers.
- B. All Scaffold boards shall be at least ten inches wide or over.
- C. Any ladder that is used on a smooth or slick surface, such as terrazzo or waxed floors, shall be equipped with a safety device.
- D. Broken or patched ladders or extension ladders with rungs that do not match shall not be permitted on any job.
- E. No employees covered by this Agreement shall be permitted to hook up a stage or a swing stage without the help of another employee covered by this Agreement.
- F. No employee covered by this Agreement shall move ladder scaffolding over twelve feet in height without taking boards off ladders.
- G. The Employer agrees to furnish a power-driven with proper safety equipment on all work performed over water. Furthermore, this craft must be of sufficient horsepower to maneuver effectively in waters in question. Motor of boat must be started each hour. The operator of such power-driven boat shall be a member of the Painters District Council #2 Union covered by this Agreement with current first-aid certification and previous experience operating a power-driven craft.
- H. When employees covered by this agreement refuse to work on faulty equipment such as out-riggers, ropes, scaffolds, ladders, etc., the Employer shall be required to see that such equipment is replaced by appropriate quality equipment and that no repressive action against employees by the Employer will be permitted.
- I. The Employer shall furnish ice water for the employees on all jobs during the summer months. Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.
- J. The Employer shall provide adequate washing facilities or proper material for employees engaged in the application of paints, coatings, or any other operation where contaminants may be harmful to the employees.

- K. The Employer will make certain that appropriate sanitation facilities are available for all employees on the job site.
- L. Approved first-aid supplies shall be furnished by the employer and be accessible on all job sites, along with a list of emergency telephone numbers for the nearest medical facilities, Police and Fire Departments.
- M. In the absence of medical facilities that are reasonable accessible in terms of time and distance to the work site, the Employer is required to have available an employee who is certified to render first aid.
- N. At least two (2) employees shall be required on each stage.
- O. The Employer agrees to furnish the employees on the sandblasting nozzles an OSHA approved air-fed hood with no breaks, tears, or other defects.
- P. With cause, the Union may request and the Employer shall furnish to the Union a list of all jobs. An Employer shall have the right to appeal such request to the Joint Trade Board.

**SECTION 11**  
**Substance Abuse Testing, Prevention and**  
**Rehabilitation**

The Employer shall have the unilateral right to implement a Substance Abuse Testing, Prevention and Rehabilitation Policy for its employees. The parties agree that the cost of administering the Policy will be borne entirely by the Employer, including but not limited to, time spent by the employees in the testing procedure (to and from the testing site, and the collection of the sample), the testing of the sample by a laboratory certified by the National Institute of Drug Abuse, ("NIDA"), and the cost of the Medical Review Officer.

**SECTION 12**  
**Insurance**

The Employer, whether legally obligated to do so or not, agrees to elect to come under the Missouri Workmen's Compensation Law and to take such steps as are provided by said Law for the acceptance thereof. The Employer agrees to carry Workmen's Compensation Insurance on all employees covered by this Agreement in his employ at all times and to furnish the Union with a certificate from a reputable insurance company licensed to do business in the State of Missouri, showing such insurance to be in effect. To facilitate the processing and resolution of workers' compensation claims, the Employer shall have the option of participating in an Alternative Dispute Resolution program that has been endorsed by the Union.

The Employer agrees to elect to come under the Missouri State Unemployment Compensation Act and provide unemployment benefits to all employees covered by this Agreement in their employ regardless of the number of employees employed, and to display in their shops at all times Employer's Certificate of Registration and Notice to Employees as issued by the Division of Employment Security, State of Missouri, to all Employers who come under the Act, and the Employer agrees to pay Social Security Tax on all employees covered by this Agreement in their employ.

The employer shall have its insurance company furnish to the Union a copy of the Workmen's Compensation policy annually. The insurance policies and coverage required pursuant to this agreement shall contain an endorsement to the effect that expiration, cancellation or material changes in the policies adversely affecting the interest of employees and/or the Union in such insurance, shall require thirty (30) days written notice to Painters District Council No. 2.

### **SECTION 13 Wage and Fringe Benefits Formula**

It is agreed that the prevailing wage shall be paid to all employees of the Employer covered by this Agreement for all hours worked for the Employer irrespective of the nature or character of the work, except as referred to and covered by Section 7, paragraph 3.

**PAYDAY:** All Employees covered by this Agreement shall be paid weekly by the end of the employee's workday and the Employer shall notify the Painters District Council No. 2 and the Funds Office in writing of the day designated as payday.

- 1) Failure on part of Employer to comply with this Section shall subject him to payment of two hours waiting time.
- 2) The Employer shall have redress before the Joint Board when he feels that he is not at fault for failure to comply with (1) of this Section.

### **SECTION 14 Wage and Fringe Benefits Amounts**

The following wage and fringe benefit increases for the term of this Agreement are as follows:

<b>Wages Per Hour (Hourly Rate)</b>	<b>effective Sept. 1, 2005</b>
Brush & Roller	\$26.99
Pressure Roller (\$25 above Brush & Roller Rate)	\$27.24
Taper	\$26.99
Taper (Ames Tools & Bazooka) (\$1.20 above Brush & Roller Rate)	\$28.19
Note: In order to qualify for tool premiums, the employee must be directed by his Employer to use tools in the performance of his work.	
Spray & Abrasive Blasting (\$2.00 above Brush & Roller Rate)	\$28.99
Water Blasting (Over 5000 PSI) (\$2.00 above Brush & Roller Rate)	\$28.99

Foreman	\$26.48
3-5 Employee Crew (\$\$.50 above applicable rate)	
6-15 Employee Crew (\$1.00 above applicable rate)	\$26.98
16 or More Employee Crew (\$1.50 above applicable rate)	\$27.48
High work over 60 ft. See definition – Section 30 (\$\$.50 above applicable rate)	\$26.48
High work under 60 ft. See definition – Section 30 (\$\$.25 above applicable rate)	\$26.23
*Lead Abatement (When applicable) (\$.75 above applicable rate)	\$26.73

\* An employee working in an area where the lead levels reach the active level shall receive a \$.75 per hour premium provided they are trained and certified in Lead Paint Removal and Abatement.

Effective 9/1/2006, there will be a \$1.35 per hour increase to be applied to wages, Welfare, Pension, Apprentice and Journeyman Training Fund or Vacation and including a mandatory \$.01 per hour increase to the Industry Fund contribution. In addition, the taper tool premium shall increase by \$.20 per hour (\$1.40 above the Brush & Roller Rate).

Effective 9/1/2007, there will be a \$1.30 per hour increase to be applied to wages, Welfare, Pension, Apprentice and Journeyman Training Fund or Vacation and including a mandatory \$.01 per hour increase to the Industry Fund contribution. In addition, the taper tool premium shall increase by \$.20 per hour (\$1.60 above the Brush & Roller Rate).

Effective 9/1/2008, there will be a \$1.25 per hour increase to be applied to wages, Welfare, Pension, Apprentice and Journeyman Training Fund or Vacation and including a mandatory \$.01 per hour increase to the Industry Fund contribution. In addition, the taper tool premium shall increase by \$.20 per hour (\$1.80 above the Brush & Roller Rate).

Effective 9/1/2009, there will be a \$1.25 per hour increase to be applied to wages, Welfare, Pension, Apprentice and Journeyman Training Fund or Vacation and including a mandatory \$.01 per hour increase to the Industry Fund contribution. In addition, the taper tool premium shall increase by \$.20 per hour (\$2.00 above the Brush & Roller Rate).

There shall be a Management and Labor Advisory Committee, consisting of all of the trustees of the Welfare, Pension, Apprentice and Journeyman Training and Vacation Funds, which shall meet annually to discuss and recommend the allocation of the annual increase among wages and fringe benefits, which recommendation shall be presented to the Union membership for ratification.

Pre-Apprentice - 1<sup>st</sup> six months 35% of applicable Journeyman rate.  
2<sup>nd</sup> six months 40% of applicable Journeyman rate plus Welfare Benefit and LMCF.

Apprentice - 1<sup>st</sup> Year – 45% of applicable Journeyman rate  
 2<sup>nd</sup> Year – 65% of applicable Journeyman rate  
 3<sup>rd</sup> Year – 80% of applicable Journeyman rate

The Employer shall have no obligation to pay wages or make fringe benefit contributions with respect to hours spent by the Apprentice at the Apprentice School.

There will be no pension contribution payable until the Apprentice advances to 3<sup>rd</sup> year.

<b>Fringe Benefits Per Hour</b>	<b>effective Sept. 1, 2005</b>
Welfare	\$5.15
Pension	\$3.71
Vacation	\$1.06
Apprenticeship and Journeyman Training Fund	\$0.32
Industry Fund	\$0.14
Labor Management Cooperation Fund LMCF	\$0.05
Administrative Dues Check-Off	2% of the gross wage

It is hereby agreed by the parties that five cents (\$.05) of each thirty-two cents (\$.32) per hour contributed by the Employer to the Apprenticeship and Journeyman Training Fund, shall be remitted to the National Painting, Decorating and Drywall Apprenticeship and Manpower Training Fund to be used in accordance with the Agreement and Trust established by the National Painting, Decorating and Drywall Apprenticeship Committee. The Trustees of the Apprenticeship and Journeyman Training Fund have the authority to allocate additional monies to the National Painting, Decorating and Drywall Apprenticeship Committee during the course of this Agreement.

Each Employer which is subject to the provisions of the Family and Medical Leave Act (FMLA) must notify the Welfare Plan Office when an employee covered under this Agreement takes leave under the FMLA. While an employee is on such leave the Employer shall make contributions to the Welfare Trust on behalf of that employee. The contribution shall be in the same monthly amounts as the Self-Pay rate that is established from time to time by the Trustees of the Welfare Trust. If the employer is on leave in any calendar month for less than the whole calendar month, the employer shall contribute one-twentieth or 5% of the monthly Self-Pay amount for each day the employee is on such FMLA leave up to a maximum of 100% of the Self-Pay amount in any calendar month.

**SECTION 15**  
**Statement of Earnings and Deductions**

The Employer agrees that all wages of employees covered by this Agreement, whether paid in cash or negotiable check, shall be accompanied by a statement of gross earnings and any deductions legally made. Such statement shall show the employee's name, and the hourly rate of pay, the pay period, and total hours worked. Hours worked must specifically show regular and overtime hours in separate columns. Net pay will be shown after all deductions, such as federal, state and city withholding taxes, vacation and dues check-off have been made.

The employer shall maintain a time keeping system, which accurately reflects all hours worked by employees covered by this Agreement. This system must be presented to the Union at the signing of the Agreement. The system shall be maintained for the length of the Agreement, and any change in the system must be approved by the Union. In the event that the Employer shall fail to maintain or, on request from the Union or the Trustees of any of the fringe benefit funds, fails to produce such records, then for purposes of computing fringe benefit contributions, dues check-off and Industry Fund contributions, there shall be a rebuttable presumption that any employee who worked for an Employer within particular weekly pay period worked a total of 40 hours in such pay period for such Employer.

**SECTION 16**  
**Hours of Work**

Eight (8) hours per day shall constitute a standard workday between the hours of 7:00 a.m. and 5:00 p.m. with one half (1/2) hour designated as an unpaid lunch period. However, due to the heat, from May 15 through September 15, the employer may designate the starting time to be 6:00 a.m., provided, the Employer notifies its employees and the Union (by telephone, FAX or mail) prior to the date when the earlier starting time is to take effect and informs the employees and the Union of the period of time that the earlier starting time is to be used. Failure of the Employer to notify the employees and the Union will result in the overtime rate being paid for the hours worked.

The standard workweek shall be forty (40) hours between 7:00 a.m. on Monday and ending 5:00 pm. on Friday (except from May 15 through September 15, when the Employer is using the earlier starting time of 6:00 a.m.) and shall be considered regular time and shall be paid at the prevailing rate. There shall be no make-up at regular pay for hours lost during the workweek.

In the event that any construction trades on the job have a different or longer workday than the Painters' workday under the applicable agreement, the Employer may, by consultation and agreement with the Union, conform the workday to the other trades. 4/10's are applicable to industrial work only. Monday through Friday, the Employer must give prior notice to the Union. If an Employer fails to report that the 4/10-hour shift in advance, all hours above eight (8) shall be paid at the applicable overtime rate.

## SECTION 17 Overtime

An overtime rate of time and one-half the base hourly rate shall be paid for all hours in excess of eight (8) hours in a day Monday through Friday.

The applicable brush and roller rate only shall be multiplied by the applicable overtime multiplier.

On all overtime one-half hour shall be set-aside after each four (4) hours of work as a lunch period.

Shift work is applicable to commercial and industrial new work and re-work. There must be a minimum of one (1) day of shift work in order to use shift work, and the Employer must give prior notice to the Union.

The Employer shall have the right to work employees Monday through Friday for eight hours during an eight and one-half period commencing between the hours of 2:00 p.m. and 8:00 p.m. with an unpaid one-half hour lunch period, provided employees working this shift are paid an additional \$2.00 per hour over the brush and roller rate. Shift work into Saturday will carry the shift rate only.

The Employer shall have the right to work employees Monday through Friday for seven and one-half hours during an eight-hour period commencing after 8:00 p.m. with a paid one-half hour lunch period, provided employees working this shift are paid an additional \$4.00 per hour over the brush and roller rate. Shift work on Saturday shall carry the shift rate only.

The Employer shall have the right to work employees Monday through Friday for seven and one-half hours during an eight hour period commencing after 8:00 p.m. with a paid one-half hour lunch period, provided employees working this shift are paid an additional \$4.00 per hour over the brush and roller rate. Shift work into Saturday shall carry the shift rate only. In occupied areas, for repaint work only; in lieu of working on Friday, a shift may be started after 10:00 p.m. on Sunday.

Any work started after 12:00 midnight Sunday, will be classified as time and one-half up to the legal starting time on Monday.

In the event an employee works any part of a shift he shall be paid for the entire shift, which is a minimum of eight (8) paid hours per shift.

An Employer who fails to report a shift job in advance shall pay the overtime rate.

On all jobs on which overtime work is necessary this overtime must be reported to the District Council in advance.

**SECTION 18**  
**Saturday, Sunday and Holidays**

Saturday shall be considered overtime and work done on Saturday shall be paid at time and one-half the prevailing scale.

Sundays and Holidays shall be considered overtime and work done on these days shall be at double the prevailing scale. All jobs on which overtime is necessary must be reported to the District Council in advance. On all jobs where Saturday, Sunday or Holiday overtime work is done, the Board of Business Representatives may appoint a steward to represent the Union's interest.

**SECTION 19**  
**Holidays**

The holidays covered by this Agreement or Memorandum of Understanding are: New Year's Day, Decoration Day, Independence Day, Veteran's Day, Thanksgiving Day and Christmas Day. Should any of these days fall on Sunday, then the following day shall be observed as the holiday. Under no circumstances shall employees covered by this Agreement be permitted to work on Labor Day (the first Monday in September).

**SECTION 20**  
**Time Allowance**

Sufficient time shall be allowed to all employees covered by this Agreement on all jobs to wash up before taking their lunch period and prior to quitting time to clean and put away their tools. All other work, such as taking down scaffolds or ladders, folding drop cloths, etc., shall be done on the Employer's time.

**SECTION 21**  
**Stewards**

It is agreed that the Union shall have the power to appoint Stewards from the Employer's work force and the Employer agrees to recognize such persons appointed as Stewards.

The Job Stewards shall be allowed sufficient and reasonable time during working hours to carry on any activities necessary to discharge their duties.

They shall have the authority to check identification of employees on the job and check all equipment and rigging to assure that it is safe and in proper working condition. The Employer shall not dismiss or otherwise discipline any Steward for properly performing his duties. The employer will not move the appointed Steward to another job without prior notice to the Union or terminate a Steward without properly notifying the Union at least twenty-four (24) hours prior to his removal. Should a regular employee of the Employer's work force refuse to otherwise disqualify himself as a Steward then the Business Representative shall appoint a Steward from outside the shop.

## **SECTION 22**

### **Foreman**

It is agreed that, where three to five (3-5) employees are employed on the job, one of the employees shall be designated as a foreman and shall receive \$.50 per hour above the brush and roller rate. Where six to fifteen (6-15) employees are on a job, one of the employees shall be designated as a foreman and shall receive \$1.00 per hour above the brush and roller rate. Where sixteen (16) or more employees are on the job, one of the employees shall be designated as a foreman and shall receive \$1.50 per hour above the brush and roller rate. In addition, he shall be paid an amount equal to the highest wage enjoyed by any other employees on the job, to make the foreman the highest paid employee on the job.

## **SECTION 23**

### **Tools and Equipment**

No brush over 4-1/2 inches wide and 1 inch thick shall be used in oil color.

On all materials such as water colors and water thinned paints; brushes not to exceed 8 inches in width and 2 inches in thickness will be permitted.

Roller stipplers shall not exceed 10 inches in length.

Felt and wool applicators and squeegees shall not be over 10 inches in length, except there shall be no restrictions on coating floors.

Paint pots shall not be over 5 gallons in size.

The use of a paint mitten shall be permitted only to reach inaccessible places that otherwise cannot be reached by brush or spray, subject to the approval of the Joint Trade Board.

Roller applicators shall not measure over ten inches in length or shall not exceed five inches in diameter, except there shall be no restrictions on coating floors.

Employees shall be required to supply their own duster, scraper, putty knife, hammer, pliers and screwdriver.

## **SECTION 24**

### **Transportation of Materials**

Employees covered by this Agreement are not permitted to lease or rent their automobile or truck to their Employer nor shall they be permitted to haul or transport materials, equipment or tools in excess of 80 pounds in their own automobile, truck or on a public conveyance.

**SECTION 25**  
**Discharging Employees**

No employee shall be discriminated against because he belongs to the Union. When an Employer discharges an employee covered by this Agreement and has him go to the shop for his money, the employee shall receive two hours pay for same.

The Employer agrees that the employees covered by this Agreement shall not be discharged or reprimanded for reporting violations of this Agreement to the Union.

An employee covered by this Agreement, upon final termination by the Employer, shall be paid in full his wages immediately upon being discharged. Failure to comply will entitle the employee to two (2) hours pay for the inconvenience.

**SECTION 26**  
**Waiting Time**

When an Employer promises to put an employee covered by this Agreement to work and orders him to report at the job site at a certain time and place and then fails to put him to work, (the said employees having reported promptly), it shall be the duty of that employee to demand two (2) hours pay for the inconvenience and expense that he was put to and no excuse on the part of the Employer will be accepted for not putting him to work except weather conditions over which the Employer has no control.

**SECTION 27**  
**Travel Expense**

- A. All parking fees to be reimbursed by the Employer when a paid receipt is presented same not to exceed two dollars and fifty cents (\$2.50) per day.
- B. When employees are required to furnish their own transportation to work beyond the designated boundaries of District Council #2, in Missouri refer to map on following page; and while in Illinois, except the area bounded by Sparta, IL. Hwy.154W to Red Bud; South on Rt. 3 to Ruma, IL; West on I55 to the Mississippi River; Hwy 4 East to 140 West to the Mississippi River, they shall receive twenty cents (\$.20) per mile travel expense pay. All mileage to be the shortest route to the job site.
- C. When employees covered by this Agreement are employed beyond the jurisdictional boundaries of District Council #2 and at too great a distance to travel daily, reimbursement for an employee's travel expenses, such as room, board, transportation cost and loss of time traveling, shall be decided by agreement between the employee and the individual Employer. The minimum of such expenses shall not be less than forty-five dollars (\$45.00) per day.

**SECTION 28**  
**Employees Performing Work in other Localities**

- A. The Contractor or the Employer party to this Agreement, when engaged in work outside the geographical jurisdiction of the Union party to this Agreement, shall employ not less than fifty percent (50%) of the workers employed on such work from among the residents of the area where the work is performed, or from among persons who are engaged the greater percentage of their time in such area.
- B. The Employer party hereto shall, when engaged in work outside the geographical jurisdiction of the Union party to this Agreement, comply with all lawful clauses of the Collective Bargaining Agreement in effect in said other geographical jurisdiction and executed by the employers of this industry and the affiliated Local Union in that jurisdiction, including, but not limited, to the wages, hours, working conditions, fringe benefits, and procedure for settlement of grievances set forth therein; provided, however, that as to employees employed by such Employer from within the geographical jurisdiction of the Union party to this Agreement and who are brought into an outside jurisdiction, such employees shall be entitled to receive the wages and conditions effective in either the home or outside jurisdiction, whichever are more favorable to such employees, and fringe benefits contributions on behalf of such employees shall be made solely to their home funds in accordance with their governing documents. This provision is enforceable by the District Council or Local Union in whose jurisdiction the work is being performed, both through the procedure for settlement of grievance set forth in the applicable Collective Bargaining Agreement and through the courts, and is also enforceable by the Union party to this Agreement, both through the procedure for settlement of grievances set forth in this Agreement and through the courts.

**SECTION 29**  
**Spray and Blasting and**  
**Lead Abatement Regulations**

When a five (5) gallon pot or less is used for spray painting, only one (1) journeyman is required.

When more than a five (5) gallon pot is used, there shall be a crew of two (2) employees. The second person of the crew is to tend the pot, pump or compressor or other related work. All work must be performed in the work area where the spraying is being performed.

When two (2) spray guns are used, there shall be three (3) employees in a crew. The third person of the crew is to tend the pot, pump or compressor or other related work. All work must be performed in the work area where the spraying is being performed.

When three (3) spray guns are used, there shall be four (4) employees in a crew. The fourth person of the crew is to tend the pot, pump or compressor or other related work. All work must be performed in the work area where the spraying is being performed.

When four (4) spray guns are used, there shall be five (5) employees in a crew. The fifth person of the crew is to tend the pot, pump or compressor or other related work. All work must be performed in the work area where the spraying is being performed.

The spray crew shall be limited to four (4) guns. If more than four (4) guns are desired, additional spray crews may be used in accordance with the above paragraph.

A third year or second year apprentice may be used as the second person on a spray crew, but the spray crew is limited to one (1) apprentice per spray crew.

There shall be "deadman" controls on each blasting nozzle.

When a three sack pot or less is used for sandblasting, only one (1) journeyman is required.

On blasting with more than three sack pot, where one nozzle is used, a crew of two (2) employees shall be employed. One (1) person shall be employed for each additional nozzle used. A third or second year apprentice may be used on the second person on the blasting crew, but the blasting crew is limited to one (1) apprentice per blasting crew.

The employee using the spray gun or nozzle shall receive the spray classification rate of pay listed under Section 14 of this Agreement for each hour or fraction thereof while performing this type of work.

Spray crews shall alternate on using the spray guns.

The spraying of lead will not be permitted unless the lead is a component part of the material that has been specified for a particular job. Then such material may be sprayed if used in strict conformity with the safety regulations as outlined in the applicable state and local areas codes but not less than those prescribed by OSHA standards.

An employee performing water blasting with equipment over 5,000 PSI shall be provided with protective clothing.

Employers shall provide adequate protection for the health and safety of employees working on spray and blasting jobs.

An employee working in an area where the lead levels reach the action level shall receive a \$.75 per hour premium provided they are trained and certified in Lead Paint Removal and Abatement.

### **SECTION 30 Wages, High Work**

The wage rates set forth under Section 14 are applicable on the following work performed by employees covered by this Agreement; bridges, viaducts, elevated tanks, ground storage tanks, smoke stacks, radio, television and electric towers, erected flagpoles, swing stage and boatswain's chair, window jacks, window sills and ledges, and open structural steel.

On interior work where safeway, patented, erected scaffolding or other means of scaffolding is used, the wage rates set forth under Section 14 are not applicable.

**SECTION 31**  
**Pre-Apprentice and Apprentice Regulations**

The parties have adopted a Pre-apprentice Program, which shall be administered by the Joint Apprenticeship Committee. Each Employer agrees to be bound by the terms, and any amendments thereto that shall be adopted by the Apprenticeship Committee, of the Pre-Apprentice Program as set forth in the Pre-Apprentice addendum. Pre-Apprentices shall be indentured to the Employer.

Apprentices shall be indentured in accordance with the Apprenticeship Standards established by the Joint Apprenticeship Committees and approved by the Joint Trade Board, the Painting and Decorating Contractors of America, Chapter No. 2 (PDCA), the Painters District Council No. 2 and all governing Departments required. The Apprenticeship Standards are incorporated into this Agreement.

The Employer must report on the weekly contributions report submitted to the Welfare Fund all hours worked by both apprentices and pre-apprentices and must pay fringe benefit contributions, administrative dues check-off and Industry Fund contributions for all such hours to the extent required pursuant to Section 14 of this Agreement or the rules governing the Pre-Apprentice Program.

**SECTION 32**  
**Summer Student Regulations**

The parties hereto agree to the establishment of a Summer Student Program commencing May 15, 1986. Employees hired to participate in the Summer Student Program must be students in school, and will be allowed to work May 15<sup>th</sup> to September 15<sup>th</sup> only.

The wage rate for Summer Students is 35% of the Journeyman wage with no fringes.

The following shop ratios shall not be exceeded at any time.

3 to 5 Journeymen	-	1 Summer Student
6 to 10 Journeymen	-	2 Summer Students
11 to 15 Journeymen	-	3 Summer Students
16 to 20 Journeymen	-	4 Summer Students
21 to 30 Journeymen	-	5 Summer Students
31 to 40 Journeymen	-	6 Summer Students

There will be a maximum of six (6) Summer Students per employer.

Summer Students may be employed on shift work but shall not be permitted to perform any overtime work or premium work.

In the event of abuse by an Employer, the Summer Student will be removed from his shop and he will not have permission to have Summer Students the following year.

Employment of Summer Students will require the prospective employee to sign in at the Union Hall prior to commencement of work and pay for the first two weeks permits at \$2.00 per day or \$10.00 per week.

### **SECTION 33 Displaying of Signs**

The Employer has the option to display on all jobs a sign bearing the name of the firm, or sign bearing the name of the industry fund or displaying the logo of the industry fund.

### **SECTION 34 Accidents to Employees**

Should an employee covered by this Agreement be taken ill or meet with an accident while at work, it shall be the duty of the person in charge or his co-workers to:

- 1) Properly administer first aid per certification.
- 2) Call for assistance – police, hospital, ambulance, etc.
- 3) Notify Employer's office immediately.
- 4) Employer's office shall immediately notify the Union and the insurance carrier.
- 5) Employees injured or becoming ill due to conditions of work shall be paid for the full shift when such illness or injury occurs if unable to return to work.

### **SECTION 35 New Material**

All matters pertaining to methods of applications of new materials and the use of tools or equipment not covered by this Agreement shall be referred to the Joint Trade Board.

### **SECTION 36 Fringe Benefit Funds, Administrative Dues Check-Off and Industry Funds**

The employer shall be required to contribute to the Pension, Welfare, Vacation, Apprenticeship Journeyman, Industry Fund and Labor Management Cooperation fund (LMCF) and to remit 2% Administrative Dues Check-Off on behalf of all employees except Summer Students covered by this Agreement for all hours worked within a pay period for such employees irrespective of the nature and character of the work performed. However, an Employer shall not be required to contribute to the Pension Fund on behalf of an Apprentice who first commences Apprenticeship on or after September 1, 1991, until such an Apprentice advances to the third year of Apprenticeship. With respect to any employee of the Employer who is salaried, an officers or who has an ownership interest in the Employer's Company and who performs bargaining unit work covered by this Agreement, the Employer shall be obligated to contribute on behalf of any such employee for no less than forty (40) hours per week. In the event that an Employer should subcontract work in violation of this Agreement, then the employer shall be obligated to

contribute to the above entities for all work performed by the subcontractor and the employees thereof. The employer agrees to report on a weekly basis on a report form prescribed by the Welfare Fund Office all hours worked by all employees covered by this Agreement. For any pay period in which the employer has employed no employees covered by this Agreement, this too shall be reported to the Welfare Fund Office.

### **SECTION 37 Welfare Fund**

The Employer agrees to contribute to the Painters District Council No. 2 Welfare Trust the hourly amount provided for or established under Section 14 of this Agreement.

The Employer agrees by contribution to the Branch "O" Classification of the Welfare Fund to extended Welfare coverage for any employee covered by this Agreement injured on the job and covered by Workmen's Compensation during the period when such employee is off from work due to such injury for a maximum period of twelve (12) consecutive calendar months. Each Employer shall notify the Union and the Welfare Fund immediately upon the employee's release from Workmen's Compensation, and its failure to so notify the Union and the Welfare Fund, will result in the Employer being liable for the premiums.

Each participant of the Welfare Plan must be issued a card indicating insurance carrier and policy number.

The Employer agrees to be a party to and be bound by the Painters District Council No. 2 Welfare Trust Agreement.

### **SECTION 38 Pension Fund**

The Employer agrees to contribute to the Painters District Council No. 2 Pension Trust for the hourly amount provided for or established under Section 14 of this Agreement. The Employer also agrees to be a party to and be bound by the Painters District Council No. 2 Pension Trust and Plan Agreement. However, an Employer shall not be required to contribute to the Pension Fund on behalf of any Apprentice who first commences Apprenticeship on or after September 1, 1991, until such Apprentice advances to the third year of Apprenticeship.

### **SECTION 39 Administrative Dues Check-Off**

The Employer agrees to deduct 2% of the employees' gross weekly wages as Administrative Dues Check-Off for those employees who have signed a dues deduction authorization form.

The Employer further agrees to make weekly reports showing the number of hours worked and the gross wage of each employee and remit 2% deduction to the Union.

The Employer will also submit to the Union a list of all employees and hours worked by all employees who are covered by this Agreement but who have not signed a dues deduction

authorization form. By virtue of the operation of this paragraph the Employer incurs no liability or responsibility.

For the convenience of the Employer, the dues check-off will be included in one check covering the Welfare, Pension, Vacation and Apprenticeship and Journeyman Training Fund contributions, Dues check-off and Labor Management Cooperation Fund (LMCF), payable weekly.

**SECTION 40**  
**Vacation Plan**

The employer agrees to contribute to the Painters District Council No. 2 Vacation Trust in the hourly amount provided for or established under Section 14 of this Agreement. The Employer shall add to the employee's base pay the vacation amount and, after all federal, state and city taxes have been deducted from the gross wages of the employee, the vacation sum shall be deducted and remitted to the Vacation Fund.

Six cents (\$.06) of the amount may be used for the administration cost of the Vacation Fund.

The Employer agrees to be a party to and be bound by the Painters District Council No. 2 Vacation Plan and Trust Agreement.

**SECTION 41**  
**Apprenticeship and Journeyman Training Fund**

The Employer agrees to contribute to the Painters District Council No. 2 Apprenticeship and Journeyman Training Fund in the hourly amount provided for or established under Section 14 of this Agreement.

The Employer agrees to be a party to and be bound by the Painters District Council No. 2 Apprenticeship and Journeyman Trust Agreement.

**SECTION 42**  
**Industry Fund**

The Employer agrees to contribute to the St Louis Painters and Decorating Industry Advancement Fund in the hourly amount provided for in Section 14 of this Agreement by separate check payable to the St. Louis Contracting Painters and Decorators Industry Advancement Fund.

**SECTION 43**  
**Labor Management Cooperation Fund (LMCF)**

All District Councils and signatory contractors to this Agreement agree to contribute to the Labor Management Cooperation Fund a minimum of five cents (\$.05) for each hour or portion thereof for which an employee receives pay, except on Summer Students or first 6-month Pre-Apprentice.

**SECTION 44**  
**Contribution to Joint Board**

All Employers represented by the Painting and Decorating Contractors of American, Chapter No. 2, and individual Employers signatory to this Agreement shall contribute to the Joint Board at the time of signing this Agreement, for the length of this Agreement, the sum of fifty dollars (\$50.00), to be used for administrative purposes of the Joint Trade Board.

**SECTION 45**  
**Termination**

This Agreement shall become effective September 1, 2005, and shall remain in full force and effect until midnight August 31, 2010, and shall automatically be renewed from year to year thereafter unless either or both parties hereto shall give the other notice in writing at least sixty (60) days prior to the original expiration date of the Agreement or the then next expiration date in any year thereafter, of a desire to terminate or modify this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers and representatives on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The date of execution notwithstanding, this Agreement shall be effective retroactive to September 1, 2005.

DISTRICT COUNCIL NO. 2 OF THE  
INTERNATIONAL UNION OF PAINTERS  
AND ALLIED TRADES, AFL-CIO

PAINTING AND DECORATING  
CONTRACTORS OF AMERICA,  
CHAPTER NO. 2/Affiliated with FCA

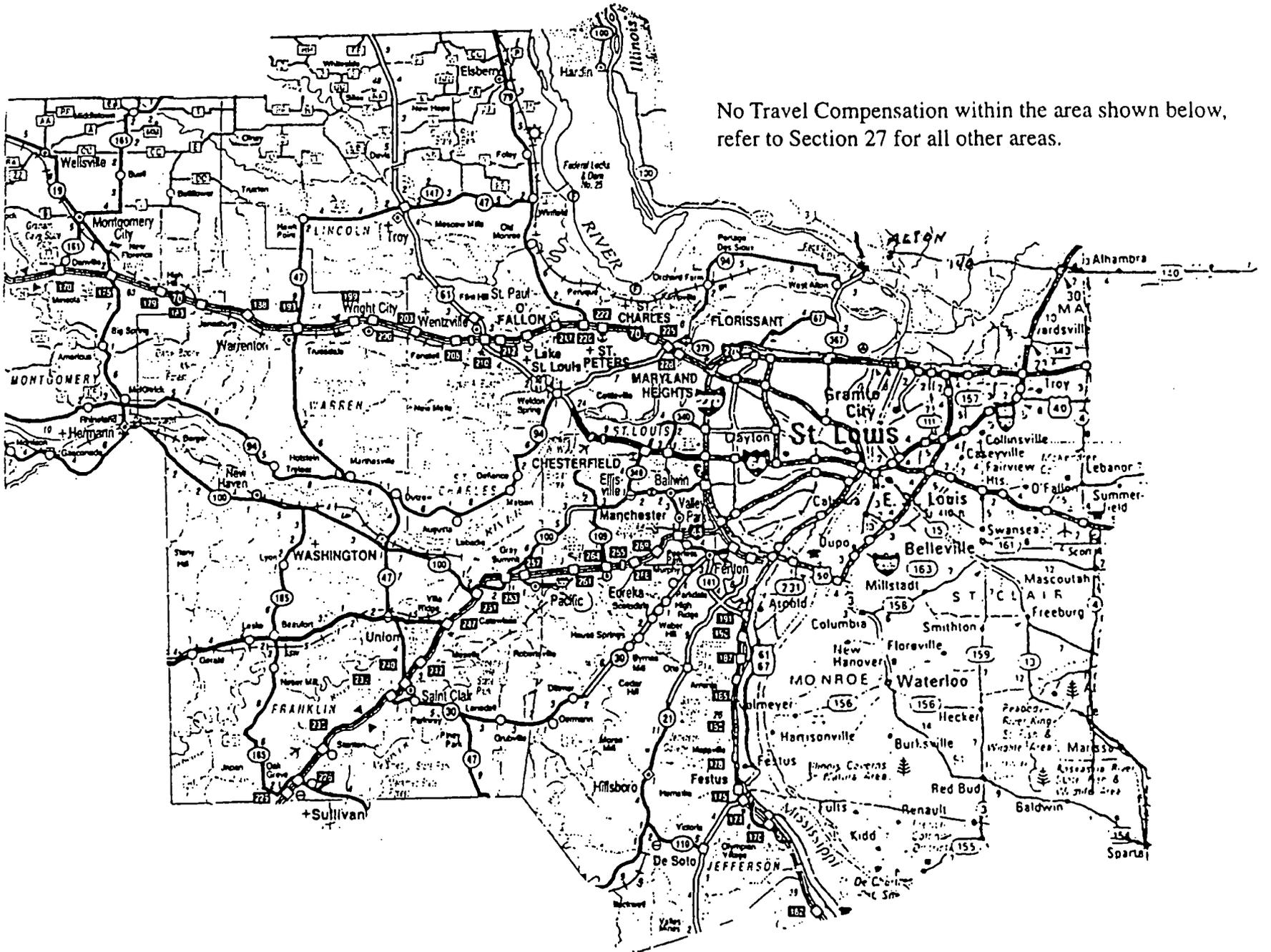
By \_\_\_\_\_

Company Name \_\_\_\_\_

By \_\_\_\_\_  
Title

Print Name \_\_\_\_\_ Date

\_\_\_\_\_  
Designated Weekly Pay Day



No Travel Compensation within the area shown below, refer to Section 27 for all other areas.

# **PAINTERS DISTRICT COUNCIL NO. 2 WELFARE TRUST AGREEMENT**

**(Effective July 9, 1991)**

This is a complete revision and restatement of the Painters District Council No. 2 Welfare Trust Agreement originally entered into on December 1, 1951, by and between the St. Louis Painters and Decorators Joint Board, Inc., a Missouri pro forma decree corporation hereinafter referred to as "the Board" and certain named individuals as initial Trustees whose successors currently are JOSEPH SHATRO, MARTIN BERGERON, JIM SMITH, DANIEL LEACH, WILLIAM SMITH, and JOSEPH WARD, hereinafter referred to as "the Trustees".

WHEREAS, Painters District Council No. 2, a labor organization, has entered into collective bargaining agreements with certain employers which provide, among other things, for the payment of contributions to the Painters District Council No. 2 Welfare Trust for the benefit of Participants and Beneficiaries thereof, and

WHEREAS, to effectuate the aforesaid purposes, it is desired to continue to maintain a trust fund and benefit plan which will conform to the applicable requirements of the Labor Management Relations Act of 1947, as amended, and which will continue to qualify as an "exempt trust," pursuant to the United States Internal Revenue Code and the rules and regulations issued thereunder, and which will conform with the Employee Retirement Income Security Act of 1974, as amended (ERISA), and

WHEREAS, this Welfare Trust Agreement has been amended from time to time in accordance with former Article XI entitled "Right to Amend" and

WHEREAS, it is the desire of the parties to the Agreement to amend and restate this Agreement in its entirety;

NOW, THEREFORE, this Agreement as amended is hereby continued and restated as of July 9, 1991, as follows:

## **ARTICLE I**

### **Name**

This Trust is to be known and designated as "Painters District Council No. 2 Welfare Trust."

The Trust is accepted in the State of Missouri, and all questions pertaining to its validity, construction, and administration shall be determined in accordance with the laws of the United States and of the State of Missouri.

## **ARTICLE II**

### **Objective**

This Trust is designed to provide such health and welfare, dental, vision, life insurance, disability, and accidental death and dismemberment benefits as deemed appropriate by the Trustees to the eligible employees, dependents and beneficiaries of such employees, and to certain former employees of employers who contribute to this Trust. Such benefits will be provided pursuant to the terms of the Plan and Summary Plan Description adopted by the Trustees and pursuant to any group insurance policies maintained by the Trustees. The terms and conditions of the group insurance policies currently in effect, any amendments to such policies, and any additional policies duly executed by the Trustees are incorporated here by this reference.

## **ARTICLE III**

### **Contributing Employers**

Employers who employ employees in a bargaining unit represented by the Painters District Council No. 2 and who have collective bargaining agreements with the Painters District Council No. 2 and who have agreed to contribute for the benefits provided under this Trust shall be Contributing Employers. Further, related employers, including the

Painters District Council No. 2, the Unity Hall Corporation, the Trustees of the Painters District Council No. 2 Pension, Group Insurance, Welfare, Vacation, and Apprenticeship and Journeyman Training Trusts, who agree to contribute on the same basis as other Contributing Employers for the benefit of their covered employees shall also be Contributing Employers hereunder.

#### **ARTICLE IV**

##### **Benefits and Eligibility for Benefits**

The Trustees shall determine the benefits to be provided under this Trust or under any Plan established pursuant to this Trust. The Trustees shall also determine the eligibility rules and participation requirements which the employees, dependents of employees, and certain former employees of Contributing Employers must meet in order to become and remain Participants in the Plan and in order to become and remain eligible for the benefits provided. Descriptions of the benefits and eligibility rules shall be set forth from time to time by the Trustees in the Plan and Summary Plan Description or other documents. The Trustees shall have the discretionary authority to construe the provisions set forth in any such Plan and Summary Plan Description or other documents and to make all determinations with regard to eligibility for benefits.

#### **ARTICLE V**

##### **Employer Contributions**

Each Contributing Employer who agrees in writing to contribute for the purpose of providing welfare benefits shall contribute the money per hour as shall be negotiated from time to time by Employers and the Union on behalf of Participants who shall be employed by Contributing Employers, as set forth in Agreements between Contributing Employers and the Union.

The contributions as established from time to time in the Agreements shall be due on or before the seventh calendar day following the weekly payroll day agreed upon between the Contributing Employer and the Union. After seven calendar days from the agreed payroll date, a Contributing Employer shall be assessed liquidated damages of 10% up to 30 days of delinquency; after which liquidated damages of 1-1/2% shall be assessed compounded monthly until the full contribution is made.

In any legal action instituted to recover delinquent contributions or to recover unpaid liquidated damages, the Contributing Employer shall be obligated to pay reasonable attorney's fees and reasonable accounting fees in addition to all principal amounts due in addition to other relief prescribed by law.

#### **ARTICLE VI**

##### **No Reversion to Employer**

No part of the corpus or income of this Trust shall be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries, and Contributing Employers shall not be entitled to receive back any part of their contributions to this Trust. However, this Article VI does not prohibit the Trustees from exercising their discretion to refund erroneous contributions to the extent that such refunds are permitted by ERISA.

#### **ARTICLE VII**

##### **Funds in Trustees' Possession**

Any funds coming into the hands of the Trustees from any source whatsoever not payable to a Participant, less reasonable expenses of administering this Trust as may be determined from time to time by the Trustees, shall be used solely to provide the benefits described herein for eligible Participants and their Beneficiaries.

## **ARTICLE VIII**

### **Right to Amend**

The Trustees shall have the sole right to amend this Trust Agreement and any Plan or other document adopted or executed by the Trustees without the consent of any Participant, at any time and from time to time as may be deemed advisable.

Any Trustee may propose an amendment to this Trust. Such amendment will become effective when it has been approved and executed by the Trustees exercising a majority of the total voting power of all the Trustees.

## **ARTICLE IX**

### **Termination**

This Trust may be terminated by a majority of the Trustees when all agreements between the Union and all Contributing Employers providing for contributions to this Trust are no longer in force and effect.

Upon the termination of the Trust as herein provided, the Trust shall, nevertheless, continue for the sole purpose of dissolution, and the Trust Fund shall be used by the Trustees for the sole purpose of carrying on health and welfare benefits then in effect to Participants then employed by Contributing Employers until such funds are completely exhausted. Upon exhaustion of the funds, the Trust shall be completely terminated.

At such time as the Trust is terminated, the Trustees shall render a final accounting of the affairs of the Trust and the Trust Fund to the Union and to all then Contributing Employers, and, thereafter, they shall have no further duties or responsibilities.

## **ARTICLE X**

### **Trustees**

The Board of Trustees is the sponsor of any Plan established pursuant to this Trust. The individual Trustees listed above, their successors, and any Administrator designated by the Trustees shall be, for purposes of ERISA, the named fiduciaries with respect to any such Plan.

The Board of Trustees shall consist of six Trustees. The Contributing Employers, through the Painting and Decorating Contractors of America, Chapter No. 2, and the Union shall each designate three Trustees. The individual Trustees so designated shall collectively constitute the Board of Trustees.

The Trustees are authorized to hire an Administrator and delegate to such Administrator such authority and responsibility as they determine to delegate and which may lawfully be delegated. The Trustees are further authorized to appoint one from their number to serve as Managing Trustee and to delegate to such Managing Trustee such authority and responsibility as they determine to delegate and which may lawfully be delegated. The Trustees may also establish committees or subcommittees composed of one or more Trustees to carry out any of their duties under this Trust, including the collection of employer contributions or other amounts due to the Trust.

The Trustees shall designate one Trustee as Chairman to serve for a term of one year, commencing with the date of election and until a successor Chairman is thereafter selected, for the purpose of presiding at the meetings of the Trustees. The Chairman shall initially be selected from the Trustees representing the Union, the following year from the Trustees representing the Employers, and thereafter similarly alternately selected.

A quorum for the transaction of business shall consist of the presence at the meeting of at least four Trustees, two of whom represent the Employers and two of whom represent the Union. Decisions of the Trustees shall be made by majority vote. If an unequal number of Employer and Union Trustees attends a meeting, the voting power of the group with fewer Trustees present shall be and stand increased to that of the group with more Trustees present so that there shall be equal voting strength between Employer and Union Trustees at all times at such meeting.

A deadlock shall be deemed to exist whenever either of the following situations arises: (1) a proposal, nomination, motion, resolution, or other matter is voted upon, and the votes cast are evenly divided and remain evenly divided; or (2) a quorum is lacking at a meeting duly called and a majority of the Trustees present declare a deadlock due to

the inability to obtain a quorum. In the event of such deadlock in either case arising, the Employer Trustees and the Union Trustees shall meet promptly for the purpose of agreeing upon an impartial umpire to break such deadlock by casting the deciding vote or deciding any dispute in question or matter under consideration. In the event of the inability of the Employer Trustees and Union Trustees to agree upon the selection of such impartial umpire, then an impartial umpire shall, on the petition of either the Employer Trustees or Union Trustees, be appointed by the Chief Judge of the United States District Court for the district wherein the principal office of the Trust is located. The decision of any such impartial umpire shall be final and binding on the Trustees and all concerned.

Either the Chairman or the Managing Trustee or any two Trustees may call a meeting of the Trustees or direct the Administrator to call such a meeting at any time by giving at least five days' written notice of the time and place thereof to each Trustee. Any meeting so called may be postponed once for a reasonable period upon the request of any Trustee upon showing of justifiable cause therefor. Any meeting of the Trustees may also be held at any time without notice if all of the Trustees consent thereto or if all attend and act. If all of the Trustees shall concur in writing upon any proposition, no formal meeting thereon need be held by the Trustees. The Managing Trustee, in the written notice, shall notify the Trustees of the subjects to be discussed, but this shall not be construed to limit any other subjects of discussion properly placed before the meeting.

The Trustees may receive reimbursement for expenses properly and actually incurred in the performance of their duties as Trustees when approved by the majority of the Trustees. Reasonable compensation may be paid to the Trustees for services rendered in the performance of their duties as Trustees, provided such payments are made in accordance with the Federal and State laws and regulations then in effect governing trusts. Additionally, the Trustees may receive reimbursement for expenses incurred in attending educational conferences, seminars, and meetings, provided that the Trustees determine in each case that the subject matter of the conference, seminar, or meeting is relevant to the administration of this Trust and that the expenses incurred are reasonable.

Any Trustee may resign by giving 30 days' notice in the United States Mail to the other Trustees and to the Board of his intent to so resign. The Union may discharge any of the Trustees appointed by it by giving 30 days' notice in the United States Mail to that Trustee, to the other Trustees, and to the Board of such intent to discharge. The Employers may discharge any Trustee appointed by them by giving 30 days' notice in the United States Mail to that Trustee, to the other Trustees, and to the Board of such intent to discharge. The resignation or removal of a Trustee shall be automatic at the end of the 30-day period of notification either by the Trustee or by the Union or the Employers, as described above, of resignation or removal. In the event that any of the Trustees selected by the Union shall die, be incapable of acting hereunder, resign, or be removed, a successor Trustee shall immediately be appointed by the Union and duly certified by the Board. In the event any of the Trustees selected by the Employers shall die, become incapable of acting hereunder, resign, or be removed, a successor Trustee shall immediately be appointed by the Employers and duly certified by the Board. Failure of the Union or the Employers to select a successor Trustee promptly shall not prevent the remaining Trustees from carrying on the affairs of this Trust.

The Unity Hall Corporation, the Union, and the Trustees of the Painters District Council No. 2 Welfare, Pension, Group Insurance, Vacation, and Apprenticeship and Journeyman Training Trusts shall have no role whatsoever in the selection or removal of Employer Trustees.

## **ARTICLE XI**

### **Trustees' Powers and Duties**

The Trustees shall have general supervision of the operation of the Trust Fund and shall conduct the business and activities of the same according to law and this Trust Agreement. The Trustees shall have the discretionary authority to construe the provisions of this Trust Agreement, any Plan adopted hereunder, or any other documents adopted or executed by the Trustees, including provisions of such documents relating to benefits and eligibility for benefits, and any such construction thereof shall be final and binding on all interested persons. The Trustees shall have the obligation to receive, hold, and administer monies or other funds received by them from Employers (and from any Employer who may hereafter agree to be bound by the terms and provisions of this instrument) or otherwise in Trust under the terms hereof. In accordance with Section 302 of the Labor Management Relations Act, the Trustees shall cause to be conducted an annual audit of the assets of this Trust.

The Trustees shall deposit all monies received by them in such bank or banks or other financial institutions as they may designate for the purpose and may, in their sole and absolute discretion, if they deem it advisable, invest and

reinvest such funds as they do not require for current expenditure in such securities as are legal for the investment of trust funds under the laws of the United States and of the State of Missouri and such other property, including real property, which they deem to be a proper investment. The Trustees may execute any and all documents required for the purchase or sale of any such investment.

The Trustees may employ one or more Investment Managers or agents to provide for the safekeeping and investment of all or part of the assets of the Fund and may delegate to such Investment Managers or agents all or such of their discretionary powers and duties with respect to the investment and reinvestment of funds as the Trustees in their sole discretion deem to be in the best interest of the Trust, its participants and beneficiaries. The Trustees may alter, amend, or revoke any such delegation at their discretion. Investment Managers shall be such as meet the definitions and qualifications of ERISA. No Trustee shall be liable for the acts or omissions of any such Investment Manager except as may be required by federal law.

The payment of money to the Trustees shall discharge the person or persons paying or transferring the same, and such person or persons shall not be bound to see to the application or be answerable for the loss or misapplication thereof.

The Trustees shall have the authority to reasonably request of any Employer, and an Employer, when so reasonably requested, shall furnish to the Trustees such information, documents, and reports as may be necessary in the performance of their duties under this Agreement and Declaration of Trust.

The Trustees and all their agents who handle funds of this Trust shall furnish such bond as may be required by law, shall be responsible at all times for all monies received by them, and shall be responsible, further, for the proper execution and administration of the terms of the Trust. The Trustees shall have the authority to purchase fiduciary insurance on terms consistent with the law.

The Trustees shall have authority to sue on behalf of the Trust to recover any monies owing to the Trust, to enforce any obligation respecting said Trust, or both. The Trustees shall have authority to defend any claim asserted against the Trust. The Trustees are empowered to abandon, compromise, or settle any claim asserted on behalf of or against the Trust.

The Trustees shall not engage in a prohibited transaction within the meaning of ERISA. The Trustees shall not be precluded from applying to the Secretary of Labor for an exemption with respect to a prohibited transaction.

The Trustees are authorized to employ accountants, actuaries, attorneys, and other professionals to provide necessary professional services to the Trust, to any Plan established or maintained pursuant to this Agreement, or to both.

The foregoing is not intended to limit in any way the powers of the Trustees, it being the intent of the parties hereto that the Trustees shall have all implied powers of trustees and power and authority to do all those things which in the opinion of the Trustees may be necessary or desirable for the proper and necessary administration and operation of the Trust Fund.

The Trustees' duties under this Agreement shall be discharged solely in the interest of the Participants and Beneficiaries (1) for the exclusive purpose of providing benefits for such Participants and Beneficiaries and defraying reasonable expenses of administering the Plan; (2) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; (3) by diversifying the investments of the Plan so as to minimize the risk of losses, unless, under the circumstances, it is clearly prudent not to do so; and (4) in accordance with this Agreement and any Plan established or maintained pursuant to this Agreement insofar as they are consistent with the provisions of Title I of ERISA.

The Trustees shall be responsible for the actions of their Co-Trustees, other fiduciaries, or the agents and employees of the Trust only to the extent provided by ERISA.

## **ARTICLE XII**

### **Employer Liability**

The liability of any individual Employer to the Fund shall in no event extend to the obligations of another Contributing Employer or other Contributing Employers.

**ARTICLE XIII**

**Construction and Severability**

With respect to any Plan established or maintained pursuant to this Agreement, this Agreement and any such Plan shall together constitute and be construed as the "Plan" for purposes of ERISA. If any portion of this Agreement or any Plan established or maintained hereunder shall be declared to be void, then such declaration of voidness shall not render the remainder of this Agreement or Plan void unless it is impossible to carry out the purposes of this Agreement. This Agreement shall be effective July 9, 1991.

IN WITNESS WHEREOF, the following parties have agreed to this Painters District Council No. 2 Welfare Trust Agreement.

<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
DANIEL LEACH	11/7/91
WILLIAM SMITH	11/7/91
JOSEPH WARD	11/7/91

<b>UNION TRUSTEES</b>	<b>DATE</b>
JOSEPH SHATRO	11/7/91
MARTIN BERGERON	11/7/91
JIM SMITH	

**PLAN AMENDMENT PAINTERS DISTRICT COUNCIL NO. 2  
PLAN AMENDMENTS**

For any Participant whose hour bank credits were canceled for any of the following reasons:

- (a) taking a clearance card; or
- (b) taking a non-covered position with a contributing employer.

that Participant will have the canceled hour bank credits reinstated if he reestablishes eligibility prior to the expiration of 6 months from the date on which the Participant lost coverage, without regard to extensions of credits for COBRA or any other self pay coverage. This provision applies to any Participant whose reestablishment of eligibility occurs on or after July 1, 1994. This amendment has no effect on the provisions of the Plan which state how hour bank credits are otherwise canceled.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
JOSEPH SHATRO	1-11-94	DANIEL LEACH	1-11-94
MARTIN BERGERON	1-11-94	WILLIAM SMITH	1-11-94
JAMES SMITH	1-11-94	MIKIL KNIGHT	3-9-94

**AMENDMENT TO THE PAINTERS DISTRICT COUNCIL NO. 2  
WELFARE TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Welfare Trust hereby adopt the following amendment to the Painters District Council No. 2 Welfare Trust and Plan Agreement. The first paragraph of the preamble is amended to provide the following individuals are the Trustees of the Welfare Trust: JOSEPH SHATRO, MARTIN BERGERON, JIM SMITH, DANIEL LEACH, WILLIAM SMITH and MIKIL KNIGHT.

<b>UNION TRUSTEES:</b>	<b>DATE</b>	<b>MANAGEMENT TRUSTEES:</b>	<b>DATE</b>
JOSEPH SHATRO	3/8/94	DANIEL LEACH	3/8/94
MARTIN BERGERON	3/8/94	WILLIAM SMITH	3/8/94
JIM SMITH		MIKIL KNIGHT	3/8/94

**AMENDMENT TO PAINTERS DISTRICT COUNCIL NO. 2  
WELFARE TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Welfare Trust hereby adopt the following amendment to the Painters District Council No. 2 Welfare Trust and Plan Agreement.

The first paragraph of the preamble is amended to provide the following individuals as the Trustees of the Welfare Trust: JOSEPH SHATRO, MARTIN BERGERON, THOMAS ERNST, WILLIAM SMITH, DANIEL LEACH and MIKIL KNIGHT.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
JOSEPH SHATRO	5-14-96	WILLIAM SMITH	5-14-96
MARTIN BERGERON	5-14-96	DANIEL LEACH	5-14-96
THOMAS ERNST	5-14-96	MIKIL KNIGHT	5-14-96

## **AMENDMENT TO PAINTERS DISTRICT COUNCIL NO. 2 WELFARE TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Welfare Trust hereby adopt the following amendment to the Painters District Council No. 2 Welfare Trust and Plan Agreement.

The first paragraph of the preamble is amended to provide the following individuals as the Trustees of the Welfare Trust: JOSEPH SHATRO, RICHARD BRYAN, THOMAS ERNST, WILLIAM SMITH, DANIEL LEACH and MIKIL KNIGHT.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
JOSEPH SHATRO	11-19-96	WILLIAM SMITH	11-19-96
RICHARD BRYAN	11-19-96	DANIEL LEACH	11-19-96
THOMAS ERNST	1-9-97	MIKIL KNIGHT	1-19-97

## **AMENDMENT TO PAINTERS DISTRICT COUNCIL NO. 2 WELFARE TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Welfare Trust hereby adopt the following amendment to the Painters District Council No. 2 Welfare Trust and Plan Agreement.

The first paragraph of the preamble is amended to provide the following individuals as the Trustees of the Welfare Trust: RICHARD BRYAN, THOMAS ERNST, GENE KAPPLER, MIKIL KNIGHT, DANIEL LEACH and WILLIAM SMITH.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	11-18-97	WILLIAM SMITH	11-18-97
THOMAS ERNST	11-18-97	DANIEL LEACH	11-18-97
GENE KAPPLER	11-18-97	MIKIL KNIGHT	11-18-97

**AMENDMENT NO. 6**  
**TO THE PAINTERS DISTRICT COUNCIL NO. 2**  
**WELFARE TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Welfare Trust hereby adopt the following amendment to the Painters District Council No. 2 Welfare Trust and Plan Agreement.

The first paragraph of the preamble is amended to provide the following individuals as the Trustees of the Welfare Trust: RICHARD BRYAN, GENE KAPPLER, KEVIN KENNY, WILLIAM SMITH, DANIEL LEACH and DONALD THOMAS.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	7-13-99	WILLIAM SMITH	9-14-99
GENE KAPPLER	7-13-99	DANIEL LEACH	7-13-99
KEVIN KENNY	7-13-99	DONALD THOMAS	11-9-99

**AMENDMENT NO. 7**  
**TO THE PAINTERS DISTRICT COUNCIL NO. 2**  
**WELFARE TRUST AND PLAN AGREEMENT**

Effective on January 1, 2001, the Trustees of the Painters District Council No. 2 Welfare Trust hereby amend the Painters District Council No. 2 Welfare Trust and Plan Agreement by deleting the second paragraph of Article V and replacing it with the following:

The contributions as established from time to time by the collective bargaining agreement shall be due on the date set out in the collective bargaining agreement. If the payment of contributions is delinquent, the Employer shall be assessed liquidated damages of 10% up to 30 days of delinquency. Thereafter, liquidated damages of 1½% shall be assessed, compounded monthly until the full contribution is made.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	2-8-01	WILLIAM SMITH	2-13-01
GENE KAPPLER	2-8-01	DANIEL LEACH	
KEVIN KENNY	2-8-01	DONALD THOMAS	2-14-01



**AMENDMENT NO. 8 TO**  
**PAINTERS DISTRICT COUNCIL NO. 2**  
**WELFARE TRUST AGREEMENT**

The Board of Trustees of the Painters District Council No. 2 Welfare Trust hereby amend the Painters District Council No. 2 Welfare Trust Agreement by adding the following new Article XII and changing the number of the current Article XII to Article XIII and the current Article XIII to Article XIV. This amendment shall be effective on April 14, 2003.

The Board of Trustees, in order to carry out its legal responsibilities and to properly administer the Welfare Plan and the Welfare Trust, requires access to information maintained by the Welfare Plan. This information may include individually identifiable health information that is protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Board of Trustees shall only use such protected health information as is necessary to carry out its proper administration of the Welfare Plan and the Welfare Trust. For example, the Board may access individually identifiable health information from the Welfare Plan and the Welfare Trust in order to carry out its legal responsibility of handling claims on appeal. The Board shall not use or disclose protected health information for any purpose beyond its plan administration functions.

Specifically, the Board of Trustees will handle protected health information as follows:

1. The Board of Trustees will not use or disclose protected health information other than as permitted by this plan document or as required by applicable law;
2. In the event that the Board of Trustees must disclose protected health information to a third-party to carry out its proper plan administration functions (e.g. to a licensed professional to assist with a claim on appeal), the Board will ensure that such third-party agrees to the same restrictions that apply to the Board as to the use and disclosure of protected health information;
3. The Board will not use or disclose protected health information for any employment-related actions and decisions or in connection with any other benefit plan administered by the Board;
4. The Board shall promptly report to the Welfare Plan any use or disclosure of protected health information received from the Welfare Plan that is inconsistent with the uses and disclosures permitted of the Board;
5. The Board will make any protected health information in its possession available to the Welfare Plan as is necessary for the Welfare Plan to meet its legal obligations of providing individual access to health information, providing an accounting of disclosures of protected health information, and amending protected health information;

6. The Board will make its internal practices, books, and records relating to the use and disclosure of protected health information received from the Welfare Plan available to the Secretary of Health and Human Services for the purposes of determining compliance by the Welfare Plan with the HIPAA Privacy Rule;
7. If feasible, the Board will return or destroy all protected health information received from the Welfare Plan that the Board still maintains in any form and will retain no copies of such information when it is no longer needed for the purpose for which the disclosure was originally made;
8. Access to protected health information maintained by the Board of Trustees or the Welfare Plan will be limited to those employees with the responsibility of carrying out the plan administration functions of the Welfare Plan and the Trust. Such access will be limited to that which is necessary to carry out the plan administration functions and Trust functions;
9. Employees who violate these provisions by using protected health information beyond that which is necessary to carry out their plan administration and Trust functions will be sanctioned under the Welfare Plan's adopted policy for sanctioning employees that violate the Welfare Plan's health information privacy policies and procedures.

Richard Bryan 3-11-03  
 RICHARD BRYAN DATE

William M. Smith 3/11/03  
 WILLIAM SMITH DATE

Gene Kappler 3/11/03  
 GENE KAPPLER DATE

Daniel Leach 3/11/03  
 DANIEL LEACH DATE

Kevin Kenny 3-11-03  
 KEVIN KENNY DATE

Donald Thomas 3-11-03  
 DONALD THOMAS DATE

**PAINTERS DISTRICT COUNCIL NO. 2  
PENSION TRUST  
AND  
PLAN AGREEMENT**

**(Restated Effective July 1, 1994)**

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THIS AGREEMENT, first made and entered into as of the first day of July, 1964, by and between ST. LOUIS PAINTERS AND DECORATORS JOINT TRADE BOARD, INC., a Missouri pro forma decree corporation, hereinafter referred to as the BOARD, and any other employers, hereinafter referred to as EMPLOYERS, who adhere to the area practice and who have a contract with Painters District Council No. 2, hereinafter referred to as the UNION, and certain named individuals, as initial trustees, whose successors currently are JOSEPH SHATRO, RICHARD J. BRYAN, JAMES E. ENGEL, H. FRED PHILIPP, JR., RICHARD SUNDERMEYER, SR., and DAN WIENSTROER.

WHEREAS, the Trustees of the Painters District Council No. 2 Pension Trust have amended this Plan from time to time, pursuant to authority contained herein,

WHEREAS, it is desired to amend the Plan by restating the Plan in its entirety in order to conform to the Employee Retirement Income Security Act of 1974 (ERISA), as amended, the United States Internal Revenue Code, as amended, the Labor Management Relations Act of 1947, as amended, and other laws.

NOW, THEREFORE, said Agreement as amended is hereby continued and restated effective July 1, 1994, unless specifically provided otherwise herein, for the benefit of such persons as are now or shall hereafter become entitled to the benefits of this Trust pursuant to the terms hereof as follows:

## ARTICLE I

### Definitions

1.1 Trust Agreement. "Trust Agreement" means those provisions of this Pension Trust and Plan Agreement which govern the creation, existence and administration of the Painters District Council No. 2 Pension Trust.

1.2 Governing Law. "Governing Law" means the laws of the State of Missouri, concerning the validity, construction and administration of the Trust, except to the extent federal law preempts state law, in which cases federal law shall be the governing law.

1.3 Trustees. "Trustees" means the Board of Trustees as established and constituted from time to time in accordance with the Trust Agreement.

1.4 Pension Plan or Plan. "Pension Plan" or "Plan" means those documents as adopted by the Trustees and as thereafter amended by the Trustees, which govern the creation, existence and administration of the Pension Plan.

1.5 Union. "Union" means Painters District Council No. 2.

1.6 Contributing Employer or Employer. "Contributing Employer" or "Employer" means an Employer signatory to a Collective Bargaining Agreement with the Union requiring contributions to this Fund and any other Employer authorized by the Trust Agreement to contribute to this Fund, provided:

- A. The Employer has been accepted as a Contributing Employer by the Trustees, and
- B. The Trustees have not, by resolution, terminated the Employer's status as a "Contributing Employer" because the Employer has failed, for a period of 120 days after the due date, to make contributions to the Fund as provided for in its Agreement.

An Employer shall not be deemed a Contributing Employer simply because it is part of a controlled group of corporations or of a trade or business under common control, some other part of which is a Contributing Employer.

1.7 Collective Bargaining Agreement. "Collective Bargaining Agreement" means an agreement between the Union and an Employer which requires contributions to the Fund.

1.8 Covered Employment. "Covered Employment" means employment of an Employee by an Employer. However, "Covered Employment" shall not include employment by an Employer after termination of that Employer's status as a Contributing Employer for failure to pay contributions due pursuant to the provisions of Section 1.6.

1.9 **Contribution Period.** "Contribution Period" means, with respect to a category of employment, the period during which the Employer is a Contributing Employer with respect to the category of employment.

1.10 **Contribution Date.** "Contribution Date" shall mean the date of commencement of contribution as set forth in an agreement between the Employer and the Union as being the date on which the Employer's obligation to contribute to the Pension Trust shall start.

1.11 **Participant.** "Participant" means Pensioner or an Employee who meets the requirements for participation in the Plan as set forth in Article III.

1.12 **Employee.** "Employee" means a person who is an Employee of an Employer and who is: (a) covered by a Collective Bargaining Agreement; or (b) a person for whom any other Employer authorized by the Trust Agreement to contribute to this Fund makes contributions to this Fund.

The term "Employee" shall not include any self-employed person or sole proprietor of a business organization, or any other person who is prohibited by federal law from participating in the Plan.

1.13 **Pensioner.** "Pensioner" means a person to whom a pension under this Plan is being paid or to whom a pension would be paid but for time for administrative processing.

1.14 **Beneficiary.** "Beneficiary" means a person (other than a Pensioner) who is receiving benefits under this Plan because of his or her designation for such benefits by a Participant or by provisions of this Plan. See also Sections 5.2 and 6.7C.

1.15 **Normal Retirement Age/Normal Retirement Date.** "Normal Retirement Age" means age 65 or, if later, the age of the Participant on the fifth anniversary of his participation. Participation before a Permanent Break in Service shall not be counted. "Normal Retirement Date" means the first date of the month coincident with or next following the month in which the Participant reaches his "Normal Retirement Age".

1.16 **Plan Year.** "Plan Year" means the twelve-month period from July 1 through the next June 30. For purposes of ERISA regulations, the Plan Year shall serve as the vesting computation period, the benefit accrual computation period, and after the initial period of employment, the computation period for eligibility to participate in the Plan.

1.17 **Fiscal Year.** "Fiscal Year" means the period from July 1 through the next June 30 and is the period for which various governmental reports are required to be filed by the Plan Administrator.

1.18 **Year of Participation.** For the purposes of compliance with Regulation 2530 of the Department of Labor, a full "Year of Participation" means a Plan Year during the Contribution Period in which a Participant has completed 2401 or more hours of work in Covered Employment, for Plan Years through the Plan Year ending June 30, 1993. For Plan Years beginning July 1, 1993 and thereafter, a full "Year of Participation" means a Plan Year during the Contribution Period in which a Participant has completed 3201 or more hours in Covered Employment.

1.19 **Hour of Service.** "Hour of Service" means:

- A. An hour of service is each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer during the applicable computation period.
- B. An hour of service is each hour for which an employee is paid, or entitled to payment, by the 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, except that:
  1. No more than 501 hours of service shall be credited under this paragraph 1.19B to an employee on account of any single continuous period during which the employee performs no duties (whether or not such period occurs in a single computation period);
  2. An hour for which an employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the employee if such

payment is made or due under a plan maintained solely for purpose of complying with applicable workmen's compensation, or unemployment compensation or disability insurance laws; and

3. Hours of service are not required to be credited for a payment which solely reimburses an employee for medical or medically related expenses incurred by the employee.

For purposes of this paragraph 1.19B, a payment shall be deemed to be made by or due from an employer regardless of whether such payment is made by or due from the employer directly or indirectly through, among others, a trust fund or insurer, to which the employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular employees in the aggregate.

- C. An hour of service is each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the employer. The same hours of service shall not be credited both under paragraph 1.19A or 1.19B, as the case may be, and under this paragraph 1.19C.
- D. Effective July 1, 1986, for purposes of computing hours for determining whether a one-year break in service has occurred only, an hour of service includes each hour up to a maximum of 501 hours, during a period of absence from covered employment, if the absence from such employment was due to any one of the following:
  1. Pregnancy of the Participant;
  2. Birth of a child of the Participant;
  3. Placement of a child with the Participant in connection with the adoption of such child by the Participant, or
  4. Caring for such child by the Participant.

The amount of hours to be credited for the period of absence shall be the number of hours that normally would have been credited to the Participant, but for the absence from covered employment, if such an amount can be ascertained. If this amount is not able to be ascertained, the Participant shall be credited with eight hours of service for each working day during the leave. The hours for service shall be credited in the vesting computation year in which they occur, if the leave occurs totally within one vesting computation year. If the leave takes place in more than one vesting computation year, the hours of service shall be credited in the vesting year during which the absence begins, if the crediting is necessary to prevent a break in service; otherwise the hours of service shall be credited in the following vesting computation year.

Hours of service under this subparagraph shall be computed only for purposes of determining whether a one-year break in service has occurred. Such hours will not be counted toward credited service nor will they be counted toward determining whether the Participant has completed a year of service for vesting purposes.

The Participant is required to furnish, upon request by the Plan Administrator or an authorized representative thereof, such timely information as the Plan may reasonably require to establish that the absence was for one of the reasons stated in this subparagraph and/or to establish the number of days for which there was such an absence.

- E. Effective January 1, 1994, an hour of service for purposes of determining whether a Participant has completed a year of service for vesting purposes will include hours of service the Participant would have earned but for his having taken approved leave under the Family and Medical Leave Act. Such hours will not be counted for purposes of benefit accrual.

Hours of Service shall be computed and credited in accordance with Department of Labor Regulations 2530.200b.

1.20 Work. "Work" means each hour for which an Employee is paid, or entitled to payment, by an Employer for services performed.

1.21 Continuous Employment. "Continuous Employment" means any Periods of Service not separated by quit, discharge, or other termination of employment between the periods.

1.22 Contributions. "Contributions" shall mean the rate or amount to be paid to the Trust Fund as specified in collective bargaining agreements between the Employer and the Union.

1.23 Gender. Except as the context may specifically require otherwise, use of the masculine gender shall be understood to include both masculine and feminine gender.

1.24 Annuity Starting Date. The "Annuity Starting Date" is the first day of the first period for which an amount is payable as an annuity. The Participant may elect this Annuity Starting Date after fulfilling all of the conditions for entitlement to benefits, subject to the following:

- A. The date must be at least 30 days and no more than 90 days after the Participant has received the Notice of right to waive Qualified Joint and Survivor Annuity described in Section 8.4. The Notice will be given to the Participant upon request. The Notice does not apply to Alternate Payees or Beneficiaries.
- B. The Annuity Starting Date will not be later than the Participant's Required Beginning Date as defined in Section 9.4A.

A Participant who begins receiving benefits before his or her Normal Retirement Age and then earns additional benefit accruals under the Plan through re-employment will have a separate Annuity Starting Date determined under this Section with respect to the additional accruals, except that an Annuity Starting Date that is on or after the Participant's Normal Retirement Age shall apply for any additional benefits accrued through re-employment after that date.

1.25 Non-Bargained Employee. A "Non-Bargained Employee" is an employee who is not covered by a collective bargaining agreement between the Union and a Contributing Employer, but for whom contributions are made to this Fund. This term includes any employee of the Painters District Council No. 2, Painters District Council No. 2 Unity Hall Corporation or any employee of the Trustees of Painters District Council No. 2 Welfare Plan, Pension Plan, Vacation Fund or Apprenticeship and Journeyman Fund, to the extent the Employer has agreed to make contributions to this Fund on behalf of said employee.

## **ARTICLE II**

### **Name and Objectives**

This trust is to be known as the "Painters District Council No. 2 Pension Trust". This Agreement contains the governing provisions of the Trust, as well as the provisions of the Painters District Council No. 2 Pension Plan. This Agreement shall be known as the Painters District Council No. 2 Pension Trust and Plan Agreement.

This Trust is designed to provide retirement, survivor, disability and death benefits for Participants and Beneficiaries, who are entitled to receive such benefits as defined in this Agreement.

## **ARTICLE III**

### **Participation**

The term Participant shall mean any Employee of a Contributing Employer who is engaged in Covered Employment during the Contribution Period for that Employer. An Employee becomes a Participant upon completion of one hour of covered service. Unless otherwise specifically provided, a Participant's participation ceases as of the first day of the Plan Year following the Plan Year during which the Participant experiences a one year break in service, as defined in Section 7.1A, unless such Participant is then a pensioner.

An Employee who has lost his status as a Participant shall again become a Participant upon completion of one hour of covered service.

## ARTICLE IV

### Employer Participation

When an Employer of one or more eligible Employees signifies its agreement to the Trustees in writing to pay for the benefits as provided herein and to be bound by the terms of this Plan and Trust, such Employer shall, if accepted by the Trustees, become a Contributing Employer. The Trustees have the right to refuse to accept an Employer as a contributing Employer or to terminate an Employer's status as a contributing Employer, in their discretion.

Each Contributing Employer who agrees in writing to contribute for the purpose of providing benefits under this Plan and executes an agreement subscribing to and being bound by the terms of this agreement, shall contribute the money per hour as shall be negotiated from time to time by Employers and the Union on behalf of Participants who shall be employed by Contributing Employers as evidenced by agreements from time to time between Contributing Employers and the Union.

The contributions as established from time to time in the Agreements shall be due on or before the seventh calendar day following the designated weekly pay date day agreed upon between the Contributing Employer and the Union. After seven days from the agreed pay date, a Contributing Employer shall be assessed liquidated damages of 10% up to 30 days of delinquency; after which liquidated damages of 1-1/2% of the then current delinquency for each month or part of a month, shall be assessed and compounded monthly, until the full contribution is made.

In any legal action instituted to recover delinquent contributions or to recover unpaid liquidated damages, the Contributing Employer shall be obligated to pay reasonable attorneys' fees and accounting fees in addition to all principal amounts due and in addition to all other relief prescribed by law.

## ARTICLE V

### Accrual of Benefits

5.1 General Rules. This Article sets forth the rules for determining and computing the amount of a Participant's accrued benefit under the Plan. The accumulation and retention of accrued benefit credits are subject to the requirements concerning Years of Vesting Service. The Benefit Amounts are subject to reduction on account of the Qualified Joint and Survivor Annuity (Article VIII) and modification if the Participant retires with an annuity starting date other than his normal retirement date, or with a form of benefits other than the normal form of benefits.

Eligibility depends on meeting the conditions for benefit entitlement (Article VI) and/or the rules concerning Years of Vesting service and permanent break in service.

5.2 Normal Form of Benefit. For purposes of this Plan the normal form of benefits is a life annuity, with a 60 month guarantee. This form includes the payment of a monthly amount commencing with the Annuity Starting Date and continuing until the month in which the Participant dies. If the death of the Participant occurs after his Annuity Starting Date, but before all sixty (60) guaranteed monthly payments have been made, the remaining payments shall be made to the named beneficiary, if then surviving, or if such beneficiary is not then surviving, to the contingent beneficiary, if then surviving. If no designated beneficiary is surviving at the time of the Participant's death, the remaining payments shall be made to the Participant's estate. If a beneficiary who is receiving guaranteed payments dies before all guaranteed payments are made, payments will continue to the contingent beneficiary, if one is then surviving. If no contingent beneficiary is then surviving, the remaining payments will be made to the estate of the beneficiary who last received a payment, until all guaranteed payments have been made.

The amount of benefit stated in the Plan (Section 5.3) is the amount which the Participant would receive each month, if the Participant receives a life annuity with a 60 month guarantee, commencing at normal retirement date. In the event the Participant receives a form of payment different from the life annuity with a 60 month guarantee, or in the event the Participant begins to receive benefits at a time other than his normal retirement date, the monthly amount which the Participant will be entitled to receive will be different from the amount stated in this section. The amount received will be the actuarial equivalent of the amount of benefit stated in Section 5.3; that is, it will be the

actuarial equivalent of the amount which the Participant would be entitled to under the life annuity with a 60 month guarantee form of payment, commencing at normal retirement date.

5.3 **Amount of Benefit Stated in the Normal Benefit Form.** The amount of benefit that a Participant accrues stated in the normal form of benefits (a life annuity with a 60 month guarantee) commencing at Normal Retirement Date, is the sum of the amount determined under subsection 5.3A and the amount determined under Section 5.3B.

- A. The amount determined under this subsection ("accredited past service benefit") is \$2.50 for each year of accredited past service for any Participant who participated on and after July 1, 1964, but who commenced participation prior to July 1, 1965. An eligible Participant receives a year of accredited past service for each continuous year of service prior to July 1, 1965. No Participant who first participated in the Plan after July 1, 1965 shall be entitled to past service credits. The amount determined under this subsection is subject to the rules concerning permanent breaks in service.
- B. The amount determined under this subsection ("accredited future service benefit") is the sum of the amounts earned by the Participant under all applicable tables. Accredited future service benefit will be accrued under this subsection for each 12 consecutive month period commencing with July 1, 1964, and subsequent anniversaries thereof ("benefit accrual year"), based on the number of "hours of service" completed by the Participant during the particular benefit accrual year, subject to the following rules:
  - 1. No accredited future service benefit will be accrued by a Participant for any benefit accrual year during which the Participant fails to complete at least 400 hours of service.
  - 2. The accrual of accredited future service benefit under this subsection is subject to the rules concerning permanent breaks in service.
  - 3. The amounts set out in these tables are subject to the rules contained in subsection 5.3C.

The amount of accredited future service benefit accrued by a Participant during each benefit accrual year is:

Total Hours of Service as defined below from July 1 to June 30 each year	Future Service Credits from 7/1/64 thru 6/30/72	Future Service Credits 7/1/72 thru 6/30/76
400 to and including 600 hours	\$1.50	\$1.50
601 to 800 hours	1.80	2.25
801 to 1,000 hours	2.10	3.00
1,001 to 1,200 hours	2.40	3.75
1,200 to 1,400 hours	2.70	4.50
1,401 to 1,600 hours	3.00	5.25
1,601 to 1,800 hours	3.30	6.00
1,801 to 2,000 hours	3.60	6.75
2,001 to 2,200 hours	3.90	7.50
2,201 to 2,400 hours	4.20	8.25
2,401 <sup>1</sup> and over	4.20	8.25

<sup>1</sup>2401 is considered full-time employment for purposes of accrual of accredited future service benefits for all accrual years through the year ending June 30, 1993. For benefit accrual beginning July 1, 1993 and thereafter, 3,201 hours of service is considered full-time employment for purposes of accrual of accredited future service benefits.

<b>Total Hours of Service as defined below from July 1 to June 30 each year</b>	<b>Future Service Credits 7/1/76 thru 6/30/78</b>	<b>Future Service Credits 7/1/78 thru 6/30/80</b>	<b>Future Service Credits 7/1/80 thru 6/30/84</b>	<b>Future Service Credits 7/1/84 thru 11/30/84</b>
400 to and including 600 hours	\$3.00	\$4.50	\$5.65	\$6.50
601 to 800 hours	4.50	6.75	8.45	9.60
801 to 1,000 hours	6.00	9.00	11.25	12.75
1,001 to 1,200 hours	7.50	11.25	14.05	15.90
1,201 to 1,400 hours	9.00	13.50	16.90	19.05
1,401 to 1,600 hours	10.50	15.75	19.70	22.20
1,601 to 1,800 hours	12.00	18.00	22.50	25.35
1,801 to 2,000 hours	13.50	20.25	25.30	28.45
2,001 to 2,200 hours	15.00	22.50	28.15	31.65
2,201 to 2,400 hours	16.50	24.75	30.95	34.80
2,401 and over	16.50	24.75	30.95	34.80

<b>Total Hours of Service as defined below Credits from July 1 to June 30 each year</b>	<b>Subject to Sub-Section 5.3C3 Future Service Credits 12/1/84 thru 6/30/85<sup>2</sup></b>	<b>Subject to Sub-Section 5.3C3 Future Service Credits 7/1/85 thru 6/30/86</b>
400 to 600 hours	\$16.25	\$21.85
601 to 800 hours	23.00	30.85
801 to 1,000 hours	30.00	40.10
1,001 to 1,200 hours	37.00	49.30
1,201 to 1,400 hours	44.05	58.60
1,401 to 1,600 hours	51.00	67.80
1,601 to 1,800 hours	58.00	77.00
1,801 to 2,000 hours	65.00	86.25
2,001 to 2,200 hours	72.00	95.50
2,201 to 2,400 hours	79.00	104.75
2,401 and over	79.00	104.75

	<b>Subject to Subsection 5.3C3 Future Service Credits From 7/1/86 thru 6/30/89</b>	<b>Subject to Subsection 5.3C3 Future Service Credits From 7/1/89 thru 6/30/93</b>
400 to 600 hours	\$31.45	\$35.30
601 to 800 hours	44.35	49.75
801 to 1,000 hours	57.40	64.30
1,001 to 1,200 hours	70.45	78.90
1,201 to 1,400 hours	83.60	93.60
1,401 to 1,600 hours	96.65	108.20
1,601 to 1,800 hours	109.70	122.80
1,801 to 2,000 hours	122.80	137.40
2,001 to 2,200 hours	135.90	152.05
2,201 to 2,400 hours	147.05	164.75
2,401 and over	147.05	164.75

<sup>2</sup>Subject to Section 5.3C4

<b>Total Hours of Service as defined below Credits from July 1 to June 30 each year</b>	<b>Subject to Sub-Section 5.3C3 Future Service Credits from 7/1/93 thru 6/30/94</b>	<b>Subject to Sub-Section 5.3C3 Future Service Credits from and after 7/1/94</b>
400 to 600 hours	\$38.70	\$42.10
601 to 800 hours	54.55	59.40
801 to 1,000 hours	70.50	76.70
1,001 to 1,200 hours	86.50	94.15
1,201 to 1,400 hours	102.60	111.60
1,401 to 1,600 hours	118.60	128.95
1,601 to 1,800 hours	134.60	146.40
1,801 to 2,000 hours	150.60	163.75
2,001 to 2,200 hours	166.70	181.25
2,201 to 2,400 hours	180.60	196.45
2,401 to 2,600 hours	197.30	214.60
2,601 to 2,800 hours	213.10	231.80
2,801 to 3,000 hours	228.90	249.00
3,001 to 3,200 hours	244.50	265.90
3,201 or more	244.50	265.90

C. The amount of accredited future service accrued by a Participant under the foregoing tables, are subject to the following rules:

1. Any Participant or Beneficiary whose annuity starting date was prior to July 1, 1984 (including disability benefits), shall, effective with the monthly payment due on July 1, 1984, receive benefits in the amount of his June 1984 payment, increased by 20%.

The monthly benefit amount of any Participant or Beneficiary whose Annuity Starting Date (including disability benefits) is July 1, 1984 or thereafter, shall be based on the greater of:

- a. The Participant's accrued benefit as of the Annuity Starting Date determined under the tables set out in subsection 5.3B; or
  - b. The Participant's accrued benefit as of June 30, 1984 determined under the tables set out in subsection 5.3B, increased by 20%.
2. Notwithstanding other provisions of this Article V and excepting Participants or Beneficiaries of Participants who are employed by contributing employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774, the accredited future service benefit of any Participant or Beneficiary whose Annuity Starting Date is on or after July 1, 1985, as of June 30, 1985, shall be the benefit computed under the tables set forth in subsection 5.3B as of June 30, 1985, without regard to the increase in the foregoing subsection 5.3C1, increased by 20%. The resulting accrued benefit shall be added to the accredited future service benefit, if any, accrued for service on and after July 1, 1985, to arrive at the Participant's total accrued benefit.
  3. The tables marked "Subject to Subsection 5.3C3" do not apply to Participants, who are employed by contributing employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774. The accredited future service benefit accrued by Participants who are employed by contributing employers signatory to agreements with Local 774 shall, for any future service benefit accrual year, be the amount set out in the last most recently effective table which is not marked "Subject to Subsection 5.3C3." The accrued benefit for such a Participant shall be the total of all amounts accrued under the applicable tables which are not marked "Subject to Subsection 5.3C3", adjusted by Subsection 5.3C1, if applicable.
  4. Notwithstanding the above, Participants shall have their accrued benefit for the period July 1, 1984 through June 30, 1985 computed under the following table, if the computation results in a higher

benefit than the combined total of the accrued benefit computed under the two tables entitled, "Future Service Credits 7/1/84 thru 11/30/84" and "Subject to Subsection 5.3C3 Future Service Credits 12/1/84 thru 6/30/85":

Total Hours of Service Plan Year	7/1/84 thru 6/30/85
400 - 600	\$12.19
601 - 800	17.42
801 - 1,000	22.81
1,001 - 1,200	28.21
1,201 - 1,400	33.63
1,401 - 1,600	39.00
1,601 - 1,800	44.40
1,801 - 2,000	49.77
2,001 - 2,200	55.19
2,201 - 2,400	60.58
2,401 & over	60.58

This subparagraph does not apply to Participant's who were employed by contributing employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774 during the period 12/1/84 through 6/30/85.

- D. Any Participant or Beneficiary (except for Participants or Beneficiaries of Participants whose benefits are based on service for contributing employers who were or are signatory to agreements with Sign and Pictorial Painters, Local Union 774) whose annuity starting date was prior to January 1, 1992 (including disability benefits), shall, effective with the monthly benefit payment due for January 1992, have his monthly benefit increased by the greater of five percent (5%) of the monthly payment or Ten Dollars (\$10.00).

## ARTICLE VI

### Conditions for Benefit Entitlement/Types of Benefits

In order to be entitled to receive benefits under this Plan, a Participant or Beneficiary must meet the requirements for one of the types of benefits described in this Article VI.

6.1 Normal Retirement Benefit. If a Participant reaches his Normal Retirement Date while still an active Participant in the Plan (i.e. prior to his Participation ceasing within the meaning of Article III), the Participant shall be entitled to a Normal Retirement Benefit. If a Participant reaches his Normal Retirement Date while not an active Participant, but has met one of the requirements of Article VII such that he has become vested in his accrued benefit, the Participant shall be entitled to a Normal Retirement Benefit upon reaching his Normal Retirement Date.

A Normal Retirement Benefit is paid in the form provided under Article VIII and is based on the Participant's accrued benefit as computed under Article V, without reduction for early retirement.

A Participant who has met the requirements for a Normal Retirement Benefit is entitled to begin to receive benefits as of his Normal Retirement Date without regard to whether he continues to work in covered employment and without regard to whether he is entitled to Social Security Benefits.

In the event a Participant accrues additional accredited future service benefits for service after his Normal Retirement Annuity Starting Date, he shall be credited with such service. However, any such additional accredited future service shall be reduced (but not below zero) by the actuarial value of any normal retirement benefits paid to the Participant subsequent to his Normal Retirement Date. Notwithstanding the reduction set forth in the previous sentence, a Participant who completes 1,200 or more hours of service in any Plan Year after his Annuity Starting Date, shall accrue at least the benefit set forth in the following table:

<b>Hours Worked in Plan Year</b>	<b>Additional Monthly Benefit Stated in the Normal Form of Benefit</b>
1,200 - 1,399	\$10
1,400 - 1,599	\$15
1,600 - 1,799	\$20
1,800 - 1,999	\$25
2,000 - 2,199	\$30
2,200 - 2,399	\$35
2,400 - 2,599	\$40
2,600 - 2,799	\$45
2,800 - 2,999	\$50
3,000 - 3,199	\$55
3,200 or more	\$60

Additional accredited future service earned in any benefit accrual year for service after the Participant's Normal Retirement Date, shall become payable as soon as administratively feasible following the end of that benefit accrual year; the first payment shall include retroactive payments to and including the first payment due July 1. The Participant's post normal retirement age election as to the form of benefits will apply to the additional accredited service accrued after his Normal Retirement Date.

6.2 **Postponed Retirement Date.** Subject to the requirements of subsection 9.4, a Participant who has met the requirements for a Normal Retirement Benefit may elect to postpone his Annuity Starting Date to a date of his choice after his Normal Retirement Date. In such event, the Participant shall notify the Fund Office of his intent to postpone his Annuity Starting Date and, if he knows, of his postponed Annuity Starting Date. The Participant shall, within a reasonable time of said notification, receive the notification described in subsection 8.4. The Participant's election period for purposes of subsection 8.3, shall be the ninety (90) day period immediately preceding the Participant's elected Postponed Annuity Starting Date. In the event of a Postponed Annuity Starting Date, the amount of Participant's monthly benefit shall be actuarially adjusted to reflect the later commencement date. The actuarial adjustment for any additional accredited service which accrues for service after the Participant's Normal Retirement Date shall run from the date that the benefits would have first been payable (i.e., September 1 following the end of the benefit accrual year in which the benefits accrued). In no event shall the Participant be permitted to postpone his Annuity Starting Date to a date after his "Required Beginning Date," as defined in Section 9.4A.

### 6.3 **Early Retirement Benefit.**

A. A Participant may elect an Early Retirement Benefit (to be computed in accordance with Section 6.3D by electing an Annuity Starting Date at any time before his Normal Retirement Date, after meeting the following eligibility requirements:

1. Attainment of age 62, and
2. Completion of ten (10) years of vesting credit under the Plan.

B. Effective July 1, 1988, and thereafter, the following provisions shall apply for all Participants except Participants who are employed by Contributing Employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774 (the early retirement eligibility and benefit amount of these excluded Participants are to continue to be determined under subsection 6.3A).

1. A Participant may elect an Early Retirement Benefit (to be computed in accordance with Section 6.3D) by electing an Annuity Starting Date at any time before his Normal Retirement Date, after meeting the following eligibility requirements:

- a. Attainment of age 60, and
  - b. Completion of ten (10) years of vesting credit under the Plan.
2. A Participant may elect an Early Retirement Benefit (to be computed without the reduction set forth in Section 6.3D) by electing an Annuity Starting Date at any time before his Normal Retirement Date, after meeting the following eligibility requirements:
- a. Attainment of age 60, and
  - b. Completion of ten (10) years of vesting service under the Plan, and
  - c. Accrual of twenty-five (25) years of credited service, as defined herein. For purpose of this Section 6.3B2, a year of credited service is any year in which the Participant accrued any benefit under the Plan (including a year of past service credit under the Plan). In addition, as to Participants who were Participants in the Plan as of July 1, 1988, a year of credited service for purposes of this Section 6.3B2 includes any year of service within the geographic jurisdiction of Painters District Council No. 2, as it was constituted on July 1, 1988, under a collective bargaining agreement to which a union affiliated with the International Brotherhood of Painters was a party.
- C. Except as specified in Section 8.2 below, the Early Retirement Benefit shall be paid in the Normal Form of Benefits under the Plan (a life annuity with a 60 month guarantee). The Participant may elect any Annuity Starting Date after the date of his election and after meeting the applicable eligibility requirements.
- D. The amount of Early Retirement Benefit which the Participant will be entitled to receive each month, stated in the form of a life annuity with a sixty (60) month guarantee will be the Participant's Normal Benefit Amount, computed in accordance with the provisions of Section 5.3, reduced by one-half of one percent (1/2 of 1%) for each full month that the Participant is younger than age 65 as of his Early Retirement Annuity Starting Date.

For any such additional accredited future service, the Participant is entitled to elect Annuity Starting Date(s), and for each such election, the Participant will receive the notices and election options set forth in Article VIII. Likewise, the spousal consent requirements of Article VIII will continue to apply to any such election. Notwithstanding the above, the first valid election of an Annuity Starting Date and Form of Benefits which the Participant makes after his Normal Retirement Age will govern all additional benefits accrued thereafter.

#### 6.4 Total and Permanent Disability Benefit.

- A. A Participant who becomes totally and permanently disabled, while still a Participant in the Plan, and after the Participant has earned ten (10) years of vesting credit, may elect to receive the Total and Permanent Disability Benefits described in this Section.

For purposes of this Article, participation ceases on the first day of the Plan Year following the Plan Year during which a Participant experiences a one year break in service as defined in Section 7.3A.

For purposes of this Article, effective March 1, 1986, a Participant shall be deemed to be totally and permanently disabled only if he is determined to be totally and permanently disabled by the Social Security Administration.

The Benefit provided by this Article is not available to a former Participant whose participation ceased within the meaning of this Section, prior to his becoming disabled. The Benefit provided by this Article is not available to a Participant who the Trustees determine has become disabled while engaged in the commission of a felony or as a result of willful intention to injure himself or to induce an illness that could result in disability.

- B. Such Participant who shall be so certified as totally and permanently disabled shall be entitled to receive a monthly disability pension based on his accrued benefits (but in no event less than Twenty-five Dollars (\$25.00) per month), commencing with the month in which he is eligible to receive his first disability payment from the Social Security Administration and he shall continue to receive such disability pension until the earliest of death, recovery from his total and permanent disability, the election of an Early Retirement Benefit, or attainment of Normal Retirement Age.

Upon attaining Normal Retirement Age (or at Early Retirement Annuity Starting Date, if elected by the Participant), the Participant's Benefits shall convert to one of the forms of benefit payable for the Normal Retirement Benefit (or Early Retirement Benefit) and the Total and Permanent Disability Benefit shall cease. At that time the Participant shall receive the notices and elections that a Participant would receive at Normal Retirement Age. The Participant's monthly benefit after converting to Early or Normal Retirement Benefit will in no event be less than Twenty-five Dollars (\$25.00) per month.

- C. Nothing in this Section shall affect the right of a Participant who is otherwise eligible for any benefit under this Plan. Nor shall the receipt of benefits under this Section cause a reduction in the amount of retirement or other benefits which may be due to the Participant or his beneficiary under other provisions of this Plan. A Participant who receives benefits under this Section shall be entitled to the same retirement benefits (Preretirement Survivor Annuity, Early Retirement Benefit and Normal Retirement Benefit) in the same form, under the same conditions and with the same notification and election procedures as he would otherwise have been entitled to if he had not received the disability benefits.

6.5 Death Benefit. Effective March 1, 1986, in addition to the benefits otherwise provided by this Plan and Trust, the Plan and Trust shall pay a death benefit in the amount of \$3,000 to the designated beneficiary of any Participant who has retired under this Plan on July 1, 1982 or thereafter, provided that the Participant was an active Participant at the time of his Annuity Starting Date. For purposes of this paragraph, the term retirement means that the Participant commences receiving a benefit payment under this Plan other than a Total and Permanent Disability Payment. For purposes of this paragraph, the term active Participant means a Participant whose participation has not ceased under Article III.

Effective with respect to Participants who die September 1, 1989 or thereafter and who otherwise meet the requirements of this Section 6.5 for a death benefit, the amount of the death benefit shall be \$5,000. This increase shall not apply to any Participant who was employed by an employer which is signatory to an agreement with Sign and Pictorial Painters Local Union 774, during the Plan Year during which the Participant last completed an hour of service.

Effective with respect to Participants who die October 1, 1991 or thereafter and who otherwise meet the requirements of this Section 6.5 for a death benefit, the Participant is eligible for Death Benefit only if the Participant was (at the time of his Annuity Starting Date under the Pension Plan), a covered Participant for the Death Benefit under the Painters District Council No. 2 Welfare Fund or on Waiver of Premium for Disability under the Painters District Council No. 2 Welfare Fund or the Painters District Council No. 2 Group Insurance Trust.

6.6 Qualified Preretirement Survivor Annuity.

- A. General Rule. A Qualified Preretirement Survivor Annuity (as defined in this Section) is payable to the surviving spouse of any Participant who dies after August 22, 1984 but before his Annuity Starting Date, who has been married to the surviving spouse for a period of one year immediately preceding the date of death, and who had met one of the requirements of Article VII and was therefore vested as of the date of his death.
- B. Definition. A Qualified Preretirement Survivor Annuity is an annuity payable to the surviving spouse of a Participant who meets the requirement of Section 6.6A, computed under Section 6.6C.

C. Computation of Qualified Preretirement Survivor Annuity.

1. If a Participant dies after the earliest retirement age under the Plan which applies to that Participant, the amount of the Qualified Preretirement Survivor Annuity payable to the surviving spouse is the amount which would have been payable to the surviving spouse as a survivor annuity if the Participant had retired with a Qualified Joint and Survivor Annuity on the day before the Participant's Death.

2. If a Participant dies before the earliest retirement age under the Plan which applies to that Participant, the amount of the Qualified Preretirement Survivor Annuity payable to the surviving spouse is the amount which would have been payable to the surviving spouse as a survivor annuity, if the Participant had:
  - a. Separated from service on the day he last worked in covered employment;
  - b. Survived to the earliest retirement date under the Plan which applies to that Participant.
  - c. Retired on that date with a Qualified Joint and Survivor Annuity, and
  - d. Died on the next day.
3. Subject to the next succeeding paragraph (6.6C4), the monthly payments to the surviving spouse shall commence on the first day of the month coinciding with or following the later of:
  - a. The date of the Participant's death, or
  - b. The earliest retirement date under the Plan which applies to that Participant;

and shall continue until and including the payment for the month in which the surviving spouse dies. No survivorship benefits shall be payable if the Participant's spouse fails to survive to the date on which the annuity payments are to begin. However, in such event, benefits may be payable under Section 6.7.

4. Notwithstanding the above, the surviving spouse may defer his or her Annuity Starting Date to any date on or before the later of:
  - a. The Participant's Normal Retirement Date; or
  - b. The first day of the month coincident with or next following the Participant's 62nd birthday.

In the event the surviving spouse defers the Annuity Starting Date for the survivorship benefit, the amount will be the amount which would have been payable to the surviving spouse as a survivor annuity if the Participant had retired with a Qualified Joint and Survivor Annuity two days before the deferred Annuity Starting Date and died the next day. If the Participant's spouse elects to defer the Annuity Starting Date for the survivorship benefits, and fails to survive the Annuity Starting Date, no survivorship benefits will be payable. However, in such event, benefits may be payable under Section 6.7.

5. The Trustees shall distribute the survivorship benefits to the surviving spouse at any time prior to the annuity starting date, in lump sum form, if the present value of the benefit does not exceed \$3,500.

For purposes of determining the present value of an annuity as of the date of distribution, the Plan is required to use an interest rate no greater than the rate used by the Pension Benefit Guaranty Corporation in valuing a lump sum distribution upon Plan termination.

#### 6.7 Beneficiary Annuity.

- A. A Beneficiary Annuity, as defined in Section 6.7B shall be paid to the beneficiary determined under Section 6.7C of any Participant who meets either of the following eligibility requirements:
  1. A vested Participant who dies before his Annuity Starting Date but has not met the requirements for a Qualified Preretirement Survivor Annuity; or
  2. A vested Participant who dies before his Annuity Starting Date while eligible for a Qualified Preretirement Survivor Annuity, but whose surviving spouse dies prior to the surviving spouse's Annuity Starting Date under the Qualified Preretirement Survivor Annuity.

- B. The Beneficiary Annuity is the monthly amount which would have been payable under the Normal Form of Benefits (a life annuity with a 60 month guarantee) commencing at the Participant's Normal Retirement Date, provided, however, that this amount is payable to the beneficiary or beneficiaries determined under Section 6.7C only for 60 months. Benefit payments to the beneficiary will commence with the first day of the first month following the month in which the Participant would have reached age 60 or if later, the first day of the month following the month in which the Participant dies.
- C. The beneficiary or beneficiaries entitled to the Beneficiary Annuity shall be determined in the same manner as the beneficiary is determined under Section 5.2.
- D. This Section shall be effective with regard to an eligible Participant whose death occurs on or after January 19, 1995.

## ARTICLE VII

### Vesting Requirement

7.1 General Rule. A Participant meets the requirements of Article VII, and is therefore "vested" for purposes of eligibility for plan benefits, if he meets one of the following requirements:

- A. A Participant who has completed ten years of vesting service as defined in Section 7.2 (excluding years of vesting service prior to a permanent break in service) is vested;
- B. A Participant who has completed five years of vesting service as defined in Section 7.2 (excluding years of vesting service prior to a permanent break in service) and whose participation ceases within the meaning of Article III after the Participant has reached the age of forty-five (45) is vested.
- C. A Participant whose termination of participation within the meaning of Article III occurs after the Participant has reached the age of sixty (60) is vested.
- D. For any Participant who has one hour of service on or after July 1, 1989 and who is not a Participant as a result of being covered under a collective bargaining agreement, that Participant is vested if he has completed five (5) years of vesting service (excluding years of vesting service prior to a permanent break in service).

7.2 Year of Vesting Service.

- A. The vesting computation period is the twelve month period commencing July 1 of each year and ending June 30 of the following year.
- B. A Participant whose Participation ceased (within the meaning of Article III) on or after January 1, 1976, earns a year of vesting service for any vesting computation period up to and including the vesting computation period which ended June 30, 1992, during which the Participant completed one hour of service, as defined in Section 1.19.
- C. For each vesting computation period commencing with the vesting computation period that begins July 1, 1992, a Participant earns a year of vesting service for each such vesting computation period during which the Participant completed 400 or more hours of service as defined in Section 1.19.
- D. Years of vesting service prior to a permanent break in service (as defined in Section 7.3D) are forfeited and do not count toward years of vesting service.
- E. A Participant who ceased participation prior to December 1, 1974, will be deemed to have completed 10 years of vesting service (or 5 years of vesting service if applicable) only if the Participant completes said years of vesting service in accordance with the rules contained in this Section 7.2 and if the date of the

Participant's cessation of participation is after the tenth anniversary (or if applicable, the fifth anniversary) of the date that the Participant first participated.

- F. For purposes of computing years of service for vesting only, hours of service with a Contributing Employer for which the Employer is not obligated to contribute to this Trust shall be counted provided that such noncovered service is contiguous with the Participant's service for which contributions were required. Noncovered service shall be considered as contiguous with covered service if there is no intervening quit, discharge or other termination. No benefits are accrued for contiguous noncovered service.

### 7.3 Break-in-Service

- A. A one year break in service occurs when, during any vesting computation period up to and including the vesting computation period that ended on June 30, 1992, a Participant has no hours of service. For vesting computation period beginning with the vesting computation period that begins on July 1, 1992 and thereafter, a one year break in service occurs when, during any such vesting computation period, a Participant or former Participant completes less than 400 hours of service.
- B. A Participant who experiences a one year break in service after he has become vested within the meaning of 7.1, is entitled to have his pre-break service counted for vesting and benefit accrual purposes.
- C. A Participant who experiences a one year break in service prior to becoming vested and who subsequently becomes a Participant in the Plan shall be entitled to have his years of vesting service and his years of accredited service for purposes of benefit computation prior to that one year break in service counted unless the break in service is a "permanent break in service" within the meaning of the following Section 7.3D. Conversely, years of service prior to a permanent break in service will not be counted.
- D. A Permanent Break in Service occurs if a nonvested Participant experiences consecutive one year breaks in service which equal or exceed, the greater of:
1. five years of service;
  2. the number of the Participant's years of service before the break in service.

## **ARTICLE VIII**

### **Forms of Benefit Payments**

8.1 Definitions. The following definitions apply for purposes of this Article VIII.

- A. The term "Annuity Starting Date" shall have the meaning set out in Section 1.24.
- B. A "Qualified Joint and Survivor Annuity" for a Participant who has been married to his spouse for at least one year immediately prior to his Annuity Starting Date is a form of annuity which pays a lifetime monthly pension payment to the Participant and upon the Participant's death, pays one-half of that amount in monthly payments to the Participant's "surviving spouse" for the life of the surviving spouse. The Qualified Joint and Survivor Annuity for a married Participant will be the actuarial equivalent of the amount which the Participant would receive under the Normal Form of Benefits under this Plan. The monthly amount of the Participant's pension is reduced in accordance with the actuarial assumptions used by the Plan and the ages of the Participant and his spouse.

A "Qualified Joint and Survivor Annuity" for a Participant who has not been married for one year immediately prior to his Annuity Starting Date is a life annuity. This annuity shall be the actuarial equivalent of the benefit which the Participant would have received under the Normal Form of Benefits under this Plan.

- C. The "surviving spouse" for purposes of this Article is the spouse to whom the Participant was lawfully married as of the Annuity Starting Date. If the "surviving spouse" predeceases the Participant, no survivorship annuity will be payable, even if the Participant remarries. The death of the surviving spouse prior to the Participant's death will not affect the amount of the monthly payment to the Participant.

**8.2 General Rule Concerning Form of Benefits.** Effective for any Participant whose Annuity Starting Date is July 1, 1976, or thereafter, benefits shall be paid in the form of a Qualified Joint and Survivor Annuity unless the Participant validly waives the Qualified Joint and Survivor Annuity in accordance with the provisions of Section 8.3. A Participant who was married as of his Annuity Starting Date, but has been married less than a year, will have his benefits converted to the Qualified Joint and Survivor Annuity for a married Participant on the one year anniversary of his marriage, if his spouse and the Participant are still surviving, unless the Participant validly waives the Qualified Joint and Survivor Annuity in accordance with the provisions of Section 8.3.

**8.3 Waiver of the Qualified Joint and Survivor Annuity.**

- A. A Participant who is otherwise required to receive his benefits in the form of a Qualified Joint and Survivor Annuity may waive said form of benefits by filing with the Fund Office a valid waiver during the election period. The election period is the ninety (90) day period prior to the Annuity Starting Date. Any valid election made during an election period prior to an Annuity Starting Date which is on or after the Participant's Normal Retirement Age will govern all payments of benefits earned thereafter. Any election may be revoked at any time during the election period.
- B. In order to be valid, an election to waive the Qualified Joint and Survivor Annuity must meet the following requirements:
1. It must be in writing.
  2. It must be filed no less than thirty (30) days and no more than ninety (90) days after the Participant receives the Notice and Explanation described in Section 8.4. The Notice and Explanation is presumed to be received on the third day after the date it is mailed.
  3. In the case of a Participant who has had one or more hours of service after August 23, 1984, the waiver must be consented to in writing by the Participant's spouse (unless such consent is not required under subsection 8.3B4). Said consent must also acknowledge in writing the effect of the election. The consent and acknowledgment required by this subsection must be witnessed by a notary public or a plan representative.

Effective for any election filed with regard to an Annuity Starting Date on or after July 1, 1987, the waiver and consent must name the designated beneficiary or beneficiaries, if any, who will receive survivorship benefits under the Plan and must name the form of benefits to be paid under the Plan, (subject to the following paragraph). If a consent names a designated beneficiary and/or a specific form of benefits, then any subsequent change to said designated beneficiary and/or form of benefits is invalid unless a new consent is obtained from the spouse, which meets the requirements of this Section 8.3.

If the consent does not name a specific beneficiary or beneficiaries or a specific form of benefits, or if the Participant and spouse desire that future changes in the beneficiary and/or form of benefits may be made without spousal consent, the consent must acknowledge that the spouse has the right to limit consent to a specific beneficiary and a specific form of benefits and the consent must voluntarily waive whichever (or both) of said rights, in accordance with the desires of the Participant and his spouse.

4. The consent described in this Section 8.3 is not required if it is established to the satisfaction of a plan representative that the consent otherwise required cannot be obtained because:
  - a. there is no spouse;
  - b. the spouse cannot be located; or

- c. such other circumstances exist as may be prescribed by the Secretary of the Treasury as sufficient to obviate the requirement of the spousal consent.

**8.4. Notice and Explanation of Qualified Joint and Survivor Annuity and the Right to Waive Qualified Joint and Survivor Annuity.**

- A. Within a reasonable time prior to the Annuity Starting Date, the Plan must provide the Participant with a notice in writing explaining the terms of the Qualified Joint and Survivor Annuity and the right to waive that Annuity Form of Benefit. This Notice will be provided within a reasonable period of time before the Participant's Normal Retirement Age and a reasonable period of time before any Early Retirement Date or Postponed Retirement Date. A Participant may not elect an Annuity Starting Date at any time before the 31st day after he has received the Notice.
- B. The Notice and Explanation must contain a written explanation of the following:
  - 1. The terms and conditions of the Qualified Joint and Survivor Annuity;
  - 2. The Participant's right to make an election to waive the Qualified Joint and Survivor Annuity and the procedure for making the election;
  - 3. The effect of an election to waive the Qualified Joint and Survivor form of benefit;
  - 4. The rights of the Participant's spouse, including the right to withhold consent; and
  - 5. The right to revoke an election to waive Qualified Joint and Survivor Annuity and the effect of such or revocation.

**8.5 Optional Forms of Retirement Benefits.**

- A. In the event a Participant validly waives the Qualified Joint and Survivor Annuity, he may elect to receive his benefits in any of the following optional forms:
  - 1. Life Annuity with a 60 month guarantee (described in Section 5.2 of this Plan).
  - 2. A Life Annuity with 120 month guarantee, which is the same form of payments as the life annuity with 60 month guarantee as described in Section 5.2, but the number of guaranteed payments is 120. This option may only be selected if the 120 monthly payments will not extend payments beyond the life expectancy of the Participant and his designated beneficiary.
  - 3. A Life Only Annuity which provides monthly benefit payments to the Participant for his lifetime with no further payments after the monthly payment for the month in which the Participant dies.
  - 4. A Joint and Full Survivor Annuity which provides monthly benefit payments to the Participant throughout his lifetime and, upon his death, continues monthly payments in the same amount to the "surviving spouse".
  - 5. A Joint and Two-Thirds Survivor Annuity, which provides monthly benefit payments to the Participant throughout his lifetime and, upon his death, continues monthly payment equal to 66-2/3% of the amount that the Participant was receiving, to the "surviving spouse".
- B. All optional forms of benefits (including the Qualified Joint and Survivor Annuity) shall be adjusted so that the actuarial value of the benefit is the actuarial equivalent of the Participant's accrued benefit stated in the Normal Form of Benefit (Section 5.2). Under this Plan, actuarial equivalent means that whenever it is necessary to convert one form of annuity to another form of annuity or to a lump sum, the result will be benefits substantially equal in value as determined by application of the 1971 Male Group Annuity Monthly tables and a 6-1/2% interest rate.

- C. Notwithstanding the foregoing, the Trustees shall distribute the Participant's benefits or the Beneficiary's benefits in the form of a lump sum payment on or prior to the annuity starting date if the present value of the benefits does not exceed \$3,500. For purposes of determining the present value of an annuity as of the date of distribution, the Plan shall use the interest rate established by the Pension Benefit Guaranty Corporation as of the beginning of the Plan Year for valuing a lump sum distribution upon plan termination or individual termination. This section shall not apply after the Annuity Starting Date unless the Participant or Beneficiary consents in writing to the single sum distribution.

## ARTICLE IX

### Application for and Timing of Benefit Distribution

9.1 Applications. A Participant or Beneficiary must apply in writing for any benefit payable under this Plan in a timely manner, in advance of the Annuity Starting Date. To be timely for this purpose, an application must be sufficient to give notice to the Trustees of the applicant's request to commence receipt of benefits under this Plan. Every Participant, Beneficiary or Pensioner shall furnish, at the request of the Trustees, any information or proof reasonably required to determine his benefit rights. If a person makes a willfully false statement material to an application or furnishes fraudulent information or proof, benefits not vested under this Plan (as defined in Article VII) may be denied, suspended or discontinued as determined by the Trustees. The Trustees shall have the right to recover any benefit payments made in reliance on any false or fraudulent statement, information or proof submitted by a Participant, Beneficiary or Pensioner.

9.2 Trustees. The Trustees shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case and the application and interpretation of the Plan including decisions concerning the eligibility of a Participant or Beneficiary to participate or his entitlement to benefits, and decisions of the Trustees shall be final and binding on all parties. In the event an application for benefits is denied in whole or in part, the Participant or Beneficiary must follow the Benefit Claim Procedure set forth in Article X. Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise such powers in a uniform and non-discriminatory manner.

9.3 Timing of Benefit Commencement. Payment of benefits may begin sooner but shall begin no later than 60 days after the last of the following dates, unless the Participant elects a later date (see section 6.2).

- A. The end of the Plan Year in which the Participant attained Normal Retirement Age;
- B. The end of the Plan Year in which the Participant left covered service;
- C. The Annuity Starting Date selected by the Participant on an application for benefits filed with the Plan;  
or
- D. The date the Trustees were first able to ascertain entitlement to, or the amount of, the Participant's Benefits.

9.4 Limitations on the Timing of Benefit Distribution.

- A. As set forth in Section 6.2, a Participant may elect to postpone his Annuity Starting Date to a date which is past his Normal Retirement Date, provided:
  - 1. Effective January 1, 1984, no Participant may postpone his Annuity Starting Date to a date later than April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70-1/2 or the calendar year in which he ceases working in covered employment. If a Participant owns 5% or more of the stock of a Contributing Employer, the benefit must begin no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2.
  - 2. Effective May 1, 1989, benefit commencement may not be postponed later than April 1 of the calendar year following the calendar year in which the Participant reaches age 70-1/2.

The latest date on which benefit payments may commence as set out in paragraph 9.4A1 and 2 is called the "required beginning date."

- B. Notwithstanding any provisions in the Plan to the contrary, benefit payment must meet the requirements of either of the following subsections:
1. Benefits shall be distributed in full prior to the "required beginning date", set out in subsection 9.4A, or
  2.
    - a. Distribution to a Participant must begin no later than the required beginning date and must be made over the life of the Participant (or lives of the Participant and the Participant's spouse), or over a period not exceeding the life expectancy of the Participant (or the life expectancies of the Participant and the Participant's spouse). Distributions (as described in this subsection) may be made to a Participant and a nonspouse Beneficiary provided the period used to determine the "life expectancies" remains as that of the Participant and the Participant's spouse.
    - b. If distribution of benefits has begun in accordance with the provisions of subsection 9.4B2a, and if the Participant dies before his or her entire interest is distributed, the remaining portion of the Participant's interest must be distributed at least as rapidly as under the distribution method being used as of the date of his death.
    - c. If a Participant dies before the distribution of the Participant's interest has begun in accordance with subsection 9.4B2a, then the entire interest of the Employee must be distributed by December 31 of the fifth calendar year following the year of the Participant's death, subject to the following:
      - (1) The five-year payout requirement shall not apply if:
        - (a) any portion of the Participant's interest is payable to (or for the benefit of) a designated beneficiary;
        - (b) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary); and
        - (c) such distributions begin not later than one year after the Participant's death or such later date as may be prescribed by regulations.
      - (2) If the designated beneficiary referred to in paragraph 9.4B2c(1) is the surviving spouse of the Participant, then:
        - (a) the date on which distributions are required to begin under 9.4B2c(1)(c) shall not be earlier than the date on which the Participant would have attained age 70-1/2; and
        - (b) if the surviving spouse dies before the distribution to such spouse begins, this subparagraph shall be applied as if the surviving spouse were the Participant.

## **ARTICLE X**

### **Benefit Claims Procedure**

Any claim for benefits under the Plan shall be made in writing to the Plan Administrator of the Plan on forms which will be provided upon request to the Fund Office. The Plan Administrator shall furnish the claimant with a written notice of his decision within ninety (90) days after receipt of the claim, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing the claim is required, written notice of the extension shall be furnished to the claimant prior to the expiration of the initial 90 day period. In no event shall such an extension exceed a period of 90 days after the expiration of the initial 90 day period.

In the event that the decision of the Plan Administrator is to wholly or partially deny a claim, the claimant shall be provided with a written decision which shall set forth in a manner calculated to be understood by the claimant the following:

- A. The specific reason or reasons for the denial;
- B. Specific reference to pertinent plan provisions on which the denial is based;
- C. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- D. Appropriate information as to the steps to be taken if the Participant or beneficiary wishes to submit his or her claim for review.

In the event a claim is wholly or partially denied, a claimant or his duly authorized representatives may appeal the claim to the Board of Trustees of the Plan by written application to the Board of Trustees filed within sixty (60) days after receipt by the claimant of written notification of denial of claim. Said application for review shall be available at the office of the Plan. The claimant shall have a right to have a duly authorized representative review pertinent documents and submit issues and comments in writing.

The decision by the Board of Trustees shall be made no later than the date of the meeting of the Board which immediately follows the Plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such a case, a decision may be made by no later than the date of the second meeting following the Plan's receipt of the request for review.

If special circumstances require an extension of time for reviewing the decision of the Plan Administrator, the decision of the Board of Trustees shall be rendered no later than the third meeting of the Board following the Plan's receipt of the request for review. If such an extension of time for review is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the Board shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent plan provisions on which the decision is based.

The benefit claims procedure provided herein is exclusive and no action shall be brought in any court or before any agency to recover any benefits or seek any relief under the Plan prior to the exhaustion of the remedies set forth herein.

## **ARTICLE XI**

### **Limitations on Benefits**

#### **11.1 Maximum Limitation.**

- A. Notwithstanding the other provisions of this Plan, the annual retirement benefit to which a Participant shall be entitled hereunder when aggregated with the benefit under all other Defined Benefit Plans maintained by the Employer, shall not exceed the lesser of:
  1. \$90,000; or
  2. 100% of the Employee's average annual compensation for the three highest consecutive calendar years during which he participated in the Plan or any other Plan maintained by the Employer.

The \$90,000 limit set forth in subparagraph (1) above shall be increased automatically to account for increases in the cost of living. Such cost of living adjustment shall be limited to scheduled increases in accordance with regulations issued by the Secretary of Treasury under Internal Revenue Code § 415(d), and shall be effective no sooner than January 1 of each year.

- B. For purposes of this section "compensation" shall mean the Employee's earned income, wages, salaries and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the plan (including, but not limited to, commissions paid to salesmen, percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following:
1. Employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed or Employer contributions under a simplified Employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation.
  2. Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the Employer either becomes freely transferrable or is no longer subject to a substantial risk of forfeiture.
  3. Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option plan.
  4. Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Section 403(b) of the Internal Revenue Code (whether or not the amounts are actually excludable from the gross income of the Employee).
- C. In the case of a Participant who has less than 10 years of accredited service for purposes of benefit accrual, the limitations set forth in subsections B1 and 2 of this section shall be multiplied by a fraction, the numerator of which is the number of the Participant's such years of service and the denominator of which is 10.
- D. The following additional rules apply for plan years beginning July 1, 1983 to July 1, 1986, inclusive: in the case of a Participant whose benefits hereunder commence prior to his attainment of age 62, the limitation set forth in subsection A1 of this section shall, in accordance with the regulations issued by the Secretary of Treasury, be adjusted so that it is the equivalent to such a benefit beginning at age 62, provided that such an adjustment shall not reduce such limitation below:
1. If the benefit commences after the Employee attains age 55, \$75,000, or
  2. If the benefit commences before the Employee attains age 55, the amount which is the actuarial equivalent to the \$75,000 limitation at age 55.

In the case of an Employee whose benefits hereunder commence after he has attained the age of 65, the limitation set forth in subsection A1 of this section shall, in accordance with regulations issued by the Secretary of Treasury, be adjusted so that it is the actuarial equivalent to the dollar limitation for a benefit commencing at age 65. For purposes of adjusting any benefit under this subsection, the interest rate assumption shall be 5%.

- E. Notwithstanding the limitations of subsection A of this section, if a Participant was covered by the Plan before the first day of the Limitation Year beginning in 1983, he may receive an annual retirement benefit which is not less than the amount of his current accrued benefit as of the close of the last Limitation Year beginning before 1983, as determined under the terms of the Plan as then in effect disregarding any amendments or cost of living adjustments after July 1, 1982. For purposes of this Section, the term "Limitation Year" shall mean the Plan Credit Year.
- F. The following rules apply for Plan Years beginning July 1, 1987 and thereafter. In the case of a participant whose Annuity Starting Date is prior to Social Security Retirement Age, the \$90,000 limitation contained in Section 11.1A1 shall be actuarially reduced so that it is the actuarial equivalent of an annual benefit of

\$90,000 commencing at the Social Security Retirement Age. In the case of a Participant whose Annuity Starting Date is after Social Security Retirement Age, the \$90,000 limitation contained in Section 11.1A1 shall be actuarially increased so that it is the actuarial equivalent of an annual benefit of \$90,000 commencing at the Social Security Retirement Age.

- G. If a Participant covered by this Plan participates in both Defined Benefit and Defined Contributions Plans maintained by the Employer, the sum of 1 and 2 below may not exceed 1.0:
1. The sum of the projected annual benefit of the Employee under all Defined Benefit pension plans of the Employer determined as of the close of the Limitation Year, divided by the lesser of:
    - a. The product of 1.25 multiplied by the dollar limitation in effect under Section 415(b)(1)(A) of the Internal Revenue Code for such year, or
    - b. The product of 1.4 multiplied by the amount which may be taken into account under Section 415(b)(1)(B) of the Internal Revenue Code with respect to such Employee for such year.
  2. The sum of the annual additions to the Employee's account under all defined contributions plans of the Employer as of the close of the Limitation Year and for all prior Calendar Years divided by the sum of the lesser of a or b for such year and for each prior year of service with the Employer (regardless of whether any such defined contribution plan was in existence during those years), where:
    - a. Is the product of 1.25 multiplied by the dollar limitation in effect under Section 415(c)(1)(A) of the Internal Revenue Code for such year (without regard to Section 415(c)(6) of such Code); and
    - b. Is the product of 1.4 multiplied by the same amount which may be taken into account under Section 415(c)(1)(B) of the Internal Revenue Code (or Section 415(c)(7) of such Code, if applicable) with respect to such individual under such plan for such year; provided however, that the Board of Trustees may elect that the amount taken into account for each Employee for all years ending before January 1, 1983, under a and b above shall be determined pursuant to the special transition rule in such Section 415(e)(6) of the Internal Revenue Code.

If this Plan is aggregated with another Plan that was in existence on July 1, 1982, and the above limitations are not met, each Participant for whom the limits are violated will not receive any annual additions or accruals in this Plan. In the event that at the earlier to occur of each December 31 or the date of an Employee retirement or termination, the sum of 1 and 2 above exceeds 1.0 and the benefit of such Employee under such other Plan or Plans is not reduced to bring such sum to 1.0, then such Employee's benefits under this Plan shall be reduced by an amount sufficient to cause the sum of 1 and 2 above for each Employee to equal 1.0.

## **ARTICLE XII**

### **Miscellaneous Provisions**

12.1 **Military Service.** Service in the armed forces of the United States shall, upon return to employment covered by this Plan, be credited for purposes of participation, benefit accrual and vesting to the extent required by law.

12.2 **Spendthrift Trust/Non Alienation or Assignability of Benefits.**

- A. No Participant shall, under this Trust, have any legal right, title or interest in the Trust or any contract issued concerning his participation, and any such Participant's interest, beneficial or otherwise, shall be limited to that provided in this Trust and under any contract on such Participant.

To the extent permitted by law, and except as provided in paragraph (b), the Participant shall not be permitted to anticipate, encumber, alienate or assign any of his rights, claims or interest in this Trust or

contract, or any part thereof, except upon the written authority of the Trustees, and such authority, if granted and it relates to a contract, shall have been filed with the issuing insurance company during the lifetime of the Participant and neither the contract nor any part thereof, nor any payments, benefits, or rights arising by reason of this Trust, shall be in any way subject to the Participant's debts, contracts or engagements, nor to any judicial processes to levy upon or attach the same for payment thereof.

- B. All other provisions of this Section and this Plan notwithstanding, the Plan shall pay benefits in accordance with any domestic relations order which is determined to be a Qualified Domestic Relations Order within the meaning of Section 414(p) of the Internal Revenue Code. The Trustees shall adopt a written procedure for determining the qualified status of domestic relations orders and for administering distributions under such qualified orders.

12.3 Non Reversion to Employer. It is expressly understood that in no event shall any of the corpus or assets of the Pension Fund revert to the Employers or be subject to any claims of any kind or nature by the Employers.

12.4 Funds in Trustees' Possession for Benefit of Participant and Beneficiaries. Any funds coming into the hands of the Trustees from any source whatsoever, less reasonable expenses of administering this Trust as may be determined from time to time by the Trustees, shall be used solely to provide the benefits enumerated herein for eligible Participants and Beneficiaries. The sources of these funds shall include contributions from Employers, interest and other earnings on investments, dividends from an insurance company, other credits that may be granted by the insurance company and other income from any source whatsoever.

12.5 Limitation of Liability. The Pension Plan has been established on the basis of an actuarial calculation which has established, to the extent possible, that contributions will, if continued, be sufficient to maintain the Plan on a permanent basis, fulfilling the funding requirements of ERISA. Except for liabilities which may result from provisions of ERISA, or other applicable law, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions as stipulated in its collective bargaining with the Union, and there shall be no liability upon the Trustees individually, or collectively, or upon the Union to provide benefits established by this Pension Plan, if the Pension Fund does not have assets to make such payments.

12.6 Liability of Employer/Liability of Participants. The liability of any individual employer to the Fund shall in no event extend to the obligations of another participating employer or other participating employers.

The individual Participants shall not be required to make any payments or contributions to the cost of the operation of the Fund or in connection with the administration of the Trust hereby established or otherwise. No individual Participant shall be liable or responsible for any debts, liabilities or obligations of the Trust or Trustees.

12.7 Rollover Distributions.

- A. This section 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 section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. Definitions.

1. 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; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

2. **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
3. **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the 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.
4. **Direct rollover:** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

## 12.8 Top-Heavy Provisions

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

1. Key Employee.

"Key Employee" means an employee or former employee (and the beneficiary of such employee) meeting the definition of "Key Employee" contained in Section 416(i)(1) of the Internal Revenue Code and Section 1.416-1 of the Treasury Regulations.

2. Non-Key Employee.

"Non-Key Employee" means any Employee who is not a Key Employee.

3. Annual Compensation Limitation.

- a. For Plan Credit Years beginning on or after July 1, 1994, the amount of a Participant's Compensation (as defined in subsection 11.1 B above) from any single employer that may be taken into account for any Plan purpose in any Plan Credit Year is \$150,000, as that amount may be adjusted from time to time by the Secretary of the Treasury under Section 401(a)(17) of the Internal Revenue Code.
- b. Notwithstanding any other provision of the Plan, effective July 1, 1994, the accrued benefit of any Participant whose Compensation exceeded \$150,000 in any Plan Credit Year beginning before August 1, 1994, shall be the greater of:

the sum of

- (1) The Participant's accrued benefit as of June 30, 1994, determined under Article V as though the Participant had terminated employment on that date and without regard to any Plan amendments adopted after that date (but taking into account remedial amendments that apply retroactively before that date under Section 401(b) of the Internal Revenue Code), plus
- (2) the amount of the Participant's benefit accrued on or after July 1, 1994, under Article V, taking into account only years of service after June 30, 1994, and

the Participant's accrued benefit, determined under Article V, taking into account all Years of Service before and after July 1, 1994.

4. Determination Date.

"Determination Date" means, with respect to any Plan Credit Year, the last day of the preceding Plan

Credit Year, or in the case of the first Plan Credit Years of any Plan, the last day of such Plan Credit Year.

**B. Top-Heavy Plan Requirements.**

Effective January 1, 1984, for any Top-Heavy Plan Credit Year, the Plan shall provide the following:

1. This Plan shall be a Top-Heavy Plan for any Plan Credit Year commencing after December 31, 1983, in which, as of the Determination Date,
  - a. the present value of accrued benefits of Key Employees and
  - b. the sum of the aggregate accounts of Key Employees under this Plan and all plans of an Aggregation Group exceeds sixty percent (60%) of the present value of accrued benefits and the aggregate accounts of all Key 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 Credit Year, but such Participant was a Key Employee for any prior Plan Credit 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 Plan (or whether any Aggregation Group which includes this Plan is a Top-Heavy Group). In addition, for Plan Credit Years beginning after December 31, 1984, if a Participant or former Participant has not performed services for any Employer maintaining 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.

2. 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.
3. "Aggregation Group" means either a Required Aggregation Group or a Permissive Aggregation Group as hereinafter determined.
  - a. 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 a Key Employee participates to meet the requirements of Sections 401(a)(4) and 410 of the Internal Revenue 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 Plan. No plan in the Required Aggregation Group is a Top-Heavy Plan if the Required Aggregation Group is not a Top-Heavy Plan.

- b. 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 of the Internal Revenue 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 Plan. No plan in the Permissive Aggregation Group will be considered a Top-Heavy Plan if the Permissive Aggregation Group is not a Top-Heavy Plan.

- c. Only those plans of an Employer in which the Determination Dates fall within the same Plan Credit Year shall be aggregated in order to determine whether such plans are Top-Heavy Plans.
4. In the case of a defined benefit plan, a Participant's present value of accrued benefits shall be determined:
    - a. 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;
    - b. for the first Plan Credit Year, as if:
      - the Participant terminated service as of the Determination Date; or
      - 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.
    - c. for any other Plan Credit Year, as if the Participant terminated service as of the actuarial valuation date,
    - d. 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 Credit Year.
  5. The calculation of a Participant's present value of accrued benefit as of a Determination Date shall be the sum of the following:
    - a. the present value of accrued benefit using actuarial assumptions stated in the most recent actuarial valuation;
    - b. any Plan distributions made within the Plan Credit Year that includes the Determination Date or within four preceding Plan Credit 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 of accrued benefit as of the valuation date.

Notwithstanding anything herein to the contrary, all distributions, including distributions made prior to July 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;

- c. 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;
- d. with respect to unrelated rollovers and plan-to-plan transfer (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 June 30, 1984, as part of the Participant's present value of accrued benefits. However, rollovers or plan-to-plan transfers accepted prior to July 1, 1984, shall be considered as part of the Participant's present value of accrued benefits; and
- e. 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.

- f. "Top-Heavy Group" means an Aggregation Group in which, as of the Determination Date, the sum of:
- (1) the present value of accrued benefits of Key Employees under all defined benefit plans included in the group; and
  - (2) the aggregate accounts of Key Employees under all defined contribution plans included in the group exceeds sixty percent (60%) of a similar sum determined for all Participants.
- g. Notwithstanding anything herein to the contrary, the effective date otherwise provided for herein for the application of Section 416 of the Internal Revenue Code to this Plan (Plan Credit Years beginning after December 31, 1983) shall be extended in accordance with any federal law or regulatory authority.

**C. Top-Heavy Vesting.**

1. Notwithstanding the determination of Vested Status in accordance with Article VII of the Plan for any Top-Heavy Plan Credit Year, the vested portion of any Participant's accrued benefit shall be determined on the basis of the Participant's number of Years of Vesting Service according to the following schedule:

<b>Service for Vesting (excluding Years of Service for Vesting prior to effective date of this Plan)</b>	<b>Vested percentage</b>
1 year	0%
2 years	0%
3 years	100%

2. If, in any subsequent Plan Credit Year, the Plan ceases to be a Top-Heavy Plan, the Trustees may elect to:
  - a. continue to apply this vesting schedule in determining the vested portion of any Participant's accrued benefit; or
  - b. revert to the vesting schedule in effect before this Plan became a Top-Heavy Plan pursuant to Section 411(a)(10) of the Internal Revenue Code. The nonforfeitable percentage of the accrued benefit before the Plan ceased being Top-Heavy, therefore must not be reduced and any Participant with three or more Years of Vesting Service must be given the option of remaining under the Top-Heavy vesting schedule. Any such reversion shall be treated as a Plan amendment.
3. The Top-Heavy vesting schedule does not apply to the accrued benefit of any Employee who does not have one hour of work after the Plan has initially become a Top-Heavy Plan and such Employee's accrued benefit attributable to Employer contributions will be determined without regard to this Article.

**D. Top-Heavy Benefit Requirement.**

1. The minimum accrued benefit derived from Employer contributions to be provided under this section for each Non-Key Employee who is a Participant shall equal the product of:
  - a. one-twelfth (1/12th) of Annual Compensation averaged over the five consecutive "limitation years" (or actual number of "limitation years" if less) which produces the highest average, and
  - b. the lesser of

- (1) two percent (2%) multiplied by Years of Vesting Service; or
  - (2) twenty percent (20%).
2. For purposes of providing the minimum benefit under Section 416 of the Internal Revenue Code, a Non-Key Employee who is not a Participant solely because:
    - a. his Annual Compensation is below a stated amount, or
    - b. he declined to make mandatory contributions to the Plan will be considered to be a Participant.
  3. For purposes of this section, Years of Vesting Service for any Plan Credit Year ending prior to July 1, 1984, or for any Plan Credit Year during which the Plan was not a Top-Heavy Plan shall be disregarded.
  4. For purposes of this section, Annual Compensation for any "limitation year" ending prior to July 1, 1984, or subsequent to the last "limitation year" during which the Plan is a Top-Heavy Plan shall be disregarded. The term "limitation year" means the Plan Credit Year.
  5. If the Plan provides for the normal retirement benefit to be paid in a form other than a single life annuity, the accrued benefit under this section shall be the Actuarial Equivalence of the minimum accrued benefit under Article V.
  6. If payment of the minimum accrued benefit commences at a date other than Normal Retirement Age, the minimum accrued benefit shall be adjusted in accordance with Article VI of the Plan.
  7. If a Non-Key Employee participates in this Plan and a defined contribution plan included in a Required Aggregation Group which is Top-Heavy, the minimum benefits shall be provided under this Plan.
  6. To the extent required to be nonforfeitable under Article VII 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 Internal Revenue Code.

### **ARTICLE XIII**

#### **Right to Amend**

The Trustees shall have the sole right to amend this Plan and Trust without the consent of any Participant, at any time from time to time as may be deemed advisable; provided, however, that no amendment to this Trust shall deprive any Participant of any accrued benefit or vested equitable interest herein, if any, nor shall such amendment be contrary to any laws in existence or enacted by the Federal or State Government directly concerning this Trust, provided that the Trustees may adopt an amendment

- A. If it is necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Internal Revenue Code and to maintain compliance of the Plan with the requirements of ERISA; or
- B. If the amendment meets the requirements of Section 302(c)(8) of ERISA and Section 412(c)(8) of the Internal Revenue Code, and the Secretary of Labor has been notified of such amendment and has either approved of it or, within 90 days after the date on which such notice was filed, has failed to disapprove.

Either the Trustees representing the Union or the Trustees representing the Employers may propose amendments to this Trust. Such amendment will become effective when it has been approved and executed by a majority of the Trustees. All amendments adopted relevant to the continuing qualification of this Plan and Trust under the Internal Revenue Code shall be submitted to the United States Internal Revenue Service for its determination of the qualification of such amendment.

## ARTICLE XIV

### Termination

- A. Right to Terminate. The Trustees shall have the right to discontinue or terminate this Plan in whole or in part. The rights of all affected Participants to benefits accrued to the date of the termination, partial termination, or discontinuance to the extent funded as of such date shall be nonforfeitable.
- B. Priorities of Allocation. In the event of termination, the assets then remaining in the Plan, after providing for any administrative expenses, shall be allocated among the Pensioners, Beneficiaries, and Participants in the following order:
1. First in the case of benefits payable as a pension:
    - a. In the case of the pension of a Participant or Beneficiary which was in pay status as of the beginning of the three year period ending on the termination date of the Plan, to each pension, based on the provisions of the Plan (as in effect during the five year period ending on such date) under which such pension would be the least. The lowest pension in pay status during the three year period shall be considered the pension in pay status for such period.
    - b. In the case of a pension of a Participant or Beneficiary which would have been in pay status as of the beginning of such three year period if the Participant had retired prior to the beginning of the three year period if his pension had commenced (in the standard form) as of the beginning of such period, to each such pension based on the provisions of the Plan (as in effect during the five year period ending on such date) under which the pension would be the least.
  2. Second, to all other benefits (if any) of the individuals under the Plan guaranteed under Title IV of ERISA.
  3. Third, to all other vested benefits under the Plan.
  4. Fourth, to all other benefits under the Plan.
- C. Allocation Procedure. For purposes of subsection B hereof:
1. The amount allocated under any paragraph of subsection B with respect to any benefit shall be properly adjusted for any allocation of assets with respect to that benefit under a prior paragraph of that subsection.
  2. If the assets available for allocation under any paragraph of subsection B (other than Paragraphs 3 and 4) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro-rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.
  3. This paragraph applies if the assets available for allocation under paragraph B3 are not sufficient to satisfy in full the benefits of individuals described in that paragraph.
    - a. If this paragraph applies, except as provided in subparagraph b below, the assets shall be allocated to the benefits of individuals described in paragraph B3 on the basis of the benefits of individuals which would have been described in such paragraph B3 under the Plan as in effect at the beginning of the five year period ending on the date of the Plan termination.
    - b. If the assets available for allocation under subparagraph a above, are sufficient to satisfy in full the benefits described in such subparagraph (without regard to this subparagraph), then for purposes of subparagraph a, benefits of individuals described in such subparagraph shall be determined on the basis of the Plan as amended by the most recent amendment effective during

such five year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subparagraph a and any assets remaining to be allocated under subparagraph a on the basis of the Plan as amended by the next succeeding Plan Amendment effective during such period.

## ARTICLE XV

### Merger or Consolidation

The Trustees shall not merge or consolidate this Plan with any other Plan or transfer the assets or liabilities of this Plan to any other Plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit said Participant would have been entitled to receive immediately before the merger, consolidation or transfer (if the Plan had then terminated).

## ARTICLE XVI

### Trustees

Trustees herein have been selected as follows: JOSEPH SHATRO, JAMES E. ENGEL AND RICHARD J. BRYAN have been selected by the Union and H. FRED PHILIPP, JR., RICHARD SUNDERMEYER, SR., and DAN WIENSTROER have been selected by the Employers. The total number of Trustees designated by the Union and the total number of Trustees designated by the Employers shall at all times be equal, regardless of the number of Employers who may be contributing to the Fund. The term "Trustee" as used herein shall mean any natural person designated as a Trustee and selected by the Union or the Employer. The Board of Trustees shall be the plan sponsor, administrator and named fiduciaries of the Plan.

Any Trustee may resign by giving thirty (30) days' notice in the United States mail to the other Trustees and to the Board of his intent to so resign. The Union may discharge any of the Trustees appointed by it, by giving thirty (30) days' notice in the United States Mail of such intent to discharge. The Employers may discharge any of the Trustees appointed by them, by giving thirty (30) days notice in the United States Mail of such intent to discharge. The removal of a Trustee shall be automatic at the end of a 30-day period of notification by either the Trustee or the Union or the Employers, as described above, of resignation or removal.

In the event any of the Trustees selected by the Union shall die, be incapable of acting hereunder, resign or be removed, a successor Trustee shall immediately be appointed by the Union duly certified by the Board. In the event any of the Trustees selected by the Employers shall die, become incapable of acting hereunder, resign or be removed, a successor Trustee shall immediately be appointed by the Employers duly certified by the Board. Failure of the Union or the Employers to select a successor Trustee promptly shall not prevent the remaining Trustees from carrying on the affairs of this Trust.

For purposes of this Plan, the Trustees are authorized to perform any of the above functions and shall be the Plan Fiduciaries. The Fiduciaries may act in one or more fiduciary capacities with respect to the Plan and may allocate to others certain aspects of the management and operation responsibilities of the Plan including the employment of investment (and other) advisors and investment managers for all or part of the Plan assets and the delegation of any ministerial duties or functions to qualified individuals. The Fiduciaries shall be responsible for determining the Plan's short and long-run financial needs from time to time and on the basis thereof shall establish a funding policy and method which will carry out the Plan's objectives and needs. The Trustees shall from time to time adopt appropriate resolutions defining such investment objectives.

The Trustees shall designate one Trustee as Managing Trustee, and may, from time to time thereafter, change such designation. Such Managing Trustee shall have the following rights and powers, in the name of and in behalf of, all of the Trustees with full and binding obligation and effect upon all the Trustees, to-wit: to receive contributions, to

open bank accounts, to sign checks, to pay insurance premiums, to keep records of receipts, disbursements and monies on hand and held in the Trust Fund, to keep records of all benefits provided Participants in the Pension Fund, to hire such corporation or person as may be required for the efficient administration of the Trust Fund (including a Plan Administrator), to purchase all supplies needed for the proper bookkeeping and proper administration of the Trust Fund and to expend from the Funds available, any money necessary for these purposes, to have the books of the Trust Fund audited annually, to have the books and auditor's report available for inspection at all times by the other Trustees, Participants, Officers of the Union and Employers, and to perform such other functions and duties of a purely ministerial nature as may be determined from time to time by the Trustees in the interest of the proper and efficient administration of the Trust. The Trustees shall further have the right to audit the books of a participating employer when such is deemed necessary or desirable for the effective administration of the Trust. The Trustees shall designate one Trustee as Chairman to serve for a term of one year commencing with the date of election and until a successor chairman is thereafter selected for the purpose of presiding at the meetings of the Trustees. The Chairman shall be alternately selected from the Trustees representing the Employers and the Trustees representing the Union.

A quorum for the transaction of business shall consist of the presence at the meeting of at least four (4) Trustees, two (2) of whom represent Employers and two (2) of whom represent the Union. Decisions of the Trustees shall be made by majority vote. If an unequal number of Employer and Union Trustees attend a meeting, the voting power of the group with less Trustees present shall be and stand increased to that of the group with more Trustees present so that there shall be equal voting strength between Employer and Union Trustees at all times at such meeting. A deadlock shall be deemed to exist whenever either of following situations arise: (1) whenever a proposal, nomination, motion or resolution or other matter is voted upon and the votes cast are evenly divided and remain evenly divided; and (2) whenever a quorum is lacking at a meeting duly called and there shall be absent from said meeting two (2) or more Trustees of one group, and a majority of the Trustees present declare a deadlock due to the inability to obtain a quorum. In the event of such deadlock in either case arising, the Employer Trustees and the Union Trustees shall meet promptly for the purpose of agreeing upon an impartial umpire to break such deadlock by casting the deciding vote or deciding any dispute in question or matter under consideration. In the event of the inability of the Employer Trustees and Union Trustees to agree upon the selection of such impartial umpire, then such impartial umpire shall, on the petition of either the Employer Trustees or Union Trustees, be appointed by the Chief Judge of the United States District Court for the district wherein the principal office of the Trust is located. The decision of any such impartial umpire shall be final and binding on the Trustees and all concerned.

Either the Chairman or the Managing Trustee or any two (2) Trustees may call a meeting of the Trustees at any time by giving at least five (5) days' written notice of the time and place thereof to each Trustee. Any meeting so called may be postponed once for a reasonable period upon the request of any Trustee upon showing of justifiable cause therefor. Any meeting of the Trustees may also be held at any time without notice if all of the Trustees consent thereto in writing or if all attend and act. If all of the Trustees shall concur in writing upon any proposition, no formal meeting thereon need be held by Trustees. The Managing Trustee, in the written notice, shall notify the Trustees of the subjects to be discussed but this shall not be construed to limit any other subjects of discussion properly placed before the meeting.

The Trustees and Fund Office personnel may receive reimbursement for expenses properly and actually incurred in the performance of their duties, including but not limited to expenses incurred in attending educational conferences, seminars and meetings, provided that the trustees determine in each case the subject matter of the conference, seminar or meeting is relevant to the administration of this Trust and that the expenses incurred are reasonable. The Trustees may adopt travel expenditure guidelines for such expenses. Reasonable compensation may be paid to the Trustees for services rendered in the performance of their duties as Trustees provided such payments are made in accordance with the Federal and State laws and regulations then in effect governing Trusts.

## ARTICLE XVII

### Trustees' Powers and Duties

The Trustees shall have general supervision of the operation of the Trust Fund and shall conduct the business and activities of the same according to law and this Trust Agreement. The Trustees shall have the obligation to receive, hold and administer monies or other funds received by them from Employers (and from any Employer who may hereafter agree to be bound by the terms and provisions of this instrument), or otherwise, in Trust under the terms

hereof. In order to carry out and effectuate the purposes hereof, the Trustees shall have the power and authority to adopt uniform rules and regulations as are consistent with and necessary for effectuating the provisions of this Agreement.

The Trustees shall deposit all monies received by them in such bank or banks as they may designate for the purpose and may, in their sole and absolute discretion if they deem it advisable, invest and reinvest such funds as they do not require for current expenditure in such securities as are legal for the investment of pension trust funds under the laws of the United States and the State of Missouri.

No party dealing with the Trustees in relation to this Trust shall be obligated to see to the application of any money or property of the Trust Fund, or to see that the terms of this Trust have been complied with or be obliged to inquire into the necessity or expedience of any act of the Trustees and every instrument executed by the Trustees shall be conclusive in favor of every person relying thereon, provided: (1) that at the time of the delivery of said instrument the Trust hereby created was in full force and effect; and (2) that said instrument was executed in accordance with the terms and conditions contained in this Trust Agreement.

The payment of money to the Trustees shall effectually discharge the person or persons paying or transferring the same, and such person or persons shall not be bound to see to the application or be answerable for the loss or misapplication thereof.

The Trustees shall have the authority to delegate duties amongst themselves and to others to the full extent permitted by law.

The Trustees shall have the authority to reasonably request of any Employer, and an Employer when so reasonably requested, shall furnish to the Trustees such information and reports as may be necessary in the performance of their duties under this Agreement and Declaration of Trust.

The Trustees and all their agents who handle funds of this Trust shall furnish such bond as may be required by law, and shall be responsible, further, for the proper execution and administration of the terms of the Trust.

The Trustees shall: (a) prescribe procedures for appeals from the denial of any trust benefits, and serve as an appeals board for a full, fair and final review of any such denial; (b) retain a qualified public accountant and an enrolled actuary; (c) prepare annual registrations required with respect to rights of terminated employees with vested interests and with respect to trust mergers and terminations; (d) comply with requirements with respect to Plan descriptions and other reports to be provided to the Secretary of Labor and Participants; (e) submit annual reports and make proper notification of reportable events; (f) provide statements of accrued benefits at the request of the Participant; (g) pay Plan Termination Insurance premiums to the Pension Benefit Guaranty Corporation, and, when required, file Notice of Termination with the Pension Benefit Guaranty Corporation; (h) maintain the funding standard account for the purposes of the Plan required by the Employee Retirement Income Security Act of 1974, or as thereafter amended; (i) designate the Managing Trustee as the agent for service of process in any legal action initiated under the Employee Retirement Income Security Act of 1974, or as thereafter amended; (j) adopt a cost method, actuarial assumptions, basis for evaluation of assets, and a funding method and policy for purposes of actuarial cost calculations under the Plan, in accordance with the Employee Retirement Income Security Act of 1974, or as thereafter amended; (k) authorize the enrolled actuary to study the actual experience under the Plan in comparison to actuarial assumptions and to make actuarial calculations to determine whether anticipated benefits may reasonably be provided by anticipated contributions and existing assets of the Plan at least once every three years; (l) have the authority to such further actions, retain or employ such additional personnel (including but not limited to an Investment Manager within the meaning of ERISA) and expend Trust assets as they deem necessary in the administration and operation of the Trust and in the vested interests of the Participants.

## ARTICLE XVIII

### Governmental Approval

It is the intent that the provisions of this Trust and Agreement conform with all Federal and State laws, including the Employee Retirement Income Security Act of 1974, and all applicable regulations thereunder. It is specifically

intended that this Agreement be submitted to the Internal Revenue Service for its approval as conforming with all Internal Revenue Service regulations regarding qualified pension plans, and if any of the provisions are in conflict with any laws or regulations referred to herein, said provisions will be amended to conform with any laws or rulings.

## **ARTICLE XIX**

### **Effective Date**

This Restated Plan shall be effective July 1, 1994, unless otherwise specifically provided.

#### **UNION TRUSTEES**

**JOSEPH SHATRO  
RICHARD J. BRYAN  
JAMES E. ENGEL**

#### **EMPLOYER TRUSTEES**

**H. FRED PHILIPP, JR.  
RICHARD SUNDERMEYER, SR.  
DAN WIENSTROER**

## AMENDMENTS TO PAINTERS DISTRICT COUNCIL NO. 2 PENSION TRUST AND PLAN AGREEMENT

The Trustees of the Painters District Council No. 2 Pension Trust and Plan Agreement hereby adopt the following amendments to the Trust and Plan Agreement.

1. The first paragraph of the preamble is deleted and the following is inserted in its place:

**THIS AGREEMENT**, first made and entered into as of the first day of July, 1964, by and between **ST. LOUIS PAINTERS AND DECORATORS JOINT TRADE BOARD, INC.**, a Missouri pro forma decree corporation, hereinafter referred to as the **BOARD**, and any other employers, hereinafter referred to as **EMPLOYERS**, who adhere to the area practice and who have a contract with Painters District Council No. 2, hereinafter referred to as the **UNION**, and certain named individuals, as initial trustees, whose successors currently are **JOSEPH SHATRO, RICHARD J. BRYAN, JAMES E. ENGEL, H. FRED PHILIPP, JR., PAUL MEYER, and DAN WIENSTROER.**

2. The first sentence of Article XVI is deleted and the following is inserted in its place:

Trustees herein have been selected as follows: **JOSEPH SHATRO, RICHARD J. BRYAN and JAMES E. ENGEL** have been selected by the Union and **H. FRED PHILIPP, JR., PAUL MEYER and DAN WIENSTROER** have been selected by the Employers.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
<b>JOSEPH SHATRO</b>	<b>11-22-95</b>	<b>H. FRED PHILIPP, JR.</b>	<b>11-22-95</b>
<b>RICHARD J. BRYAN</b>	<b>11-22-95</b>	<b>PAUL MEYER</b>	<b>11-22-95</b>
<b>JAMES E. ENGEL</b>	<b>11-22-95</b>	<b>DAN WIENSTROER</b>	<b>11-22-95</b>

**AMENDMENT NO. 2 TO PAINTERS DISTRICT COUNCIL NO. 2  
PENSION TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust and Plan Agreement hereby adopt the following Amendment No. 2 to the Painters District Council No. 2 Pension Trust and Plan Agreement, (which restatement is effective July 1, 1994). This Amendment is to be submitted to the Internal Revenue Service for approval and the adoption of said Amendment is contingent upon said approval.

1. Section 6.1 is hereby amended by deleting the third sentence of the fourth full paragraph and substituting therefor the following:

Notwithstanding the reduction set forth in the previous sentence, a Participant who completes 1,200 or more hours of service in any Plan Year after his Annuity Starting Date, commencing with the Plan Year beginning July 1, 1994, shall accrue at least the benefit set forth in the following table.

**UNION TRUSTEES**

**JOSEPH SHATRO  
RICHARD J. BRYAN  
JAMES E. ENGEL**

**EMPLOYER TRUSTEES**

**H. FRED PHILIPP, JR.  
DAN WIENSTROER  
PAUL MEYER**

## AMENDMENT NO. 3 TO PAINTERS DISTRICT COUNCIL NO. 2 PENSION TRUST AND PLAN AGREEMENT

The Trustees of the Painters District Council No. 2 Pension Trust and Plan Agreement (which restatement is effective July 1, 1994), hereby adopts the following Amendment No. 3 to the Painters District Council Pension Trust and Plan Agreement. This Amendment is to be submitted to the Internal Revenue Service for approval and the adoption of said Amendment is contingent upon said approval.

1. Section 5.3B is revised with regard to the Table entitled:

"Subject to Subsection 5.3C3 Future Service Credits from and after 7/1/94"  
by changing said title by adding the words "thru 6/30/96" at the end of said title.

2. Section 5.3B is revised by adding a Table, to read as follows:

Subject to Subsection 5.3C3 Future Service Credits from and after 7/1/96:

400 - 600	\$ 44.95
601 - 800	63.90
801 - 1000	81.65
1001 - 1200	100.60
1201 - 1400	118.35
1401 - 1600	136.10
1601 - 1800	155.05
1801 - 2000	172.80
2001 - 2200	191.75
2201 - 2400	209.50
2401 - 2600	227.25
2601 - 2800	246.15
2801 - 3000	263.90
3001 - 3200	281.65
3201 -	281.65

### UNION TRUSTEES

JOSEPH SHATRO  
RICHARD J. BRYAN  
JAMES E. ENGEL

### EMPLOYER TRUSTEES

H. FRED PHILIPP, JR.  
DAN WIENSTROER  
PAUL MEYER

## **AMENDMENT NO. 4 TO PAINTERS DISTRICT COUNCIL NO. 2 PENSION TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust and Plan Agreement hereby adopt the following amendments to the Trust and Plan Agreement.

1. The first paragraph of the preamble is deleted and the following is inserted in its place:

**THIS AGREEMENT**, first made and entered into as of the first day of July, 1964, by and between **ST. LOUIS PAINTERS AND DECORATORS JOINT TRADE BOARD, INC.**, a Missouri pro forma decree corporation, hereinafter referred to as the **BOARD**, and any other employers, hereinafter referred to as **EMPLOYERS**, who adhere to the area practice and who have a contract with Painters District Council No. 2, hereinafter referred to as the **UNION**, and certain named individuals, as initial trustees, whose successors currently are **JOSEPH SHATRO, JAMES E. ENGEL, ROBERT A. LUCKS, H. FRED PHILIPP, JR., PAUL MEYER, and DAN WIENSTROER.**

2. The first sentence of Article XVI is deleted and the following is inserted in its place:

Trustees herein have been selected as follows: **JOSEPH SHATRO, JAMES E. ENGEL and ROBERT A. LUCKS** have been selected by the Union and **H. FRED PHILIPP, JR., PAUL MEYER and DAN WIENSTROER** have been selected by the Employers.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
<b>JOSEPH SHATRO</b>	<b>10-17-96</b>	<b>H. FRED PHILIPP, JR.</b>	<b>10-17-96</b>
<b>JAMES E. ENGEL</b>	<b>10-17-96</b>	<b>PAUL MEYER</b>	<b>10-17-96</b>
<b>ROBERT A. LUCKS</b>	<b>10-17-96</b>	<b>DAN WIENSTROER</b>	<b>10-17-96</b>

# AMENDMENT NO. 5 TO PAINTERS DISTRICT COUNCIL NO. 2 PENSION TRUST AND PLAN AGREEMENT

The Trustees of the Painters District Council No. 2 Pension Trust and Plan Agreement hereby adopt the following amendments to the Trust and Plan Agreement.

1. The first paragraph of the preamble is deleted and the following is inserted in its place:

THIS AGREEMENT, first made and entered into as of the first day of July, 1964, by and between ST. LOUIS PAINTERS AND DECORATORS JOINT TRADE BOARD, INC., a Missouri pro forma decree corporation, hereinafter referred to as the BOARD, and any other employers, hereinafter referred to as EMPLOYERS, who adhere to the area practice and who have a contract with Painters District Council No. 2, hereinafter referred to as the UNION, and certain named individuals, as initial trustees, whose successors currently are RICHARD BRYAN, JAMES KROUT, ROBERT LUCKS, PAUL MEYER, H. FRED PHILIPP, JR., and DAN WIENSTROER.

2. The first sentence of Article XVI is deleted and the following is inserted in its place:

Trustees herein have been selected as follows: RICHARD BRYAN, JAMES KROUT and ROBERT A. LUCKS have been selected by the Union and H. FRED PHILIPP, JR., PAUL MEYER and DAN WIENSTROER have been selected by the Employers.

UNION TRUSTEES	DATE	EMPLOYER TRUSTEES	DATE
RICHARD BRYAN	11-10-97	H. FRED PHILIPP, JR.	11-10-97
JAMES KROUT	11-10-97	PAUL MEYER	11-10-97
ROBERT A. LUCKS	11-10-97	DAN WIENSTROER	11-10-97

## **AMENDMENT NO. 6 TO PAINTERS DISTRICT COUNCIL NO. 2 PENSION TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby amend the Trust and Plan Agreement by adding the following new subsection E to the end of Section 5.3:

- E. Effective December 1, 1997, each individual who is receiving monthly benefits from this Plan and whose Annuity Starting Date was on or before December 1, 1997, shall receive a one-time only extra payment equal to the amount of his or her monthly benefit.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	1-13-98	H. FRED PHILIPP, JR.	1-13-98
JAMES KROUT	1-13-98	PAUL MEYER	1-13-98
ROBERT A. LUCKS	1-13-98	DAN WIENSTROER	1-13-98

## **AMENDMENT NO. 7 TO PAINTERS DISTRICT COUNCIL NO. 2 PENSION TRUST AND PLAN AGREEMENT**

The following language presently appearing as the first two sentences of the fifth paragraph of Article XXII of the Painters District Council No. 2 Pension Trust and Plan Agreement is hereby deleted:

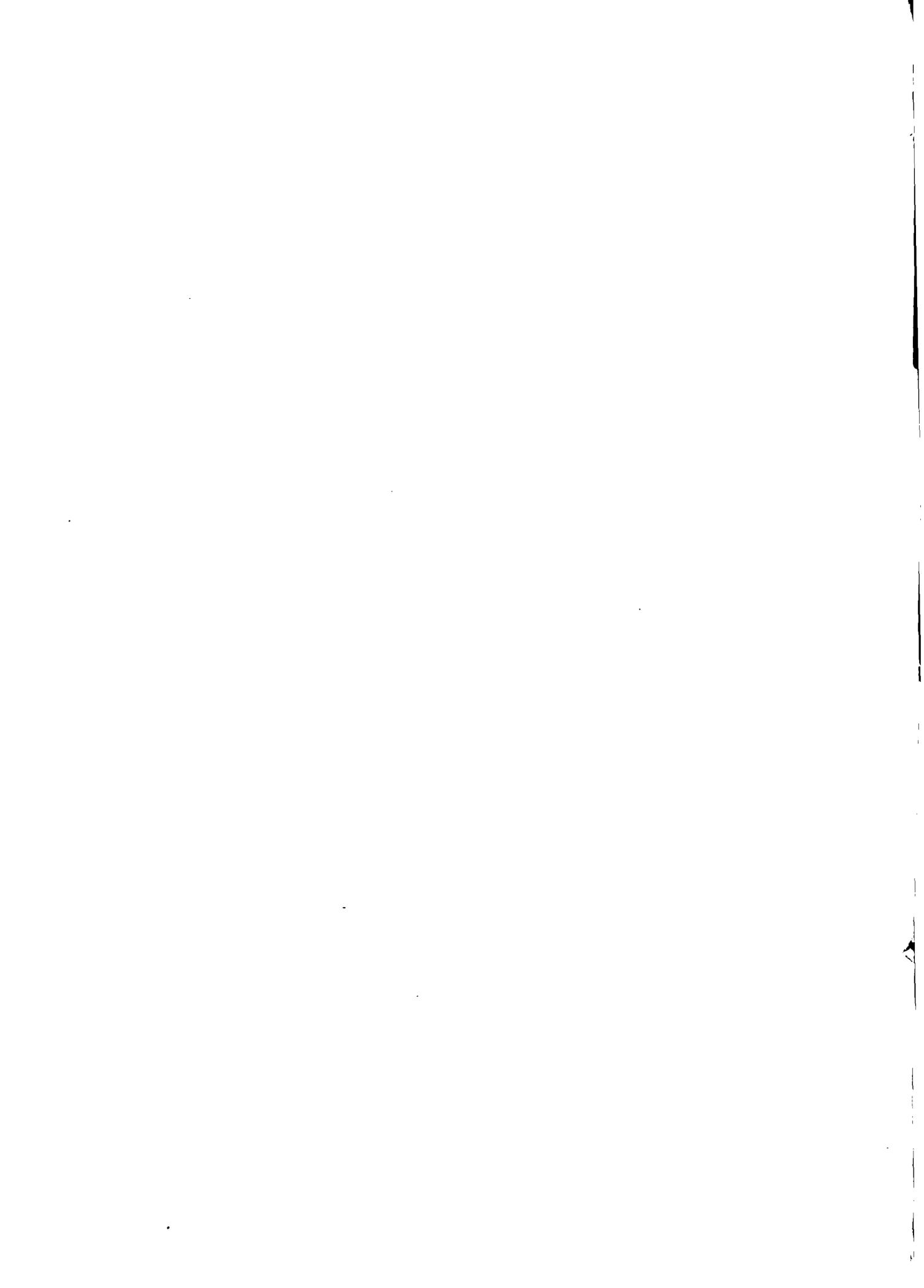
The Trustees shall designate one Trustee as Managing Trustee, and may, from time to time thereafter, change such designation. Such Managing Trustee shall have the following rights and powers, in the name of and in behalf of, all of the Trustees with full and binding obligation and effect upon all the Trustees, to-wit: to receive contributions, to open bank accounts, to sign checks, to pay insurance premiums, to keep records of receipts, disbursements and monies on hand and held in the Trust Fund, to keep records of all benefits provided Participants in the Pension Fund, to hire such corporation or persons as may be required for the efficient administration of the Trust Fund, to purchase all supplies needed for the proper bookkeeping and proper administration of the Trust Fund and to expend from the Funds available, any money necessary for these purposes, to have the books of the Trust Fund audited annually, to have the books and auditor's report available for inspection at all times by the other Trustees, Participants, officers of the Union and Employers, and to perform such other functions and duties of a purely ministerial nature as may be determined from time to time by the Trustees in the interest of the proper and efficient administration of the Trust.

The following language is hereby adopted to replace the above-quoted language:

The Trustees are further authorized to appoint one from their number to serve as Managing Trustee and to delegate to such Managing Trustee such authority and responsibility as they determine to delegate and which may lawfully be delegated.

This amendment is to be effective upon signing by a majority of the Trustees.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	1-22-98	H. FRED PHILIPP, JR.	1-22-98
JAMES KROUT	1-22-98	PAUL MEYER	1-22-98
ROBERT A. LUCKS	1-22-98	DAN WIENSTROER	1-22-98



**PAINTERS DISTRICT COUNCIL NO. 2  
PENSION TRUST AND PLAN AGREEMENT**

**(Restated Effective July 1, 1998)**

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## ARTICLE I

### Definitions

1.1 Trust Agreement. "Trust Agreement" means those provisions of this Pension Trust and Plan Agreement which govern the creation, existence and administration of the Painters District Council No. 2 Pension Trust.

1.2 Governing Law. "Governing Law" means the laws of the State of Missouri, concerning the validity, construction and administration of the Trust, except to the extent federal law preempts state law, in which case federal law shall be the governing law.

1.3 Trustees. "Trustees" means the Board of Trustees as established and constituted from time to time in accordance with the Trust Agreement.

1.4 Pension Plan or Plan. "Pension Plan" or "Plan" means those documents as adopted by the Trustees and as thereafter amended by the Trustees, which govern the creation, existence and administration of the Pension Plan.

1.5 Union. "Union" means Painters District Council No. 2.

1.6 Contributing Employer or Employer. "Contributing Employer" or "Employer" means an Employer signatory to a Collective Bargaining Agreement with the Union requiring contributions to this Fund and any other Employer authorized by the Trust Agreement to contribute to this Fund, provided:

- A. The Employer has been accepted as a Contributing Employer by the Trustees, and
- B. The Trustees have not, by resolution, terminated the Employer's status as a "Contributing Employer" because the Employer has failed, for a period of 120 days after the due date, to make contributions to the Fund as provided for in its Agreement.

An Employer shall not be deemed a Contributing Employer simply because it is part of a controlled group of corporations or of a trade or business under common control, some other part of which is a Contributing Employer.

1.7 Collective Bargaining Agreement. "Collective Bargaining Agreement" means an agreement between the Union and an Employer which requires contributions to the Fund.

1.8 Covered Employment. "Covered Employment" means employment of an Employee by an Employer. However, "Covered Employment" shall not include employment by an Employer after termination of that Employer's status as a Contributing Employer for failure to pay contributions due pursuant to the provisions of Section 1.6.

1.9 Contribution Period. "Contribution Period" means, with respect to a category of employment, the period during which the Employer is a Contributing Employer with respect to the category of employment.

1.10 Contribution Date. "Contribution Date" shall mean the date of commencement of contribution as set forth in an agreement between the Employer and the Union as being the date on which the Employer's obligation to contribute to the Pension Trust shall start.

1.11 Participant. "Participant" means Pensioner or an Employee who meets the requirements for participation in the Plan as set forth in Article III.

1.12 Employee. "Employee" means a person who is an Employee of an Employer and who is: (a) covered by a Collective Bargaining Agreement; or (b) a person for whom any other Employer authorized by the Trust Agreement to contribute to this Fund makes contributions to this Fund.

The term "Employee" shall not include any self-employed person or sole proprietor of a business organization, or other person who is prohibited by federal law from participating in the Plan.

1.13 Pensioner. "Pensioner" means a person to whom a pension under this Plan is being paid or to whom a pension would be paid but for time for administrative processing.

1.14 Beneficiary. "Beneficiary" means a person (other than a Pensioner) who is receiving benefits under this Plan because of his or her designation for such benefits by a Participant or by provisions of this Plan. See also Sections 5.2 and 6.7C.

1.15 Normal Retirement Age/Normal Retirement Date. "Normal Retirement Age" means age 65 or, if later, the age of the Participant on the fifth anniversary of his participation. Participation before a Permanent Break in Service shall not be counted. "Normal Retirement Date" means the first date of the month coincident with or next following the month in which the Participant reaches his "Normal Retirement Age".

1.16 Plan Year. "Plan Year" means the twelve month period from July 1 through the next June 30. For purposes of ERISA regulations, the Plan Year shall serve as the vesting computation period, the benefit accrual computation period, and after the initial period of employment, the computation period for eligibility to participate in the Plan.

1.17 Fiscal Year. "Fiscal Year" means the period from July 1 through the next June 30 and is the period for which various governmental reports are required to be filed by the Plan Administrator.

1.18 Year of Participation. For the purposes of compliance with Regulation 2530 of the Department of Labor, a full "Year of Participation" means a Plan Year during the Contribution Period in which a Participant has completed 2401 or more hours of work in Covered Employment, for Plan Years through the Plan Year ending June 30, 1993. For Plan Years beginning July 1, 1993 and thereafter, a full "Year of Participation" means a Plan Year during the Contribution Period in which a Participant has completed 3201 or more hours in Covered Employment.

1.19 Hour of Service. "Hour of Service" means:

- A. An hour of service is each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer during the applicable computation period.
- B. An hour of service is each hour for which an employee is paid, or entitled to payment, by the 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, except that:
  1. No more than 501 hours of service shall be credited under this paragraph 1.19B to an employee on account of any single continuous period during which the employee performs no duties (whether or not such period occurs in a single computation period);
  2. An hour for which an employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the employee if such payment is made or due under a plan maintained solely for purpose of complying with applicable workmen's compensation, or unemployment compensation or disability insurance laws; and
  3. Hours of service are not required to be credited for a payment which solely reimburses an employee for medical or medically related expenses incurred by the employee.

For purposes of this paragraph 1.19B, a payment shall be deemed to be made by or due from an employer regardless of whether such payment is made by or due from the employer directly or indirectly through, among others, a trust fund or insurer, to which the employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular employees in the aggregate.

- C. An hour of service is each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the employer. The same hours of service shall not be credited both under paragraph 1.19A or 1.19B, as the case may be, and under this paragraph 1.19C.
- D. Effective July 1, 1986, for purposes of computing hours for determining whether a one-year break in service has occurred only, an hour of service includes each hour up to a maximum of 501 hours, during a period of absence from covered employment, if the absence from such employment was due to one of the following:

1. Pregnancy of the Participant;
2. Birth of a child of the Participant;
3. Placement of a child with the Participant in connection with the adoption of such child by the Participant, or
4. Caring for such child by the Participant.

The amount of hours to be credited for the period of absence shall be the number of hours that normally would be credited to the Participant, but for the absence from covered employment, if such an amount can be ascertained. If this amount is not able to be ascertained, the Participant shall be credited with eight hours of service for each working day during the leave.

The hours of service shall be credited in the vesting computation year in which they occur, if the leave occurs totally within one vesting computation year. If the leave takes place in more than one vesting computation year, the hours of service shall be credited in the vesting year during which the absence begins, if the crediting is necessary to prevent a break in service, otherwise the hours of service shall be credited in the following vesting computation year.

Hours of service under this subparagraph shall be computed only for purposes of determining whether a one-year break in service has occurred. Such hours will not be counted toward credited service nor will they be counted toward determining whether the Participant has completed a year of service for vesting purposes.

The Participant is required to furnish, upon request by the Plan Administrator or an authorized representative thereof, such timely information as the Plan may reasonably require to establish that the absence was for one of the reasons stated in this subparagraph and/or to establish the number of days for which there was such an absence.

- E. Effective January 1, 1994, an hour of service for purposes of determining whether a Participant has completed a year of service for vesting purposes will include hours of service the Participant would have earned but for his having taken approved leave of absence under the Family and Medical Leave Act. Such hours will not be counted for purposes of benefit accrual.

Hours of service shall be computed and credited in accordance with Department of Labor Regulations 2530.200b.

1.20 Work. "Work" means each hour for which an Employee is paid, or entitled to payment, by an Employer for services performed.

1.21 Continuous Employment. "Continuous Employment" means any Periods of Service not separated by quit, discharge or other termination of employment between the periods.

1.22 Contributions. "Contributions" shall mean the rate or amount to be paid to the Trust Fund as specified in collective bargaining agreements between the Employer and the Union.

1.23 Gender. Except as the context may specifically require otherwise, use of the masculine gender shall be understood to include both masculine and feminine gender.

1.24 Annuity Starting Date. The "Annuity Starting Date" is the first day of the first period for which an amount is payable as an annuity. The Participant may elect this Annuity Starting Date after fulfilling all of the conditions for entitlement to benefits, subject to the following:

- A. The date must be at least 30 days and no more than 90 days after the Participant has received the Notice of right to waive Qualified Joint and Survivor Annuity described in Section 8.4. The Notice will be given to the Participant upon request. The Notice does not apply to Alternate Payees or Beneficiaries.
- B. The Annuity Starting Date will not be later than the Participant's Required Beginning Date as defined in Section 9.4A.

A participant who begins receiving benefits before his or her Normal Retirement Age and then earns additional benefit accruals under the Plan through re-employment will have a separate Annuity Starting Date determined under this Section with respect to the additional accruals, except that an Annuity Starting Date that is on or after the Participant's Normal Retirement Age shall apply for any additional benefits through re-employment after that date. (See Section 6.1 for rules concerning payment of benefits accrued after a Participant's Annuity Starting Date that is on or after the Participant's Normal Retirement Age).

1.25 Non-Bargained Employee. A "Non-Bargained Employee" is an employee who is not covered by a collective bargaining agreement between the Union and a Contributing Employer, but for whom contributions are made to this Fund. This term includes any employee of the Painters District Council No. 2, Painters District Council No. 2 Unity Hall Corporation or any employee of the Trustees of Painters District Council No. 2 Welfare Plan, Pension Plan, Vacation Fund or Apprenticeship and Journeyman Fund, to the extent the Employer has agreed to make contributions to this Fund on behalf of said employee.

## ARTICLE II

### Name and Objectives

This Trust is to be known as the "Painters District Council No. 2 Pension Trust". This Agreement contains the governing provisions of the Trust, as well as the provisions of the Painters District Council No. 2 Pension Plan. This Agreement shall be known as the Painters District Council No. 2 Pension Trust and Plan Agreement.

This Trust is designed to provide retirement, survivor, disability and death benefits for Participants and Beneficiaries, who are entitled to receive such benefits as defined in this Agreement.

## ARTICLE III

### Participation

The term Participant shall mean any Employee of a Contributing Employer who is engaged in Covered Employment during the Contribution Period for that Employer. Any Employee becomes a Participant upon completion of one hour of covered service. Unless otherwise specifically provided, a Participant's participation ceases as of the first day of the Plan Year following the Plan Year during which the Participant experiences a one year break in service, as defined in Section 7.3A, unless such Participant is then a pensioner.

An Employee who has lost his status as a Participant shall again become a Participant upon completion of one hour of covered service.

## ARTICLE IV

### Employer Participation

When an Employer of one or more eligible Employees signifies its agreement to the Trustees in writing to pay for the benefits as provided herein and to be bound by the terms of this Plan and Trust, such Employer shall, if accepted by the Trustees, become a Contributing Employer. The Trustees have the right to refuse to accept an Employer as a contributing Employer or to terminate an Employer's status as a contributing Employer, in their discretion.

Each Contributing Employer who agrees in writing to contribute for the purpose of providing benefits under this Plan and executes an agreement subscribing to and being bound by the terms of this agreement, shall contribute the money per hour as shall be negotiated from time to time by Employers and the Union on behalf of Participants who shall be employed by Contributing Employers as evidenced by agreements from time to time between Contributing Employers and the Union.

The contributions as established from time to time in the Agreements shall be due for each pay period on or before the Friday of the week following the week in which the pay day for that pay period occurred. A Delinquent Employer shall be assessed liquidated damages of 10% up to 30 days of delinquency, after which liquidated damages of 1-1/2% of the then current delinquency for each month or part of a month, shall be assessed and compounded monthly, until the full contribution is made.

In any legal action instituted to recover delinquent contributions or to recover unpaid liquidated damages, the Contributing Employer shall be obligated to pay reasonable attorneys' fees and accounting fees in addition to all principal amounts due and in addition to all other relief prescribed by law.

## ARTICLE V

### Accrual of Benefits

5.1 General Rules. This Article sets forth the rules for determining and computing the amount of a Participant's accrued benefit under the Plan. The accumulation and retention of accrued benefit credits are subject to the requirements concerning Years of Vesting Service and Breaks in Service. The Benefit Amounts are subject to reduction on account of the Qualified Joint and Survivor Annuity (Article VIII) and modification if the Participant retires with an annuity starting date other than his normal retirement date, or with a form of benefits other than the normal form of benefits.

Eligibility to receive a benefit based on the Participant's accrued benefit depends on meeting the conditions for benefit entitlement (Article VI) and/or the rules concerning Years of Vesting Service and Permanent Break in Service (Article VII).

5.2 Normal Form of Benefit. For purposes of this Plan the normal form of benefits is a life annuity, with a 60 month guarantee. This form includes the payment of a monthly amount commencing with the Annuity Starting Date and continuing until the month in which the Participant dies. If the death of the Participant occurs after his Annuity Starting Date, but before all sixty (60) guaranteed monthly payments have been made, the remaining payments shall be made to the named beneficiary, if then surviving, or if such beneficiary is not then surviving, to the contingent beneficiary, if then surviving. If no designated beneficiary is surviving at the time of the Participant's death, the remaining payments shall be made to the Participant's estate. If a beneficiary who is receiving guaranteed payments dies before all guaranteed payments are made, payments will continue to the contingent beneficiary, if one is then surviving. If no contingent beneficiary is then surviving, the remaining payments will be made to the estate of the beneficiary who last received a payment, until all guaranteed payments have been made.

The amount of benefit stated in the Plan (Section 5.3) is the amount which the Participant would receive each month, if the Participant receives a life annuity with a 60 month guarantee, commencing at normal retirement date. In the event the Participant receives a form of payment different from the life annuity with a 60 month guarantee, or in the event the Participant begins to receive benefits at a time other than his normal retirement date, the monthly amount which the Participant will be entitled to receive will be different from the amount stated in this section. The amount received will be the actuarial equivalent of the amount of benefit stated in Section 5.3; that is, it will be the actuarial equivalent of the amount which the Participant would be entitled to under the life annuity with a 60 month guarantee form of payment, commencing at normal retirement date.

5.3 Amount of Benefit Stated in the Normal Benefit Form. The amount of benefit that a Participant accrues stated in the normal form of benefits (a life annuity with a 60 month guarantee) commencing at Normal Retirement Date, is the sum of the amount determined under subsection 5.3A and the amount determined under Section 5.3B.

- A. The amount determined under this subsection ("accredited past service benefit") is \$2.50 for each year of accredited past service for any Participant who participated on and after July 1, 1964. An eligible Participant receives a year of accredited past service for each continuous year of service prior to July 1, 1964. No Participant who first participated in the Plan after July 1, 1964 shall be entitled to past service credits. The amount determined under this subsection is subject to the rules concerning permanent breaks in service.
- B. The amount determined under this subsection ("accredited future service benefit") is the sum of the amounts earned by the Participant under all applicable tables. Accredited future service benefit will be accrued under this subsection for each 12 consecutive month period commencing with July 1, 1964, and subsequent anniversaries thereof ("benefit accrual year"), based on the number of "hours of service" completed by the Participant during the particular benefit accrual year, subject to the following rules:
  - 1. No accredited future service benefit will be accrued by a Participant for any benefit accrual year during which the Participant fails to complete at least 400 hours of service.

2. The accrual of accredited future service benefits under this subsection is subject to the rules concerning permanent breaks in service.

3. The amounts set out in these tables are subject to the rules contained in Subsection 5.3C.

The amount of accredited future service benefit accrued by a Participant during each benefit accrual year is:

Total Hours of Service as defined below from July 1 to June 30 each year	Future Service Credits 7/1/64 thru 6/30/72	Future Service Credits 7/1/72 thru 6/30/76	Future Service Credits 7/1/78 thru 6/30/80	Future Service Credits 7/1/80 thru 6/30/84	Future Service Credits 7/1/84 thru 11/30/84
400 to and including 600 hours	\$ 1.50	\$ 1.50			
601 to 800 hours	1.80	2.25			
801 to 1,000 hours	2.10	3.00			
1,001 to 1,200 hours	2.40	3.75			
1,201 to 1,400 hours	2.70	4.50			
1,401 to 1,600 hours	3.00	5.25			
1,601 to 1,800 hours	3.30	6.00			
1,801 to 2,000 hours	3.60	6.75			
2,001 to 2,200 hours	3.90	7.50			
2,201 to 2,400 hours	4.20	8.25			
2,401 <sup>1</sup> and over	4.20	8.25			
Total Hours of Service as defined below from July 1 to June 30 each year	Future Service Credits 7/1/76 thru 6/30/78	Future Service Credits 7/1/78 thru 6/30/80	Future Service Credits 7/1/80 thru 6/30/84	Future Service Credits 7/1/80 thru 6/30/84	Future Service Credits 7/1/84 thru 11/30/84
400 to and including 600 hours	\$ 3.00	\$ 4.50	\$ 5.65	\$ 6.50	\$ 6.50
601 to 800 hours	4.50	6.75	8.45	9.60	9.60
801 to 1,000 hours	6.00	9.00	11.25	12.75	12.75
1,001 to 1,200 hours	7.50	11.25	14.05	15.90	15.90
1,201 to 1,400 hours	9.00	13.50	16.90	19.05	19.05
1,401 to 1,600 hours	10.50	15.75	19.70	22.20	22.20
1,601 to 1,800 hours	12.00	18.00	22.50	25.35	25.35
1,801 to 2,000 hours	13.50	20.25	25.30	28.45	28.45
2,001 to 2,200 hours	15.00	22.50	28.15	31.65	31.65
2,201 to 2,400 hours	16.50	24.75	30.95	34.80	34.80
2,401 and over	16.50	24.75	30.95	34.80	34.80

<sup>1</sup>2,401 is considered full-time employment for purposes of accredited future service benefits for all accrual years through the year ending June 30, 1993. For benefit accrual years beginning July 1, 1993 and thereafter, 3,201 hours of service is considered full-time employment for purposes of accredited future service benefits.

Total Hours of Service as defined below from July 1 to June 30 each year	Subject to Sub-section 5.3C3 Future Service Credits 12/1/84 thru 6/30/85 <sup>2</sup>	Subject to Sub-section 5.3C3 Future Service Credits 7/1/85 thru 6/30/86
400 to 600 hours	\$ 16.25	\$ 21.85
601 to 800 hours	23.00	30.85
801 to 1,000 hours	30.00	40.10
1,001 to 1,200 hours	37.00	49.30
1,201 to 1,400 hours	44.05	58.60
1,401 to 1,600 hours	51.00	67.80
1,601 to 1,800 hours	58.00	77.00
1,801 to 2,000 hours	65.00	86.25
2,001 to 2,200 hours	72.00	95.50
2,201 to 2,400 hours	79.00	104.75
2,401 and over	79.00	104.75

	Subject to Sub- section 5.3C3 Future Service Credits from 7/1/86 thru 6/30/89	Subject to Sub- section 5.3C3 Future Service Credits from 7/1/89 thru 6/30/93
400 to 600 hours	\$ 31.45	\$ 35.30
601 to 800 hours	44.35	49.75
801 to 1,000 hours	57.40	64.30
1,001 to 1,200 hours	70.45	78.90
1,201 to 1,400 hours	83.60	93.60
1,401 to 1,600 hours	96.65	108.20
1,601 to 1,800 hours	109.70	122.80
1,801 to 2,000 hours	122.80	137.40
2,001 to 2,200 hours	135.90	152.05
2,201 to 2,400 hours	147.05	164.75
2,401 and over	147.05	164.75

<sup>2</sup>Subject to Section 5.3C4.

Total Hours of Service as defined below From July 1 to June 30 each year	Subject to Sub- section 5.3C3 Future Service Credits from 7/1/93 thru 6/30/94	Subject to Sub- section 5.3C3 Future Service Credits from 7/1/94 thru 6/30/96	Subject to Sub- section 5.3C3 Future Service Credits from and after 7/1/96
400 to 600 hours	\$ 38.70	\$ 42.10	\$ 44.95
601 to 800 hours	54.55	59.40	63.90
801 to 1,000 hours	70.50	76.70	81.65
1,001 to 1,200 hours	86.50	94.15	100.60
1,201 to 1,400 hours	102.60	111.60	118.35
1,401 to 1,600 hours	118.60	128.95	136.10
1,601 to 1,800 hours	134.60	146.40	155.05
1,801 to 2,000 hours	150.60	163.75	172.80
2,001 to 2,200 hours	166.70	181.25	191.75
2,201 to 2,400 hours	180.60	196.45	209.50
2,401 to 2,600 hours	197.30	214.60	227.25
2,601 to 2,800 hours	213.10	231.80	246.15
2,801 to 3,000 hours	228.90	249.00	263.90
3,001 to 3,200 hours	244.50	265.90	281.65
3,201 or more	244.50	265.90	281.65

C. The amount of accredited future service accrued by a Participant under the foregoing tables, is subject to the following rules:

1. Any Participant or Beneficiary whose annuity starting date was prior to July 1, 1984 (including disability benefits), shall, effective with the monthly payment due on July 1, 1984, receive benefits in the amount of his June 1984 payment, increased by 20%.

The monthly benefit amount of any Participant or Beneficiary whose Annuity Starting Date (including disability benefits) is July 1, 1984 or thereafter, shall be based on the greater of:

- a. The Participant's accrued benefit as of the Annuity Starting Date determined under the tables set out in subsection 5.3B; or
- b. The Participant's accrued benefit as of June 30, 1984 determined under the tables set out in subsection 5.3B, increased by 20%.

2. Notwithstanding other provisions of this Article V and excepting Participants or Beneficiaries of Participants who are employed by contributing employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774, the accredited future service benefit of any Participant or Beneficiary whose Annuity Starting Date is on or after July 1, 1985, as of June 30, 1985, shall be the benefit computed under the tables set forth in subsection 5.3B as of June 30, 1985, without regard to the increase in the foregoing subsection 5.3C1, increased by 20%. The resulting accrued benefit shall be added to the accredited future service benefit, if any, accrued for service on and after July 1, 1985, to arrive at the Participant's total accrued benefit.
3. The tables marked "Subject to Subsection 5.3C3" do not apply to Participants who are employed by contributing employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774. The accredited future service benefit accrued by Participants who are employed by contributing employers signatory to agreements with Local 774 shall, for any future service benefit accrual year, be the amount set out in the last most recently effective table which is not marked "Subject to Subsection 5.3C3." The accrued benefit for such a Participant shall be the total of all amounts accrued under the applicable tables which are not marked "Subject to Subsection 5.3C3", adjusted by Subsection 5.3C1, if applicable.
4. Notwithstanding the above, Participants shall have their accrued benefit for the period July 1, 1984 through June 30, 1985 computed under the following table, if the computation results in a higher benefit than the combined total of the accrued benefit computed under the two tables entitled, "Future Service Credits 7/1/84 thru 11/30/84" and "Subject to Subsection 5.3C3 Future Service Credits 12/1/84 thru 6/30/85":

Total Hours of Service Plan Year	7/1/84 thru 6/30/85
400 - 600	\$ 12.19
601 - 800	17.42
801 - 1,000	22.81
1,001 - 1,200	28.21
1,201 - 1,400	33.63
1,401 - 1,600	39.00
1,601 - 1,800	44.40
1,801 - 2,000	49.77
2,001 - 2,200	55.19
2,201 - 2,400	60.58
2,401 & over	60.58

This subparagraph does not apply to Participants who were employed by contributing employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774 during the period 12/1/84 through 6/30/85.

- D. Any Participant or Beneficiary (except for Participants or Beneficiaries of Participants whose benefits are based on service for contributing employers who were or are signatory to agreements with Sign and Pictorial Painters, Local Union 774) whose annuity starting date was prior to January 1, 1992 (including disability benefits), shall, effective with the monthly benefit payment due for January, 1992, have his monthly benefit increased by the greater of five percent (5%) of the monthly payment or Ten Dollars (\$10.00).

## ARTICLE VI

### Conditions for Benefit Entitlement/Types of Benefits

In order to be entitled to received benefits under this Plan, a Participant or Beneficiary must meet the requirements for one of the types of benefits described in this Article VI.

6.1 Normal Retirement Benefit. If a Participant reaches his Normal Retirement Date while still an active Participant in the Plan (i.e. prior to his Participation ceasing within the meaning of Article III), the Participant shall be entitled to a Normal Retirement Benefit. If a Participant reaches his Normal Retirement Date while not an active Participant, but has met one of the requirements of Article VII such that he has become vested in his accrued benefit, the Participant shall be entitled to a Normal Retirement Benefit upon reaching his Normal Retirement Date.

A Normal Retirement Benefit is paid in the form provided under Article VIII and is based on the Participant's accrued benefit as computed under Article V, without reduction for early retirement.

A participant who has met the requirements for a Normal Retirement Benefit is entitled to begin to receive benefits as of his Normal Retirement Date without regard to whether he continues to work in covered employment and without regard to whether he is entitled to Social Security Benefits.

In the event a Participant accrues additional accredited future service benefits for service after his Normal Retirement Annuity Starting Date, he shall be credited with such service. However, any such additional accredited future service shall be reduced (but not below zero) by the actuarial value of any normal retirement benefits paid to the Participant subsequent to his Normal Retirement Date. Notwithstanding the reduction set forth in the previous sentence, a Participant who completes 1,200 or more hours of service in any Plan Year after his Annuity Starting Date, commencing with the Plan Year beginning July 1, 1994, shall accrue at least the benefit set forth in the following table:

Hours Worked In Plan Year	Additional Monthly Benefit Stated in the Normal Form of Benefit
1,200 - 1,399	\$10
1,400 - 1,599	\$15
1,600 - 1,799	\$20
1,800 - 1,999	\$25
2,000 - 2,199	\$30
2,200 - 2,399	\$35
2,400 - 2,599	\$40
2,600 - 2,799	\$45
2,800 - 2,999	\$50
3,000 - 3,199	\$55
3,200 or more	\$60

Additional accredited future service earned in any benefit accrual year for service after the Participant's Normal Retirement Date, shall become payable as soon as administratively feasible following the end of that benefit accrual year; the first payment shall include retroactive payments to and including the first payment due July 1. The Participant's post Normal Retirement Age election as to the form of benefits will apply to the additional accredited service accrued after his Normal Retirement Date.

**6.2 Postponed Retirement Date.** Subject to the requirements of subsection 9.4, a Participant who has met the requirements for a Normal Retirement Benefit may elect to postpone his Annuity Starting Date to a date of his choice after his Normal Retirement Date. In such event, the Participant shall notify the Fund Office of his intent to postpone his Annuity Starting Date and, if he knows, of his postponed Annuity Starting Date. The Participant shall, within a reasonable time of said notification, receive the notification described in subsection 8.4. The Participant's election period for purposes of subsection 8.3, shall be the ninety (90) day period immediately preceding the Participant's elected Postponed Annuity Starting Date. In the event of a Postponed Annuity Starting Date, the amount of Participant's monthly benefit shall be actuarially adjusted to reflect the later commencement date. The actuarial adjustment for any additional accredited service which accrues for service after the Participant's Normal Retirement Date shall run from the date that the benefits would have first been payable (i.e., September 1 following the end of the benefit accrual year in which the benefits accrued). In no event shall the Participant be permitted to postpone his Annuity Starting Date to a date after his "Required Beginning Date," as defined in Section 9.4A.

### 6.3 Early Retirement Benefit.

- A. A Participant may elect an Early Retirement Benefit (to be computed in accordance with Section 6.3E) by electing an Annuity Starting Date at any time before his Normal Retirement Date, after meeting the following eligibility requirements:
1. Attainment of age 62, and
  2. Completion of ten (10) years of vesting credit under the Plan.
- B. Effective July 1, 1988, and thereafter, the following provisions shall apply for all Participants except Participants who are employed by Contributing Employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774 (the early retirement eligibility and benefit amount of these excluded Participants are to continue to be determined under subsection 6.3A).
1. A Participant may elect an Early Retirement Benefit (to be computed in accordance with subsection 6.3E) by electing an Annuity Starting Date at any time before his Normal Retirement Date, after meeting the following requirements:
    - a. Attainment of age 60, and
    - b. Completion of ten (10) years of vesting credit under the Plan.
  2. A Participant may elect an Early Retirement Benefit (to be computed without the reduction set forth in subsection 6.3E) by electing an Annuity Starting Date before his Normal Retirement Date, after meeting the following eligibility requirements:
    - a. Attainment of age 60, and
    - b. Completion of ten (10) years of vesting service under the Plan, and
    - c. Accrual of twenty-five (25) years of credited service as defined herein. For purposes of this subsection 6.3B2, a year of credited service is any year in which the Participant accrued any benefit under the Plan (including a year of past service credit under the Plan). In addition, as to Participants who were Participants in the Plan as of July 1, 1988, a year of credited service for purposes of this subsection 6.3B2 includes any year of service within the geographic jurisdiction of Painters District Council No. 2, as it was constituted on July 1, 1988, under a collective bargaining agreement to which a union affiliated with the International Brotherhood of Painters was a party.
- C. Effective September 1, 1998, and thereafter, the following provisions shall apply for all Participants who are active Participants on or after April 1, 1998 except Participants who are employed by Contributing Employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774 (the early retirement eligibility and benefit amount of these excluded Participants are to continue to be determined under subsection 6.3A). A Participant may elect an Early Retirement Benefit (to be computed without the reduction set forth in subsection 6.3E) by electing an Annuity Starting Date, at any time before his Normal Retirement Date, after meeting the following eligibility requirements:
1. Attainment of age 58, and
  2. Completion of ten (10) years of vesting service under the Plan, and
  3. Accrual of thirty (30) years of credited service, as defined herein. For purposes of this Section 6.3C3, a year of credited service is any year in which the Participant accrued any benefit under the Plan (including a year of past service credit under the Plan). In addition, as to Participants who were Participants in the Plan as of April 1, 1998, a year of credited service for purposes of this subsection 6.3C.3 includes any year of service within the geographic jurisdiction of Painters District Council No. 2, as it was constituted on September 1, 1998, under a collective bargaining agreement to which a union affiliated with the International Brotherhood of Painters was a party.
- The eligibility provisions of this section represent alternative eligibility provisions to those set out in subsections 6.3A and 6.3B and do not replace the eligibility provisions set out in those subsections.

- D. Except as specified in Section 8.2 below, the Early Retirement Benefit shall be paid in the Normal Form of Benefits under the Plan (a life annuity with a 60 month guarantee). The Participant may elect any Annuity Starting Date after the date of his election and after meeting the applicable eligibility requirements.
- E. The amount of Early Retirement Benefit which the Participant will be entitled to receive each month, stated in the form of a life annuity with a sixty (60) month guarantee will be the Participant's Normal Benefit Amount, computed in accordance with the provisions of Section 5.3, reduced by one-half of one percent (1/2 of 1%) for each full month that the Participant is younger than age 65 as of his Early Retirement Annuity Starting Date.

For any additional accredited future service which the Participant accrues after his Early Retirement Annuity Starting Date, the Participant is entitled to elect Annuity Starting Date(s), and for each such election, the Participant will receive the notices and election options set forth in Article VIII. Likewise, the spousal consent requirements of Article VIII will continue to apply to any such election. Notwithstanding the above, the first valid election of an Annuity Starting Date and Form of Benefits which the Participant makes on or after his Normal Retirement Date will govern all additional benefits accrued thereafter.

#### 6.4 Total and Permanent Disability Benefit.

- A. A Participant who becomes totally and permanently disabled, while still a Participant in the Plan, and after the Participant has earned ten (10) years of vesting credit, may elect to receive the Total and Permanent Disability Benefits described in this Section.

For purposes of this Article, participation ceases on the first day of the Plan Year following the Plan Year during which a Participant experiences a one year break in service as defined in Section 7.3A.

For purposes of this Article, effective March 1, 1986, a Participant shall be deemed to be totally and permanently disabled only if he is determined to be totally and permanently disabled by the Social Security Administration.

The Benefit provided by this Article is not available to a former Participant whose participation ceased within the meaning of this Section, prior to his becoming disabled. The Benefit provided by this Article is not available to a Participant who the Trustees determine has become disabled while engaged in the commission of a felony or as a result of willful intention to injure himself or to induce an illness that could result in disability.

- B. Such Participant who shall be so certified as totally and permanently disabled shall be entitled to receive a monthly disability pension in the amount of his accrued benefit stated in the Normal Form of Benefits (but in no event less than Twenty-five Dollars (\$25.00) per month), commencing with the month in which he is eligible to receive his first disability payment from the Social Security Administration and he shall continue to receive such disability pension until the earliest of death, recovery from his total and permanent disability, the election of an Early Retirement Benefit, or attainment of Normal Retirement Age.

Upon attaining Normal Retirement Age (or at Early Retirement Annuity Starting Date, if elected by the Participant), the Participant's Benefits shall convert to one of the forms of benefit payable for the Normal Retirement Benefit (or Early Retirement Benefit) and the Total and Permanent Disability Benefit shall cease. At that time the Participant shall receive the notices and elections that a Participant would receive at Normal Retirement Age. The Participant's monthly benefit after converting to Early or Normal Retirement Benefit will in no event be less than Twenty-five Dollars (\$25.00) per month.

- C. Nothing in this Section shall affect the right of a Participant who is otherwise eligible for any benefit under this Plan. Nor shall the receipt of benefits under this Section cause a reduction in the amount of retirement or other benefits which may be due to the Participant or his beneficiary under other provisions of this Plan. A Participant who receives benefits under this Section shall be entitled to the same retirement benefits (Preretirement Survivor Annuity, Early Retirement Benefit and Normal Retirement Benefit) in the same form, under the same conditions and with the same notification and election procedures as he would otherwise have been entitled to if he had not received the disability benefits.

6.5 Death Benefit. Effective March 1, 1986, in addition to the benefits otherwise provided by this Plan and Trust, the Plan and Trust shall pay a death benefit in the amount of \$3,000 to the designated beneficiary of any Participant who has retired under this Plan on July 1, 1982 or thereafter, provided the Participant was an active Participant at the time of his Annuity Starting Date. For purposes of this paragraph, the term retirement means that the Participant commences receiving a benefit payment under this Plan other than a Total and Permanent Disability Payment. For purposes of this paragraph, the term active Participant means a Participant whose participation has not ceased under Article III.

Effective with respect to Participants who die September 1, 1989 or thereafter and who otherwise meet the requirements of this Section 6.5 for a death benefit, the amount of the death benefit shall be \$5,000. This increase shall not apply to any Participant who was employed by an employer which is signatory to an agreement with Sign and Pictorial Painters Local Union 774, during the Plan Year during which the Participant last completed an hour of service.

Effective with respect to Participants who die October 1, 1991 or thereafter and who otherwise meet the requirements of this Section 6.5 for a death benefit, the Participant is eligible for Death Benefit only if the Participant was (at the time of his Annuity Starting Date under the Pension Plan) a covered Participant for the Death Benefit under the Painters District Council No. 2 Welfare Fund or on Waiver of Premium for Disability under the Painters District Council No. 2 Welfare Fund or the Painters District Council No. 2 Group Insurance Trust. For purposes of the death benefit for deaths that occur on or after October 1, 1991, it is no longer required that the Participant shall have been an active Participant in the Painters District Council Pension Plan at the time of his Annuity Starting Date.

6.6 Qualified Preretirement Survivor Annuity.

- A. General Rule. A Qualified Preretirement Survivor Annuity (as defined in this Section) is payable to the surviving spouse of any Participant who dies after August 22, 1984 but before his Annuity Starting Date, who has been married to the surviving spouse for a period of one year immediately preceding the date of death, and who has met one of the requirements of Article VII and was therefore vested as of the date of his death.
- B. Definition. A Qualified Preretirement Survivor Annuity is an annuity payable to the surviving spouse of a Participant who meets the requirements of Section 6.6A computed under Section 6.6C.
- C. Computation of Qualified Preretirement Survivor Annuity.
1. If a Participant dies after the earliest retirement age under the Plan which applies to that Participant, the amount of the Qualified Preretirement Survivor Annuity payable to the surviving spouse is the amount which would have been payable to the surviving spouse as a survivor annuity if the Participant had retired with a Qualified Joint and Survivor Annuity on the day before the Participant's death. If, however, the surviving spouse elects to defer the Annuity Starting Date under subsection 6.6C.4, the amount of the monthly benefit shall be computed under that subsection.
  2. If a Participant dies before the earliest retirement age under the Plan which applies to that Participant, the amount of the Qualified Preretirement Survivor Annuity payable to the surviving spouse is the amount which would be payable to the surviving spouse as a survivor annuity, if the Participant had:
    - a. Separated from service on the day he last worked in covered employment;
    - b. Survived to the earliest retirement date under the Plan which applies to that Participant;
    - c. Retired on that date with a Qualified Joint and Survivor Annuity, and
    - d. Died on the next day.

If, however, the surviving spouse elects to defer the Annuity Starting Date under subsection 6.6C.4, the amount of the monthly benefit shall be computed under that subsection.

3. Subject to the next succeeding paragraph (6.6C4), the monthly payments to the surviving spouse shall commence on the first day of the month coinciding with or following the later of:
  - a. The date of the Participant's death, or
  - b. The earliest retirement date under the Plan which applies to that Participant;

and shall continue until and including the payment for the month in which the surviving spouse dies. No survivorship benefits shall be payable if the Participant's spouse fails to survive to the date on which the annuity payments are to begin. However, in such event, benefits may be payable under Section 6.7.

4. Notwithstanding the above, the surviving spouse may defer his or her Annuity Starting Date to any date on or before the later of:
  - a. The Participant's Normal Retirement Date; or
  - b. The first day of the month coincident with or next following the Participant's 62nd birthday.

In the event the surviving spouse defers the Annuity Starting Date for the survivorship benefit, the amount will be the amount which would have been payable to the surviving spouse as a survivor annuity if the Participant had retired with a Qualified Joint and Survivor Annuity two days before the deferred Annuity Starting Date and died the next day. If the Participant's spouse elects to defer the Annuity Starting Date for the survivorship benefits, and fails to survive the Annuity Starting Date, no survivorship benefits will be payable. However, in such event, benefits may be payable under Section 6.7.

5. The Trustees shall distribute the survivorship benefits to the surviving spouse at any time prior to the annuity starting date, in lump sum form, if the present value of the benefit does not exceed \$5,000.

For purposes of determining the present value of an annuity as of the date of distribution, the Plan is required to use an interest rate no greater than the rate used by the Pension Benefit Guaranty Corporation in valuing a lump sum distribution upon Plan termination.

#### 6.7 Beneficiary Annuity.

- A. A Beneficiary Annuity, as defined in subsection 6.7B shall be paid to the beneficiary determined under subsection 6.7C of any Participant who meets either of the following eligibility requirements:
  1. A vested Participant who dies before his Annuity Starting Date but has not met the requirements for a Qualified Preretirement Survivor Annuity; or
  2. A vested Participant who dies before his Annuity Starting Date while eligible for a Qualified Preretirement Survivor Annuity, but whose surviving spouse dies prior to the surviving spouse's Annuity Starting Date under the Qualified Preretirement Survivor Annuity.
- B. The Beneficiary Annuity is the monthly amount which would have been payable under the Normal Form of Benefits (a life annuity with a 60 month guarantee) commencing at the Participant's Normal Retirement Date, provided, however, that this amount is payable to the beneficiary or beneficiaries determined under Section 6.7C only for 60 months. Benefit payments to the beneficiary will commence with the first day of the first month following the month in which the Participant would have reached age 60 or if later, the first day of the month following the month in which the Participant dies or if later, the first day of the month following the death of the surviving spouse.
- C. The beneficiary or beneficiaries entitled to the Beneficiary Annuity shall be determined in the same manner as the beneficiary is determined under Section 5.2, except that if payment is required to be made under that section to the Participant's estate and if more than one year has passed since the participant's death, the payments shall be made to the Participant's legal heirs determined under the laws of intestacy of the State of Missouri as of the date the payments are to commence.
- D. This Section shall be effective with regard to an eligible Participant whose death occurs on or before January 19, 1995.

## ARTICLE VII

### Vesting Requirements

7.1 General Rule. A Participant meets the requirements of Article VII, and is therefore "vested" for purposes of eligibility for plan benefits, if he meets one of the following requirements:

- A. A Participant who has completed ten years of vesting service as defined in Section 7.2 (excluding years of vesting service prior to a permanent break in service) is vested;
- B. A Participant who has completed five years of vesting service as defined in Section 7.2 (excluding years of vesting service prior to a permanent break in service) and whose participation ceases within the meaning of Article III after the Participant has reached the age of forty-five (45) is vested.
- C. A Participant whose termination of participation within the meaning of Article III occurs after the Participant has reached the age of sixty (60) is vested.
- D. For any Participant who has one hour of service on or after July 1, 1989 and who is not a Participant as a result of being covered under a collective bargaining agreement, that Participant is vested if he has completed five (5) years of vesting service as defined in Section 7.2 (excluding years of vesting service prior to a permanent break in service).
- E. Any Participant who has one hour of service on or after July 1, 1998, is vested if he had completed five (5) years of vesting service as defined in Section 7.2 (excluding years of service prior to a permanent break in service).

7.2 Year of Vesting Service.

- A. The vesting computation period is the twelve month period commencing July 1 of each year and ending June 30 of the following year.
- B. A Participant whose participation ceased (within the meaning of Article III) on or after January 1, 1976, earns a year of vesting service for any vesting computation period up to and including the vesting computation period which ended June 30, 1992, during which the Participant completed one hour of service, as defined in Section 1.19.
- C. For each vesting computation period commencing with the vesting computation period that begins July 1, 1992, a Participant earns a year of vesting service for each such vesting computation period during which the Participant completed 400 or more hours of service as defined in Section 1.19.
- D. Years of vesting service prior to a permanent break in service (as defined in Section 7.3D) are forfeited and do not count toward years of vesting service.
- E. A Participant who ceased participation prior to December 1, 1974, will be deemed to have completed 10 years of vesting service (or 5 years of vesting service if applicable) only if the Participant completes said years of vesting service in accordance with the rules contained in this Section 7.2 and if the date of the Participant's cessation of participation is after the tenth anniversary (or if applicable, the fifth anniversary) of the date that the Participant first participated.
- F. For purposes of computing years of service for vesting only, hours of service with a Contributing Employer for which the Employer is not obligated to contribute to this Trust shall be counted provided that such noncovered service is contiguous with the Participant's service for which contributions were required. Noncovered service shall be considered as contiguous with covered service if there is no intervening quit, discharge or other termination. No benefits are accrued for contiguous noncovered service.

7.3 Break-in-Service.

- A. A one year break in service occurs when, during any vesting computation period up to and including the vesting computation period that ended on June 30, 1992, a Participant has no hours of service, as defined in Section 1.19. For vesting computation periods beginning with the vesting computation period that begins on July 1, 1992, and thereafter, a one year break in service occurs when, during any such vesting computation period, a Participant or former Participant completes less than 400 hours of service, as defined in Section 1.19.
- B. A Participant who experiences a one year break in service after he has become vested within the meaning of Section 7.1, is entitled to have his pre-break service counted for vesting and benefit accrual purposes.

- C. A Participant who experiences a one year break in service prior to becoming vested and who subsequently becomes a Participant in the Plan shall be entitled to have his years of vesting service and his years of accredited service for purposes of benefit computation prior to that one year break in service counted unless the break in service is a "permanent break in service" within the meaning of the following Section 7.3B. Conversely, years of service prior to a "permanent break in service" will not be counted.
- D. A Permanent Break in Service occurs if a nonvested Participant experiences consecutive one year breaks in service which equal or exceed, the greater of:
  - 1. five years of service;
  - 2. the number of the Participant's years of service before the break in service.

## **ARTICLE VIII**

### **Forms of Benefit Payments**

8.1 **Definitions.** The following definitions apply for purposes of this Article VIII.

- A. The term "Annuity Starting Date" shall have the meaning set out in Section 1.24.
- B. A "Qualified Joint and Survivor Annuity" for a Participant who is married to his spouse on his Annuity Starting Date is a form of annuity which pays a lifetime monthly pension payment to the Participant and upon the Participant's death, pays one-half of that amount in monthly payments to the Participant's "surviving spouse" for the life of the surviving spouse. The Qualified Joint and Survivor Annuity for a married Participant will be the actuarial equivalent of the amount which the Participant would receive under the Normal Form of Benefits under this Plan. The monthly amount of the Participant's pension is reduced in accordance with the actuarial assumptions used by the Plan and the ages of the Participant and his spouse.

A "Qualified Joint and Survivor Annuity" for a Participant who has not been married for one year immediately prior to his Annuity Starting Date is a life annuity. This annuity shall be the actuarial equivalent of the benefit which the Participant would have received under the Normal Form of Benefits under this Plan.

- C. The "surviving spouse" for purposes of this Article is the spouse to whom the Participant was lawfully married as of the Annuity Starting Date. If the "surviving spouse" predeceases the Participant, no survivorship annuity will be payable, even if the Participant remarries. The death of the surviving spouse prior to the Participant's death will not affect the amount of the monthly payment to the Participant.

8.2 **General Rule Concerning Form of Benefits.** Effective for any Participant whose Annuity Starting Date is July 1, 1976, or thereafter, benefits shall be paid in the form of a Qualified Joint and Survivor Annuity unless the Participant validly waives the Qualified Joint and Survivor Annuity in accordance with the provisions of Section 8.3.

8.3 **Waiver of the Qualified Joint and Survivor Annuity.**

- A. A participant who is otherwise required to receive his benefits in the form of a Qualified Joint and Survivor Annuity may waive said form of benefits by filing with the Fund Office a valid waiver during the election period. The election period is the ninety (90) day period prior to the Annuity Starting Date. Any valid election made during an election period prior to an Annuity Starting Date which is on or after the Participant's Normal Retirement Age will govern all payments of benefits earned thereafter. Any election may be revoked at any time during the election period.
- B. In order to be valid, an election to waive the Qualified Joint and Survivor Annuity must meet the following requirements:
  - 1. It must be in writing.
  - 2. It must be filed no less than thirty (30) days and no more than ninety (90) days after the Participant receives the Notice and Explanation described in Section 8.4. The Notice and Explanation is presumed to be received on the third day after the date it is mailed.

3. In the case of a Participant who had one or more hours of service after August 23, 1984, the waiver must be consented to in writing by the Participant's spouse (unless such consent is not required under subsection 8.3B4). Said consent must also acknowledge in writing the effect of the election. The consent and acknowledgement required by this subsection must be witnessed by a notary public or a plan representative.

Effective for an election filed with regard to an Annuity Starting Date on or after July 1, 1987, the waiver and consent must name the designated beneficiary or beneficiaries, if any, who will receive survivorship benefits under the Plan and must name the form of benefits to be paid under the Plan, (subject to the following paragraph). If a consent names a designated beneficiary and/or a specific form of benefits, then any subsequent change to said designated beneficiary and/or form of benefits is invalid unless a new consent is obtained from the spouse, which meets the requirements of this Section 8.3.

If the consent does not name a specific beneficiary or beneficiaries or a specific form of benefits, or if the Participant and spouse desire that future changes in the beneficiary and/or form of benefits may be made without spousal consent, the consent must acknowledge that the spouse has the right to limit consent to a specific beneficiary and a specific form of benefits and the consent must voluntarily waive whichever (or both) of said rights, in accordance with the desires of the Participant and his spouse.

4. The consent described in this Section 8.3 is not required if it is established to the satisfaction of a plan representative that the consent otherwise required cannot be obtained because:
  - a. there is no spouse;
  - b. the spouse cannot be located; or
  - c. such other circumstances exists as may be prescribed by the Secretary of the Treasury as sufficient to obviate the requirement of the spousal consent.

8.4. Notice and Explanation of Qualified Joint and Survivor Annuity and the Right to Waive Qualified Joint and Survivor Annuity.

- A. Within a reasonable time prior to the Annuity Starting Date, the Plan must provide the Participant with a notice in writing explaining the terms of the Qualified Joint and Survivor Annuity and the right to waive that Annuity Form of Benefit. This Notice will be provided within a reasonable period of time before the Participant's Normal Retirement Age and a reasonable period of time before any Early Retirement Date or Postponed Retirement Date. A Participant may not elect an Annuity Starting Date at any time before the 31st day after he has received the Notice.
- B. The Notice and Explanation must contain a written explanation of the following:
  1. The terms and conditions of the Qualified Joint and Survivor Annuity;
  2. The Participant's right to make an election to waive the Qualified Joint and Survivor Annuity and the procedure for making the election;
  3. The effect of an election to waive the Qualified Joint and Survivor form of benefit;
  4. The rights of the Participant's spouse, including the right to withhold consent; and
  5. The right to revoke an election to waive Qualified Joint and Survivor Annuity and the effect of such revocation.

8.5 Optional Forms of Retirement Benefits.

- A. In the event a Participant validly waives the Qualified Joint and Survivor Annuity, he may elect to receive his benefits in any of the following optional forms:
  1. Life Annuity with a 60 month guarantee (described in Section 5.2 of this Plan).

2. A Life Annuity with 120 month guarantee, which is the same form of payments as the life annuity with a 60 month guarantee as described in Section 5.2, but the number of guaranteed payments is 120. This option may only be selected if the 120 monthly payments will not extend payments beyond the life expectancy of the Participant and his designated beneficiary.
  3. A Life Only Annuity which provides monthly benefit payments to the Participant for his lifetime with no further payments after the monthly payment for the month in which the Participant dies.
  4. A Joint and Full Survivor Annuity which provides monthly benefit payments to the Participant throughout his lifetime and, upon his death, continues monthly payments in the same amount to the "surviving spouse".
  5. A Joint and Two-Thirds Survivor Annuity, which provides monthly benefit payments to the Participant throughout his lifetime and, upon his death, continues monthly payments equal to 66-2/3% of the amount that the Participant was receiving, to the "surviving spouse".
- B. All optional forms of benefits (including the Qualified Joint and Survivor Annuity) shall be adjusted so that the actuarial value of the benefit is the actuarial equivalent of the Participant's accrued benefit stated in the Normal Form of Benefit (Section 5.2). Under this Plan, actuarial equivalent means that whenever it is necessary to convert one form of annuity to another form of annuity or to a lump sum, the result will be benefits substantially equal in value as determined by application of the 1971 Male Group Annuity Mortality tables and a 6-1/2% interest rate.
- C. Notwithstanding the foregoing, the Trustees shall distribute the Participant's benefits or the Beneficiary's benefits in the form of a lump sum payment on or prior to the annuity starting date if the present value of the benefits does not exceed \$5,000. For purposes of determining the present value of an annuity as of the date of distribution, the Plan shall use the interest rate established by the Pension Benefit Guaranty Corporation as of the beginning of the Plan Year for valuing a lump sum distribution upon plan termination or individual termination. This section shall not apply after the Annuity Starting Date unless the Participant or Beneficiary consents in writing to a single lump sum distribution.

## **ARTICLE IX**

### **Application for and Timing of Benefit Distribution**

9.1 **Applications.** A Participant or Beneficiary must apply in writing for any benefit payable under this Plan in a timely manner, in advance of the Annuity Starting Date. To be timely for this purpose, an application must be sufficient to give notice to the Trustees of the applicant's request to commence receipt of benefits under this Plan. Every Participant, Beneficiary or Pensioner shall furnish, at the request of the Trustees, any information or proof reasonably required to determine his benefit rights. If a person makes a willfully false statement material to an application or furnishes fraudulent information or proof, benefits not vested under this Plan (as defined in Article VII) may be denied, suspended or discontinued as determined by the Trustees. The Trustees shall have the right to recover any benefit payment made in reliance on any false or fraudulent statement, information or proof submitted by a Participant, Beneficiary or Pensioner.

9.2 **Trustees.** The Trustees shall, subject the requirements of the law, be the sole judges of the standard of proof required in any case and the application and interpretation of the Plan including decisions concerning the eligibility of a Participant or Beneficiary to participate or his entitlement to benefits, and decisions of the Trustees shall be final and binding on all parties. In the event an application for benefits is denied in whole or in part, the Participant or Beneficiary must follow the Benefit Claim Procedure set forth in Article X. Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise such powers in a uniform and non-discriminatory manner.

9.3 **Timing of Benefit Commencement.** Payment of benefits may begin sooner but shall begin no later than 60 days after the last of the following dates, unless the Participant elects a later date (see Section 6.2):

- A. The end of the Plan Year in which the Participant attained Normal Retirement Age;
- B. The end of the Plan Year in which the Participant left covered service;

- C. The Annuity Starting Date selected by the participant on an application for benefits filed with the Plan; or
- D. The date the Trustees were first able to ascertain entitlement to, or the amount of, the Participant's Benefit.

9.4 Limitations on the Timing of Benefit Distribution.

- A. As set forth in Section 6.2, a Participant may elect to postpone his Annuity Starting Date to a date which is past his Normal Retirement date, provided:
  - 1. Effective January 1, 1984, no Participant may postpone his Annuity Starting Date to a date later than April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70-1/2 or the calendar year in which he ceases working in covered employment. If a Participant owns 5% or more of the stock of a Contributing Employer, the benefit must begin no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2.
  - 2. Effective May 1, 1989, benefit commencement may not be postponed later than April 1 of the calendar year following the calendar year in which the Participant reaches age 70-1/2.

The latest date on which benefit payments may commence as set out in paragraph 9.4A1 and 2 is called the "required beginning date."

- B. Notwithstanding any provisions in the Plan to the contrary, benefit payment must meet the requirements of either of the following subsections:
  - 1. Benefits shall be distributed in full prior to the "required beginning date", set out in subsection 9.4A, or
  - 2.
    - a. Distribution to a Participant must begin no later than the required beginning date and must be made over the life of the Participant (or lives of the Participant and the Participant's spouse), or over a period not exceeding the life expectancy of the Participant (or the life expectancies of the Participant and the Participant's spouse). Distributions (as described in this subsection) may be made to a Participant and a nonspouse Beneficiary provided the period used to determine the "life expectancies" remains as that of the Participant and the Participant's spouse.
    - b. If distribution of benefits has begun in accordance with the provisions of subsection 9.4B2a, and if the Participant dies before his or her entire interest is distributed, the remaining portion of the Participant's interest must be distributed at least as rapidly as under the distribution method being used as of the date of his death.
    - c. If a Participant dies before the Distribution of the Participant's interest has begun in accordance with subsection 9.4B2a, then the entire interest of the Employee must be distributed by December 31 of the fifth calendar year following the year of the Participant's death, subject to the following:
      - (1) The five-year payout of the requirement shall not apply if:
        - (a) any portion of the Participant's interest is payable to (or for the benefit of) a designated beneficiary;
        - (b) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary); and
        - (c) such distributions begin not later than one year after the Participant's death or such later date as may be prescribed by regulations.

- (2) If the designated beneficiary referred to in paragraph 9.4B2c(1) is the surviving spouse of the Participant, then:
  - (a) the date on which distributions are required to begin under 9.4B2c(1)(c) shall not be earlier than the date on which the Participant would have attained age 70-1/2; and
  - (b) if the surviving spouse dies before the distribution to such spouse begins, this subparagraph shall be applied as if the surviving spouse were the Participant.

## **ARTICLE X**

### **Benefit Claims Procedure**

Any claim for benefits under the Plan shall be made in writing to the Plan Administrator of the Plan on forms which will be provided upon request to the Fund Office. The Plan Administrator shall furnish the claimant with a written notice of his decision within ninety (90) days after receipt of the claim, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing the claim is required, written notice of the extension shall be furnished to the claimant prior to the expiration of the initial 90 day period. In no event shall such an extension exceed a period of 90 days after the expiration of the initial 90 day period.

In the event that the decision of the Plan Administrator is to wholly or partially deny a claim, the claimant shall be provided with a written decision which shall set forth in a manner calculated to be understood by the claimant the following:

- A. The specific reason or reasons for the denial;
- B. Specific reference to pertinent plan provisions on which the denial is based;
- C. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- D. Appropriate information as to the steps to be taken if the Participant or Beneficiary wishes to submit his or her claim for review.

In the event a claim is wholly or partially denied, a claimant or his duly authorized representatives may appeal the claim to the Board of Trustees of the Plan by written application to the Board of Trustees filed within sixty (60) days after receipt by the claimant of written notification of denial of claim. Said application for review shall be available at the office of the Plan. The claimant shall have the right to have a duly authorized representative review pertinent documents and submit issues and comments in writing.

The decision by the Board of Trustees shall be made no later than the date of the meeting of the Board which immediately follows the Plan's receipt of request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such a case, a decision may be made by no later than the date of the second meeting following the Plan's receipt of the request for review.

If special circumstances require an extension of time for reviewing the decision of the Plan Administrator, the decision of the Board of Trustees shall be rendered no later than the third meeting of the Board following the Plan's receipt of the request for review. If such an extension of time for review is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the Board shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent plan provisions on which the decision is based.

The benefit claims procedure provided herein is exclusive and no action shall be brought in any court or before any agency to recover any benefits or seek relief under the Plan prior to the exhaustion of the remedies set forth herein.

## **ARTICLE XI**

### **Limitations on Benefits**

#### **11.1 Maximum Limitation.**

- A. Notwithstanding the other provisions of this Plan, the annual retirement benefit to which a Participant shall be entitled hereunder when aggregated with the benefit under all other Defined Benefit Plans maintained by the Employers, shall not exceed the lesser of:

1. \$90,000; or
2. 100% of the Employee's average annual compensation for the three highest consecutive calendar years during which he participated in the Plan or any other Plan maintained by the Employer.

The \$90,000 limit set forth in subparagraph (1) above shall be increased automatically to account for increases in the cost of living. Such cost of living adjustment shall be limited to scheduled increases in accordance with regulations issued by the Secretary of Treasury under Internal Revenue Code § 415(d) and shall be effective no sooner than January 1 of each year.

- B. For purposes of this section "compensation" shall mean the Employee's earned income, wages, salaries and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the plan (including, but not limited to, commissions paid to salesmen, percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following:
1. Employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed or Employer contributions under a simplified Employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation.
  2. Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the Employer either becomes freely transferable or is no longer subject to a substantial risk of forfeiture.
  3. Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option plan.
  4. Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Section 403(b) of the Internal Revenue Code (whether or not the amounts actually excludable from the gross income of the Employee).
- C. In the case of a Participant who has less than 10 years of accredited service for purposes of benefit accrual, the limitations set forth in subsections B1 and 2 of this section shall be multiplied by a fraction, the numerator of which is the number of the Participant's such years of service and the denominator of which is 10.
- D. The following additional rules apply for plan years beginning July 1, 1983 to July 1, 1986, inclusive: in the case of a Participant whose benefits hereunder commence prior to his attainment of age 62, the limitations set forth in subsection A1 of this section shall, in accordance with the regulations issued by the Secretary of Treasury, be adjusted so that it is the equivalent to such benefit beginning at age 62, provided that such an adjustment shall not reduce such limitation below:
1. If the benefit commences after the Employee attains age 55, \$75,000, or
  2. If the benefit commences before the Employee attains age 55, the amount which the actuarial equivalent to the \$75,000 limitation at age 55.
- In the case of an Employee whose benefits hereunder commence after he has attained the age of 65, the limitation set forth in subsection A1 of this section shall, in accordance with regulations issued by the Secretary of Treasury, be adjusted so that it is the actuarial equivalent to the dollar limitation for a benefit commencing at age 65. For purposes of adjusting any benefit under this subsection, the interest rate assumption shall be 5%.
- E. Notwithstanding the limitations of subsection A of this section, if a Participant was covered by the Plan before the first day of the Limitation Year beginning in 1983, he may receive an annual retirement benefit which is not less than the amount of his current accrued benefit as of the close of the last Limitation Year beginning before 1983, as determined under the terms of the Plan as then in effect disregarding any amendments or cost of living adjustment after July 1, 1982. For the purposes of this Section, the term "Limitation Year" shall mean the Plan Credit Year.

- F. The following rules apply for Plan Years beginning July 1, 1987 and thereafter. In the case of a Participant whose Annuity Starting Date is prior to Social Security Retirement Age, the \$90,000 limitation contained in Section 11.1A1 shall be actuarially reduced so that it is the actuarial equivalent of an annual benefit of \$90,000 commencing at the Social Security Retirement Age. In the case of a Participant whose Annuity Starting Date is after Social Security Retirement Age, the \$90,000 limitation contained in Section 11.1A1 shall be actuarially increased so that it is the actuarial equivalent of an annual benefit of \$90,000 commencing at the Social Security Retirement Age.
- G. If a Participant covered by this Plan participates in both Defined Benefit and Defined Contributions Plans maintained by the Employer, the sum of 1 and 2 below may not exceed 1.0:
1. The sum of the projected annual benefit of the Employee under all Defined Benefit pension plans of the Employer determined as of the close of the Limitation Year, divided by the lesser of:
    - a. The product of 1.25 multiplied by the dollar limitation in effect under Section 415(b)(1)(A) of the Internal Revenue Code for such year, or
    - b. The product of 1.4 multiplied by the amount which may be taken into account under Section 415(b)(1)(B) of the Internal Revenue Code with respect to such Employee for such year.
  2. The sum of the annual additions to the Employee's account under all defined contributions plans of the Employer as of the close of the Limitation Year and for all prior Calendar Years divided by the sum of the lesser of a or b for such year and for each prior year of service with the Employer (regardless of whether any such defined contribution plan was in existence during those years), where:
    - a. Is the product of 1.25 multiplied by the dollar limitation in effect under Section 415(c)(1)(A) of the Internal Revenue Code for such year (without regard to Section 415(c)(6) of such Code); and
    - b. Is the product of 1.4 multiplied by the same amount which may be taken into account under Section 415(c)(1)(B) of the Internal Revenue Code (or Section 415(c)(7) of such Code, if applicable) with respect to such individual under such plan for such year; provided, however, that the Board of Trustees may elect that the amount taken into account for each Employee for all years ending before January 1, 1983, under a and b above shall be determined pursuant to the special transition rule in such Section 415(e)(6) of the Internal Revenue Code.

If this Plan is aggregated with another Plan that was in existence on July 1, 1982, and the above limitations are not met, each Participant for whom the limits are violated will not receive any annual additions or accruals in this Plan. In the event that at the earlier to occur of each December 31 or the date of an Employee retirement or termination, the sum of 1 and 2 above exceeds 1.0 and the benefit of such Employee under such other Plan or Plans is not reduced to bring such sums to 1.0, then such Employee's benefits under this Plan shall be reduced by an amount sufficient to cause the sum of 1 and 2 above for each Employee to equal 1.0.

## ARTICLE XII

### Miscellaneous Provisions

12.1 Military Service. Service in the armed forces of the United States shall, upon return to employment covered by this Plan, be credited for purposes of participation, benefit accrual and vesting to the extent required by law.

12.1 Spendthrift Trust/Non Alienation or Assignability of Benefits.

A. No Participant shall, under this Trust, have any legal right, title, or interest in the Trust or any contract issued concerning his participation, and any such Participant's interest, beneficial or otherwise, shall be limited to that provided in this Trust and under any contract on such Participant.

To the extent permitted by law, and except as provided in paragraph (B), the Participant shall not be permitted to anticipate, encumber, alienate or assign any of his rights, claims or interest in this Trust or contract, or any part thereof, except upon the written authority of the Trustees, and such authority, if granted and it relates to a contract, shall have been filed with the issuing insurance company during the lifetime of the Participant and neither the contract nor any part thereof, nor any payments, benefits or rights arising by reason of this Trust, shall be in any way subject to the Participant's debts, contracts or engagements, nor to any judicial processes to levy upon or attach the same for payment thereof.

- B. All other provisions of this Section and this Plan notwithstanding, the Plan shall pay benefits in accordance with any domestic relations order which is determined to be a Qualified Domestic Relations Order within the meaning of Section 414(p) of the Internal Revenue Code. The Trustees shall adopt a written procedure for determining the qualified status of domestic relations orders and for administering distributions under such qualified orders.

12.3 Non Reversion to Employer. It is expressly understood that in no event shall any of the corpus or assets of the Pension Trust Fund revert to the Employers or be subject to any claims of any kind or nature by the Employers.

12.4 Funds in Trustees' Possession for Benefit of Participants and Beneficiaries. Any funds coming into the hands of the Trustees from any source whatsoever, less reasonable expenses of administering this Trust as may be determined from time to time by the Trustees, shall be used solely to provide the benefits enumerated for eligible Participants and Beneficiaries. The sources of these funds shall include contributions from Employers, interest and other earnings on investments, dividends from an insurance company, other credits that may be granted by the insurance company and other income from any source whatsoever.

12.5 Limitation of Liability. The Pension Plan has been established on the basis of an actuarial calculation which has established, to the extent possible, that contributions will, if continued, be sufficient to maintain the Plan on a permanent basis, fulfilling the funding requirements of ERISA. Except for liabilities which may result from provisions of ERISA, or other applicable law, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions as stipulated in its collective bargaining with the Union, and there shall be no liability upon the Trustees individually, or collectively, or upon the Union to provide benefits established by this Pension Plan, if the Pension Fund does not have assets to make such payments.

12.6 Liability of Employer/Liability of Participants. The liability of any individual employer to this Fund shall in no event extend to the obligations of another participating employer or other participating employers.

The individual Participants shall not be required to make any payments or contributions to the cost of the operation of the Fund or in connection with the administration of the Trust hereby established or otherwise. No individual Participant shall be liable or responsible for any debts, liabilities or obligations of the Trust or Trustees.

#### 12.7 Rollover Distributions.

- A. This section 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 section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

#### B. Definitions.

1. **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; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

2. **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
3. **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the 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.
4. **Direct rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

## 12.8 Top-Heavy Provisions.

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

### 1. Key Employee.

"Key Employee" means any employee or former employee (and the beneficiary of such employee) meeting the definition of "Key Employee" contained in Section 416(i)(1) of the Internal Revenue Code and Section 1.416-1 of the Treasury Regulations.

### 2. Non-Key Employee.

"Non-Key Employee" means any Employee who is not a Key Employee.

### 3. Annual Compensation Limitation.

- a. For Plan Credit Years beginning on or after July 1, 1994, the amount of a Participant's Compensation (as defined in subsection 11.1 B above) from any single employer that may be taken into account for any Plan purpose in any Plan Credit Year is \$150,000, as that amount may be adjusted from time to time by the Secretary of the Treasury under Section 401(a)(17) of the Internal Revenue Code.
- b. Notwithstanding any other provision of the Plan, effective July 1, 1994, the accrued benefit of any Participant whose Compensation exceeded \$150,000 in any Plan Credit Year beginning before August 1, 1994, shall be the greater of:

the sum of

- (1) The Participant's accrued benefit as of June 30, 1994, determined under Article V as though the Participant had terminated employment on that date and without regard to any Plan amendments adopted after that date (but taking into account remedial amendments that apply retroactively before that date under Section 401(b) of the Internal Revenue Code), plus
- (2) the amount of the Participant's benefit accrued on or after July 1, 1994, under Article V, taking into account only years of service after June 30, 1994, and

the Participant's accrued benefit, determined under Article V, taking into account all Years of Service before and after July 1, 1994.

### 4. Determination Date.

"Determination Date" means, with respect to any Plan Credit Year, the last day of the preceding Plan Credit Year, or in the case of the first Plan Credit Year of any Plan, the last day of such Plan Credit Year.

**B. Top-Heavy Plan Requirements.**

Effective January 1, 1984, for any Top-Heavy Plan Credit Year, the Plan shall provide the following:

1. This Plan shall be a Top-Heavy Plan for any Credit Year commencing after December 31, 1983, in which, as of the Determination Date,
  - a. the present value of accrued benefits of Key Employees and
  - b. the sum of the aggregate accounts of Key Employees under this Plan and all plans of an Aggregation Group exceeds sixty percent (60%) of the present value of accrued benefits and the aggregate accounts of all Key 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 Credit Year, but such Participant was a Key Employee for any prior Plan Credit 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 Plan (or whether any Aggregation Group which includes this Plan is a Top-Heavy Group). In addition, for Plan Credit Years beginning after December 31, 1984, if a Participant or former Participant has not performed services for any Employer maintaining 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.

2. 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.
3. "Aggregation Group" means either a Required Aggregation Group or a Permissive Aggregation Group as hereinafter determined.

- a. 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 a Key Employee participates to meet the requirements of Sections 401(a)(4) and 410 of the Internal Revenue 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 Plan. No plan in the Required Aggregation Group is a Top-Heavy Plan if the Required Aggregation Group is not a Top-Heavy Plan.

- b. 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 of the Internal Revenue 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 Plan. No plan in the Permissive Aggregation Group will be considered a Top-Heavy Plan if the Permissive Aggregation Group is not a Top-Heavy Plan.

- c. Only those plans of an Employer in which the Determination Dates fall within the same Plan Credit Year shall be aggregated in order to determine whether such plans are Top-Heavy Plans.
4. In the case of a defined benefit plan, a Participant's present value of accrued benefits shall be determined:
    - a. 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;
    - b. for the first Plan Credit Year, as if:

the Participant terminated service as of the Determination Date; or

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.

- c. for any other Plan Credit Year, as if the Participant terminated service as of the actuarial valuation date,
  - d. 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 Credit Year.
5. The calculation of a Participant's present value of accrued benefit as of a Determination Date shall be the sum of the following:

- a. the present value of accrued benefit using actuarial assumptions stated in the most recent actuarial valuation;
- b. any Plan distributions made within the Plan Credit Year that includes the Determination Date or within four preceding Plan Credit 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 of accrued benefit as of the valuation date.

Notwithstanding anything herein to the contrary, all distributions, including distributions made prior to July 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;

- c. any Employer 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;
- d. with respect to unrelated rollovers and plan-to-plan transfer (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 rollovers 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 June 30, 1984, as part of the Participant's present value of accrued benefits. However, rollovers or plan-to-plan transfers accepted prior to July 1, 1984, shall be considered as part of the Participant's present value of accrued benefits; and
- e. 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 transfers, 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.
- f. "Top-Heavy Group" means an Aggregation Group in which, as of the Determination Date, the sum of:
  - (1) the present value of accrued benefits of Key Employees under all defined benefit plans included in the group; and
  - (2) the aggregate accounts of Key Employees under all defined contribution plans included in the group exceeds sixty percent (60%) of a similar sum determined for all Participants.

- g. Notwithstanding anything herein to the contrary, the effective date otherwise provided for herein for the application of Section 416 of the Internal Revenue Code to this Plan (Plan Credit Years beginning after December 31, 1983) shall be extended in accordance with any federal law or regulatory authority.

**C. Top-Heavy Vesting.**

1. Notwithstanding the determination of Vested Status in accordance with Article VII of the Plan, for any Top-Heavy Plan Credit Year, the vested portion of any Participant's accrued benefit shall be determined on the basis of the Participant's number of Years of Vesting Service according to the following schedule:

<b>Service for Vesting (excluding Years of Service for Vesting prior to effective date of this Plan)</b>	<b>Vested percentage</b>
1 Year	0%
2 years	0%
3 years	100%

2. If, in any subsequent Plan Credit Year, the Plan ceases to be a Top-Heavy Plan, the Trustees may elect to:
- continue to apply this vesting schedule in determining the vested portion of any Participant's accrued benefit; or
  - revert to the vesting schedule in effect before this Plan became a Top-Heavy Plan pursuant to Section 411(a)(10) of the Internal Revenue Code. The nonforfeitable percentage of the accrued benefit before the Plan ceased being Top-Heavy, therefore must not be reduced and any Participant with three or more Years of Vesting Service must be given the option of remaining under the Top-Heavy vesting schedule. Any such reversion shall be treated as a Plan amendment.
3. The Top-Heavy vesting schedule does not apply to the accrued benefit of any Employee who does not have one hour of work after the Plan has initially become a Top-Heavy Plan and such Employee's accrued benefit attributable to Employer contributions will be determined without regard to this Article.

**D. Top-Heavy Benefit Requirement.**

1. The minimum accrued benefit derived from Employer contributions to be provided under this section for each Non-Key Employee who is a Participant shall equal the product of:
- one-twelfth (1/12th) of Annual Compensation averaged over the five consecutive "limitation years" (or actual number of "limitation years" if less) which produces the highest average, and
  - the lesser of
    - two percent (2%) multiplied by Years of Vesting Service; or
    - twenty percent (20%).
2. For purposes of providing the minimum benefit under Section 416 of the Internal Revenue Code, a Non-Key Employee who is not a Participant solely because:
- his Annual Compensation is below a stated amount, or
  - he declined to make mandatory contributions to the Plan
- will be considered to be a Participant.

3. For purpose of this section, Years of Vesting Service for any Plan Credit Year ending prior to July 1, 1984, or for any Plan Credit Year during which the Plan was not a Top-Heavy Plan shall be disregarded.
4. For purposes of this section, Annual Compensation for any "limitation year" ending prior to July 1, 1984, or subsequent to the last "limitation year" during which the Plan is a Top-Heavy Plan shall be disregarded. The term "limitation year" means the Plan Credit Year.
5. If the Plan provides for the normal retirement to be paid in a form other than a single life annuity, the accrued benefit under this section shall be the Actuarial Equivalence of the minimum accrued benefit under Article V.
6. If payment of the minimum accrued benefit commences at a date other than Normal Retirement Age, the minimum accrued benefit shall be adjusted in accordance with Article VI of the Plan.
7. If a Non-Key Employee participates in this Plan and a defined contribution plan included in a Required Aggregation Group which is Top-Heavy, the minimum benefits shall be provided under this Plan.
8. To the extent required to be nonforfeitable under Article VII of the Plan, the minimum accrued benefit under this section may not be forfeited under Section 411(a)(3)(B) or 411(a)(3)(D) of the Internal Revenue Code.

### **ARTICLE XIII**

#### **Right to Amend**

The Trustees shall have the sole right to amend this Plan and Trust without the consent of any Participant, at any time from time to time as may be deemed advisable; provided, however, that no amendment to this Trust shall deprive any Participant of any accrued benefit or vested equitable interest herein, if any, nor shall such amendment be contrary to any laws in existence or enacted by the Federal or State Government directly concerning this Trust, provided that the Trustees may adopt an amendment.

- A. If it is necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Internal Revenue Code and to maintain compliance of the Plan with the requirements of ERISA; or
- B. If the amendment meets the requirements of Section 302(c)(8) of ERISA and Section 412(c)(8) of the Internal Revenue Code, and the Secretary of Labor has been notified of such amendment and has either approved of it or, within 90 days after the date on which notice was filed, has failed to disapprove.

Either the Trustees representing the Union or the Trustees representing the Employers may propose amendments to this Trust. Such amendment will become effective when it has been approved and executed by a majority of the Trustees. All amendments adopted relevant to the continuing qualification of this Plan and Trust under the Internal Revenue Code shall be submitted to the United States Internal Revenue Service for its determination of the qualification of such amendment.

### **ARTICLE XIV**

#### **Termination**

- A. **Right to Terminate.** The Trustees shall have the right to discontinue or terminate this Plan in whole or in part. The rights of all affected Participants to benefits accrued to the date of the termination, partial termination, or discontinuance to the extent funded as of such date shall be nonforfeitable.
- B. **Priorities of Allocation.** In the event of termination, the assets then remaining in the Plan, after providing for any administrative expenses, shall be allocated among the Pensioners, Beneficiaries, and Participants in the following order:

1. First in the case of benefits payable as a pension:
    - a. In the case of the pension of a Participant or Beneficiary which was in pay status as of the beginning of the three year period ending on the termination date of the Plan, to each pension, based on the provisions of the Plan (as in effect during the five year period ending on such date) under which such pension would be the least. The lowest pension in pay status during the three year period shall be considered the pension in pay status for such period.
    - b. In the case of a pension of a Participant or Beneficiary which would have been in pay status as of the beginning of such three year period if the Participant had retired prior to the beginning of the three year period if his pension had commenced (in the standard form) as of the beginning of such period, to each such pension based on the provisions of the Plan (as in effect during the five year period ending on such date) under which the pension would be the least.
  2. Second, to all other benefits (if any) of the individuals under the Plan guaranteed under Title IV of ERISA.
  3. Third, to all other vested benefits under the Plan.
  4. Fourth, to all other benefits under the Plan.
- C. Allocation Procedure. For purposes of subsection B hereof:
1. The amount allocated under any paragraph of subsection B with respect to any benefit shall be properly adjusted for any allocation of assets with respect to that benefit under a prior paragraph of that subsection.
  2. If the assets available for allocation under any paragraph of subsection B (other than Paragraphs 3 and 4) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro-rata among such individuals on the basis of the present value (as of termination date) of their respective benefits described in that paragraph.
  3. This paragraph applies if the assets available for allocation under paragraph B3 are not sufficient to satisfy in full the benefits of individuals described in that paragraph.
    - a. If this paragraph applies, except as provided in subparagraph b below, the assets shall be allocated to the benefits of individuals described in paragraph B3 on the basis of the benefits of individuals which would have been described in such paragraph B3 under the Plan as in effect at the beginning of the five year period ending on the date of the Plan termination.
    - b. If the assets available for allocation under subparagraph a above, are sufficient to satisfy in full the benefits described in such subparagraph (without regard to this subparagraph), then for purpose of subparagraph a, benefits of individuals described in such subparagraph shall be determined on the basis of the Plan as amended by the most recent amendment effective during such five year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subparagraph a and any assets remaining to be allocated under subparagraph a on the basis of the Plan as amended by the next succeeding Plan Amendment effective during such period.

## ARTICLE XV

### Merger or Consolidation

The Trustees shall not merge or consolidate this Plan with any other Plan or transfer the assets or liabilities of this Plan to any other Plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit said Participant would be entitled to receive immediately before the merger, consolidation or transfer (if the Plan had then terminated).

## ARTICLE XVI

### Trustees

Trustees herein have been selected as follows: RICHARD BRYAN, JAMES KROUT, and ROBERT A. LUCKS have been selected by the Union and H. FRED PHILIPP, JR., PAUL MEYER, and DAN WIENSTROER have been selected by the Employers. The total number of Trustees designated by the Union and the total number of Trustees designated by the Employers shall at all times be equal, regardless of the number of Employers who may be contributing to the Fund. The term "Trustee" as used herein shall mean any natural person designated as a Trustee and selected by the Union or the Employer. The Board of Trustees shall be the plan sponsor, administrator and named fiduciaries of the Plan.

Any Trustee may resign by giving thirty (30) days' notice in the United States mail to the other Trustees and to the Board of his intent to so resign. The Union may discharge any of the Trustees appointed by it, by giving thirty (30) days' notice in the United States mail of such intent to discharge. The Employers may discharge any of the Trustees appointed by them, by giving thirty (30) days' notice in the United States mail of such intent to discharge. The removal of a Trustee shall be automatic at the end of a 30-day period of notification by either the Trustee or the Union or the Employers, as described above, of resignation or removal.

In the event any of the Trustees selected by the Union shall die, be incapable of acting hereunder, resign or be removed, a successor Trustee shall immediately be appointed by the Union duly certified by the Board. In the event any of the Trustees selected by the Employers shall die, become incapable of acting hereunder, resign or be removed, a successor Trustee shall immediately be appointed by the Employers duly certified by the Board. Failure of the Union or the Employers to select a successor Trustee promptly shall not prevent the remaining Trustees from carrying on the affairs of the Trust.

For purposes of this Plan, the Trustees are authorized to perform any of the above functions and shall be the Plan Fiduciaries. As such, the Trustees shall discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to Participants and their beneficiaries and defraying reasonable expenses of administering the Plan with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; by diversifying the investments of the Plan so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so, and in accordance with the documents and instruments governing the Plan (to the extent said documents and instruments are consistent with the law). The Fiduciaries may act in one or more fiduciary capacities with respect to the Plan and may allocate to others certain aspects of the management and operation responsibilities of the Plan including the employment of investment (and other) advisors and investment managers for all or part of the Plan assets and the delegation of any ministerial duties or functions to qualified individuals. The Fiduciaries shall be responsible for determining the Plan's short and long-run financial needs from time to time and on the basis thereof shall establish a funding policy and method which will carry out the Plan's objectives and needs. The Trustees shall from time to time adopt appropriate resolutions defining such investment objectives.

The Trustees are further authorized to appoint one from their number to serve as Managing Trustee and to delegate to such Managing Trustee such authority and responsibility as they determine to delegate and which may lawfully be delegated.

The Trustees shall further have the right to audit the books of a participating employer when such is deemed necessary or desirable for the effective administration of the Trust.

The Trustees shall designate one Trustee as Chairman to serve for a term of one year commencing with the date of election and until a successor chairman is thereafter selected for the purpose of presiding at the meetings of the Trustees. The Chairman shall be alternately selected from the Trustees representing the Employers and the Trustees representing the Union.

A quorum for the transaction of business shall consist of the presence at the meeting of at least four (4) Trustees, two (2) of whom represent the Employers and two (2) of whom represent the Union. Decisions of the Trustees shall be made by majority vote. If an unequal number of Employer and Union Trustees attend a meeting, the voting power of the group with less Trustees present shall be and stand increased to that of the group with more Trustees present.

so that there shall be equal voting strength between Employer and Union Trustees at all times at such meeting. A deadlock shall be deemed to exist whenever either of the following situations arise: (1) whenever a proposal, nomination motion or resolution or other matter is voted upon and the votes cast are evenly divided and remain evenly divided; and (2) whenever a quorum is lacking at a meeting duly called and there shall be absent from said meeting two (2) or more Trustees of one group, and a majority of the Trustees present declare a deadlock due to the inability to obtain a quorum. In the event of such deadlock in either case arising, the Employer Trustees and the Union Trustees shall meet promptly for the purpose of agreeing upon an impartial umpire to break such deadlock by casting the deciding vote or deciding any dispute in question or matter under consideration. In the event of the inability of the Employer Trustees and the Union Trustees to agree upon the selection of such impartial umpire, then such impartial umpire shall, on the petition of either the Employer Trustees or Union Trustees, be appointed by the Chief Judge of the United States District Court for the district wherein the principal office of the Trust is located. The decision of any such impartial umpire shall be final and binding on the Trustees and all concerned.

Either the Chairman or the Managing Trustee or any two (2) Trustees may call a meeting of the Trustees at any time by giving at least five (5) days' written notice of the time and place thereof to each Trustee. Any meeting so called may be postponed once for a reasonable period upon the request of any Trustee upon showing of justifiable cause therefor. Any meeting of the Trustees may also be held at any time without notice if all of the Trustees consent thereto in writing or if all attend and act. If all of the Trustees shall concur in writing upon any proposition, no formal meeting thereon need be held by Trustees. The Managing Trustee, in the written notice, shall notify the Trustees of the subjects to be discussed but this shall not be construed to limit any other subjects of discussion properly placed before the meeting.

The Trustees and Fund Office personnel may receive reimbursement for expenses properly and actually incurred in the performance of their duties, including but not limited to expenses incurred in attending educational conferences, seminars and meetings, provided that the Trustees determine in each case the subject matter of the conference, seminar or meeting is relevant to the administration of this Trust and that the expenses incurred are reasonable. The Trustees may adopt travel expenditure guidelines for such expenses. Reasonable compensation may be paid to the Trustees for services rendered in the performance of their duties as Trustees provided such payments are made in accordance with the Federal and State laws and regulations then in effect governing Trusts.

## ARTICLE XVII

### Trustees' Powers and Duties

The Trustees shall have general supervision of the operation of the Trust Fund and shall conduct the business and activities of the same according to law and this Trust Agreement. The Trustees shall have the obligation to receive, hold and administer monies and other funds received by them from Employers (and from any Employer who may hereafter agree to be bound by the terms and provisions of this instrument), or otherwise, in Trust under the terms hereof. In order to carry out and effectuate the purposes hereof, the Trustees shall have the power and authority to adopt uniform rules and regulations as are consistent with and necessary for effectuating the provisions of this Agreement.

The Trustees shall deposit all monies received by them in such bank or banks as they may designate for the purpose and may, in their sole and absolute discretion if they deem it advisable, invest and reinvest such funds as they do not require for current expenditure in such securities as are legal for the investment of pension trust funds under the laws of the United States and the State of Missouri.

No party dealing with the Trustees in relation to this Trust shall be obligated to see to the application of any money or property of the Trust Fund, or see that the terms of this Trust have been complied with or be obligated to inquire into the necessity or expedience of any act of the Trustees and every instrument executed by the Trustees shall be conclusive in favor of every person relying thereon, provided: (1) that at the time of the delivery of said instrument the Trust hereby created was in full force and effect; and (2) that said instrument was executed in accordance with the terms and conditions contained in this Trust Agreement.

The payment of money to the Trustees shall effectually discharge the person or persons paying or transferring the same, and such person or persons shall not be bound to see to the application or be answerable for the loss or misapplication thereof.

The Trustees shall have the authority to delegate duties amongst themselves and to others to the full extent permitted by law.

The Trustees shall have the authority to reasonably request of any Employer, and an Employer when so reasonably requested, shall furnish to the Trustees such information and reports as may be necessary in the performance of their duties under this Agreement and Declaration of Trust.

The Trustees and all their agents who handle funds of this Trust shall furnish such bond as may be required by law, and shall be responsible, further, for the proper execution and administration of the terms of the Trust.

The Trustees shall: (a) prescribe procedures for appeals from the denial of any trust benefits, and serve as an appeals board for a full, fair and final review of any such denial; (b) retain a qualified public accountant and an enrolled actuary; (c) prepare annual registrations required with respect to rights of terminated employees with vested interests and with respect to trust mergers and terminations; (d) comply with requirements with respect to Plan descriptions and other reports to be provided to the Secretary of Labor and Participants; (e) submit annual reports and make proper notification of reportable events; (f) provide statements of accrued benefits at the request of the Participant; (g) pay Plan Termination Insurance Premiums to the Pension Benefit Guaranty Corporation, and, when required, file Notice of Termination with the Pension Benefit Guaranty Corporation; (h) maintain the funding standard account for the purposes of the Plan required by the Employee Retirement Income Security Act of 1974, or as thereafter amended; (i) designate the Managing Trustee as the agent for service of process in any legal action initiated under the Employee Retirement Income Security Act of 1974, or as thereafter amended; (j) adopt a cost method, actuarial assumptions, basis for evaluation of assets, and a funding method and policy for purposes of actuarial cost calculations under the Plan, in accordance with the Employee Retirement Income Security Act of 1974, or as thereafter amended; (k) authorize the enrolled actuary to study the actual experience under the Plan in comparison to actuarial assumptions and to make actuarial calculations to determine whether anticipated benefits may reasonably be provided by anticipated contributions and existing assets of the Plan at least once every three years; (l) have the authority to take further actions, retain or employ such additional personnel (including but not limited to an Investment Manager within the meaning of ERISA) and expend Trust assets as they deem necessary in the administration and operation of the Trust and in the vested interests of the Participants.

## **ARTICLE XVIII**

### **Governmental Approval**

It is the intent that the provisions of this Trust and Agreement conform with all Federal and State laws, including the Employee Retirement Income Security Act of 1974, and all applicable regulations thereunder. It is specifically intended that this Agreement be submitted to the Internal Revenue Service for its approval as conforming with all Internal Revenue Service regulations regarding qualified pension plans, and if any of the provisions are in conflict with any laws or regulations referred to herein, said provisions will be amended to conform with any laws or rulings.

## **ARTICLE XIX**

### **Effective Date**

This Restated Plan shall be effective July 1, 1998, unless otherwise specifically provided.

#### **UNION TRUSTEES**

RICHARD BRYAN            4/15/99  
JAMES KROUT  
ROBERT LUCKS

#### **EMPLOYER TRUSTEES**

PAUL MEYER  
H. FRED PHILIPP, JR.  
DAN WIENSTROER

**AMENDMENT NO. 1 TO THE  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby amend the Trust and Plan Agreement by adding the following new Subsection E to the end of Section 5.3:

- E. Effective April 1, 1999, each individual who is receiving monthly benefits from this Plan, including surviving spouses, shall receive a one-time only payment of \$500.00. This supplemental payment is applicable to participants (and the surviving spouses thereof) who have an annuity starting date on or before April 1, 1999.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	4/15/99	DAN WIENSTROER	4/15/99
JAMES KROUT	4/15/99	H. FRED PHILIPP, JR.	7/22/99
ROBERT LUCKS	4/15/99	PAUL MEYER	4/15/99

**AMENDMENT NO. 2 TO THE  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby adopt the following Amendment No. 2 to the Painters District Council No. 2 Pension Trust and Plan Agreement, which said document is a Restatement of the Plan effective July 1, 1999.

1. Subsection 5.3.C.3. is hereby deleted in its entirety and the following is substituted therefore:
  3. The tables marked "Subject to Subsection 5.3C3" do not apply to Participants, who are employed by contributing employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774. The accredited future service benefits accrued by Participants who are employed by contributing employers signatory to agreements with Local 774 shall be the sum of the following two amounts:
    - a. For years of service prior to July 1, 1999, the accredited future service for any future service benefit accrual year shall be the amount set out in the last most recently effective table which is not marked "Subject to Subsection 5.3C3". The accrued benefit for such a Participant for the years of service prior to July 1, 1999, shall be the total of all amounts accrued under the applicable tables which are not marked "Subject to Subsection 5.3C3," adjusted by Subsection 5.3C1, if applicable.
    - b. For years of service on or after July 1, 1999, the accredited future service benefit shall be determined under the following table:

Total Hours of Service in the <u>Plan Year</u>	<u>Future Service Credits</u>
400 to 600 hours	\$ 12.05
601 to 800 hours	17.40
801 to 1000 hours	22.75
1001 to 1200 hours	28.15
1201 to 1400 hours	33.50
1401 to 1600 hours	38.90
1601 to 1800 hours	44.30
1801 to 2000 hours	49.60
2001 to 2200 hours	55.05
2201 to 2400 hours	60.40
2401 and over	60.40

UNION TRUSTEES	DATE	MANAGEMENT TRUSTEES	DATE
RICHARD BRYAN	7/22/99	H. FRED PHILIPP, JR.	7/22/99
JAMES KROUT	7/22/99	PAUL MEYER	8/5/99
ROBERT LUCKS	8/5/99	DAN WIENSTROER	7/22/99

**AMENDMENT NO. 3 TO THE  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby adopt the following Amendment No. 3 to the Painters District Council No. 2 Pension Trust and Plan Agreement, which said document is a Restatement of the Plan effective July 1, 1998:

1. Subsection 6.6C. is hereby amended by adding a Subsection 6.6C.6 to read as follows:

6. Notwithstanding the above, for any Participant whose death occurs on or after July 1, 1999, the basic computation for the Qualified Pre-Retirement Survivor Annuity shall be performed in accordance with the provisions of Subsection 6.6C.2., except that for this computation, 6.6C.2.c., shall read:

“c. Retired on that date with a Qualified Joint and 75% Survivor Annuity, and”

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>MANAGEMENT TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	11/21/99	H. FRED PHILIPP, JR.	10/21/99
RICHARD BROEKER	10/21/99	PAUL MEYER	10/21/99
ROBERT A. LUCKS	10/21/99	DAN WIENSTROER	10/21/99

**AMENDMENT NO. 4 TO THE  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby adopt the following Amendment No. 4 to the Painters District Council No. 2 Pension Trust and Plan Agreement, which said document is a Restatement of the Plan effective July 1, 1998.

1. The introductory paragraph is hereby deleted and replaced with the following:

THIS AGREEMENT, first made and entered into as of the first day of July, 1964, by and between ST. LOUIS PAINTERS AND DECORATORS JOINT TRADE BOARD, INC., a Missouri pro forma decree corporation, hereinafter referred to as the BOARD, and any other employers, hereinafter referred to as EMPLOYERS, who adhere to the area practice and who have a contract with Painters District Council No. 2, hereinafter referred to as the UNION, and certain named individuals, as initial trustees, whose successors currently are RICHARD BRYAN, RICHARD BROEKER, ROBERT A. LUCKS, PAUL MEYER, H. FRED PHILIPP, JR., and DAN WIENSTROER.

2. The first sentence of the first paragraph of Article XVI is hereby deleted and replaced with the following:

Trustees herein have been selected as follows: RICHARD BRYAN, RICHARD BROEKER, and ROBERT A. LUCKS have been selected by the Union and H. FRED PHILIPP, JR., PAUL MEYER, and DAN WIENSTROER have been selected by the Employers.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	11/21/99	H. FRED PHILIPP, JR.	10/21/99
RICHARD BROEKER	10/21/99	PAUL MEYER	10/21/99
ROBERT A. LUCKS	10/21/99	DAN WIENSTROER	10/21/99

**AMENDMENT NO. 5 TO THE  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION TRUST AND PLAN AGREEMENT**

(As Amended and Restated Effective July 1, 1998)

The undersigned, Richard Bryan and Dan Wienstroer, Chairman and Managing Trustee of the Painters District Council No. 2 Pension Trust, respectively, hereby adopt on behalf of such Trust, pursuant to a resolution adopted by the Board of Trustees of such Trust on May, 2000, the following Amendment No. 5 to the Painters District Council No. 2 Pension Trust and Plan Agreement (as amended and restated effective July 1, 1998) effective July 1, 2000. This Amendment is to be submitted to the Internal Revenue Service for approval and adoption of said Amendment and is contingent upon said approval.

1. Section 6.3 is amended by deleting the second full paragraph of Subsection 6.3E and adding the following new Subsection 6.3F:
  - F. A Participant shall be credited with additional accredited future service benefits for service after his Early Retirement Annuity Starting Date. However, any such additional accredited benefits for a Plan Year shall be reduced (but not below zero) by the Subsidized Portion of any early retirement benefits paid to the Participant subsequent to his Early Retirement Date for such Plan Year. "Subsidized Portion" means the difference between the amount of a Participant's Early Retirement Benefit which is actually paid to him and the amount which would have been paid to him if the reduction under Subsection 6.3E applied to the early retirement benefit. Notwithstanding the reduction set forth in the previous sentence, a Participant who completed 1,200 or more Hours of Service in any Plan Year after his Early Retirement Annuity Starting Date, commencing with the Plan Year beginning July 1, 2000, shall accrue at least the benefits provided in the table set forth in Section 6.1. The Annuity Starting Date for accredited future service benefits earned after a Participant's Early Retirement Date shall be his Normal Retirement Date, or his Postponed Retirement Date if he retires after his Normal Retirement Date.

RICHARD BRYAN, CHAIRMAN

DAN WIENSTROER, MANAGING  
TRUSTEE

Date: June 16, 2000

Date: June 16, 2000

**AMENDMENT NO. 6 TO THE  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby adopt the following Amendment No. 6 to the Painters District Council No. 2 Pension Trust and Plan Agreement, which said document is a Restatement of the Plan effective July 1, 1999.

1. Subsection 5.3.C.3 is hereby deleted in its entirety and the following is substituted therefor:

3. The tables marked "Subject to Subsection 5.3C3" do not apply to Participants, who are employed by contributing employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774. The accredited future service benefits accrued by Participants who are employed by contributing employers signatory to agreements with Local 774 shall be the sum of the following two amounts:

a. For years of service prior to July 1, 1999, the accredited future service for any future service benefit accrual year shall be the amount set out in the last most recently effective table which is not marked "Subject to Subsection 5.3C3". The accrued benefit for such a Participant for the years of service prior to July 1, 1999, shall be the total of all amounts accrued under the applicable tables which are not marked "Subject to Subsection 5.3C3," adjusted by Subsection 5.3C1, if applicable.

b. For years of service on or after July 1, 1999 through June 30, 2000, the accredited future service benefit shall be determined under the following table:

Total Hours of Service in the <u>Plan Year</u>	<u>Future Service Credits</u>
400 to 600 hours	\$ 12.05
601 to 800 hours	17.40
801 to 1000 hours	22.75
1001 to 1200 hours	28.15
1201 to 1400 hours	33.50
1401 to 1600 hours	38.90
1601 to 1800 hours	44.30
1801 to 2000 hours	49.60
2001 to 2200 hours	55.05
2201 to 2400 hours	60.40
2401 and over	60.40

c. For years of service on and after July 1, 2000, the accredited future service benefit shall be determined under the following table:

<u>Total Hours of Service in the Plan Year</u>	<u>Future Service Credits</u>
400 to 600 hours	\$ 13.15
601 to 800 hours	18.95
801 to 1000 hours	24.75
1001 to 1200 hours	30.55
1201 to 1400 hours	36.35
1401 to 1600 hours	42.20
1601 to 1800 hours	48.05
1801 to 2000 hours	53.80
2001 to 2200 hours	59.65
2201 to 2400 hours	65.45
2401 and over	65.45

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>MANAGEMENT TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	7/20/00	H. FRED PHILIPP, JR.	7/20/00
RICHARD BROEKER	7/20/00	PAUL MEYER	7/20/00
ROBERT A. LUCKS	7/20/00	DAN WIENSTROER	7/20/00

**AMENDMENT NO. 7 TO THE  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION TRUST AND PLAN AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby adopt the following Amendment No. 7 to the Painters District Council No. 2 Pension Trust and Plan Agreement, which said document is a Restatement of the Plan effective January 1, 2001:

1. The third paragraph of Article IV is hereby deleted in its entirety and the following is substituted therefor:

The contributions as established from time to time by the collective bargaining agreement shall be due on the date set out in the collective bargaining agreement. If the payment of contributions is delinquent, the Employer shall be assessed liquidated damages of 10% up to 30 days of delinquency. Thereafter, liquidated damages of 1 1/2% shall be assessed, compounded monthly until the full contribution is made.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	2/27/01	H. FRED PHILLIPP, JR.	2/27/01
RICHARD BROEKER	2/27/01	PAUL MEYER	2/27/01
ROBERT A. LUCKS	2/27/01	DAN WIENSTROER	2/27/01

**AMENDMENT NO. 1 TO THE  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION PLAN AND TRUST AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby adopt the following Amendment No. 1 to the Painters District Council No. 2 Pension Trust and Plan Agreement, which said document is a Restatement of the Plan and Trust effective July 1, 1997.

1. This Amendment shall supercede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

2. Effective July 1, 2002, change Section 1.4.C.4 to read as follows:

4. "Applicable Mortality Table" means the table prescribed in Rev. Rul. 2002-62.

3. Effective July 1, 2002, change Section 11.1 to read as follows:

11.1 Limitation on Benefits

- (a) Limitation. The annual benefit otherwise payable to a Participant at any time will not exceed the maximum permissible benefit. If the benefit the Participant would otherwise accrue for a Plan Year would produce an annual benefit in excess of the maximum permissible benefit, the rate of accrual will be credited so the annual benefit will equal the maximum permissible benefit.
- (b) Defined benefit dollar limitation. The "defined benefit dollar limitation" is \$160,000, as adjusted, effective January 1 of each year, under Code § 415(d) in such manner as the Secretary shall prescribe and payable in the form of a straight life annuity. A limitation as adjusted under Code § 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.
- (c) Maximum permissible benefit. The "maximum permissible benefit" is the defined benefit dollar limitation (as adjusted where required, as provided in (i), (ii) and (iii) below).
- (i) If the Participant has fewer than ten years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (1) the numerator of which is the number of years (or part thereof) of participation in the Plan and (2) the denominator of which is ten. In the case of a Participant who has fewer than ten years of participation in the Plan, the defined benefit compensation limitation shall be multiplied by a fraction, (1) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (2) the denominator of which is ten.
- (ii) If the benefit of a Participant begins prior to age sixty-two, the defined benefit dollar limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning

at the earlier age that is the Actuarial Equivalent of the defined benefit dollar limitation applicable to the Participant at age sixty-two (adjusted under (i) above, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two is determined as of the lesser of (1) the Actuarial Equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate specified in Section 1.4.A and mortality table (or other tabular factor) specified in Section 1.4.C.4 and (2) the Actuarial Equivalent (at such age) of the defined benefit dollar limitation computed using a five percent interest rate and the applicable mortality table as defined in Section 1.4.C.4. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph (ii) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

- (iii) If the benefit of a Participant begins after the Participant attains age sixty-five, the defined benefit dollar limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is Actuarially Equivalent to the defined benefit dollar limitation applicable to the Participant at age sixty-five (adjusted under (i) above, if required). The Actuarial Equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five is determined as (1) the lesser of the Actuarial Equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate specified in Section 1.4.A and mortality table (or other tabular factor) specified in Section 1.4.C.4 and (2) the Actuarial Equivalent (at such age) of the defined benefit dollar limitation computed using a five percent interest rate assumption and the applicable mortality table as defined in Section 1.4.C.4. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.
- (iv) Except as provided herein, where a benefit is payable in a form other than a straight life annuity, the benefit must be adjusted to an Actuarially Equivalent straight life annuity before applying the limitations of this Section. Where a Participant's benefit must be adjusted to an Actuarially Equivalent straight life annuity, the Actuarially Equivalent straight life annuity is equal to the greater of (1) the annuity benefit computed using the interest rate specified in Section 1.4.A and the mortality table (or other tabular factor) specified in Section 1.4.C.4 and (2) the annuity benefit computed using a five percent interest rate assumption and the applicable mortality table defined in Section 1.4.C.4. In determining the actuarial equivalent of a single sum payment, the interest rate specified in Section 1.4.C.1 and the applicable mortality table specified in Section 1.4.C.4 shall be used. No actuarial adjustment to the benefit is required for (1) the value of a Qualified Joint and Survivor Annuity under Section 8.1.B, (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, pre-retirement death benefits and post-retirement medical benefits), and (3) the value of post-retirement cost-of-

living increases made in accordance with Code § 415(d) and Section 1.415-3(c)(2)(iii) of the Treasury Tax Regulations. The benefits do not include any benefits attributable to Employee contributions or rollover contributions, or the assets transferred from a qualified plan that was not maintained by an Employer.

- (d) In the case of an individual who was a participant in one or more defined benefit plans of the Employer on July 1, 1982, the application of the limitations of this Section 4.04 shall not cause the maximum permissible amount for such individual under all such defined benefit plans to be less than the individual's accrued benefit under all such defined benefit plans as of the last day of the limitation year beginning before January 1, 1983. The preceding sentence applies only if all such defined benefit plans met the requirements of Section 415 of the Code, as in effect on July 1, 1982, for all limitation years beginning before January 1, 1983.

4. Effective July 1, 2002, change Subsection 12.8.A.1 to read as follows:

1. Key Employee. Any Employee or former Employee (including any deceased Employee) who at the determination date was:
- (i) An officer of an Employer whose Compensation is greater than \$130,000 (as adjusted under Code § 416(i)(1) for Plan Years beginning after March 31, 2003).
  - (ii) A five percent (5%) owner of an Employer, or
  - (iii) A one percent (1%) owner of an Employer having annual Compensation from the Employer of more than \$150,000.

For purposes of this Subsection "Compensation" means compensation within the meaning of Code Section 415(c)(3). The determination of who is a Key Employee shall be determined in accordance with Code Section 416(i)(1) and the applicable Treasury regulations and other guidelines of general applicability issued hereunder.

5. Effective July 1, 2002, change Section 12.8.A.3.a to read as follows:

- a. The amount of a Participant's compensation (as defined in Subsection 12.1.B above) from any single Employer that may be taken into account for any Plan purpose in any Plan Year is \$200,000, as that amount may be adjusted from time to time by the Secretary of the Treasury under Code § 401(a)(17).

6. Effective July 1, 2002, change the last sentence of Section 12.8.B.1 to read as follows:

In addition, if a Participant or former Participant has not performed services for any Employer maintaining the Plan during the one year period ending on the Determination Date, the aggregate account and/or present value of Accrued

Benefits for such Participant or former Participant shall not be taken into account for purposes of determining whether this Plan is a Top-Heavy Plan.

7. Effective July 1, 2002, delete Section 12.8.B.5.b and renumber Sections 12.8.B.5.c, d, e, f and g as Sections 12.8.B.5.b, c, d, e and f, respectively.
8. Effective July 1, 2002, change Section 12.8.B.5.c to read as follows:
  - c. with respect to unrelated rollovers and plan-to-plan transfer (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 as part of the Participant's present value of accrued benefits.
9. Effective July 1, 2002, add the following new Section 12.8.B.6:
  6. The present value 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 Code § 416(g)(2) during the one 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 Code § 416(g)(2)(A)(i). In the case of a distribution made for a reason other than separation from service, death or disability, this provision shall be applied by substituting "five year period" for "one year period." The accrued benefits and accounts of any individual who has not performed services for an Employer during the one year period ending on the determination date shall not be taken into account.
10. Effective July 1, 2002, add the following new Section 12.8.D.9:
  9. For purposes of satisfying the minimum benefit requirements of Code § 416(c)(1) and the Plan, in determining Years of Service with the Employer, any service with the Employer shall be disregarded to the extent that such service occurs during a Plan Year when the Plan benefits (within the meaning of Code § 410(b)) no Key Employee or former Key Employee.
11. Effective July 1, 2002, change Subsection 12.7.B.2 to read as follows:
  2. Eligible retirement plan. An individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), a qualified trust described in Code § 410(a) or an eligible plan under Code § 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 that accepts the Distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Code § 414(p).

12. Effective July 1, 2003, change Section 9.4 to read as follows:

9.4 Limitations on the Timing of Benefit Distributions.

A. General Rules

1. Requirements of Regulations Incorporated. All distributions required under this Section 9.4 will be determined and made in accordance with the Treasury Regulations under Code § 401(a)(9).

B. Time and Manner of Distribution.

1. Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
2. Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - a. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.
  - b. If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies.
  - c. If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - d. If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving

spouse begin, this Section 9.4.B.2, other than Section 9.4.B.2.a, will apply as if the surviving spouse were the Participant.

For purposes of this Section 9.4.B.2 and Section 9.4.E, distributions are considered to begin on the Participant's Required Beginning Date (or, if Section 9.4.B.2.d applies, the date distributions are required to begin to the surviving spouse under Section 9.4.B.2.a). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 9.4.B.2.a), the date distributions are considered to begin is the date distributions actually commence.

3. Form of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Sections 9.4.C, D and E. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code § 401(a)(9) and Treasury Regulations. Any part of the Participant's interest which is in the form of an individual account described in Code § 414(k) will be distributed in a manner satisfying the requirements of Code § 401(a)(9) and Treasury Regulations that apply to individual accounts.

C. Determination of Amount to be Distributed Each Year.

1. General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
  - a. the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
  - b. the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 9.4.D or E.
  - c. once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
  - d. payments will either be non-increasing or increase only as follows:

- (i) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
- (ii) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Section 9.4.D dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Code § 414(p);
- (iii) to provide cash refunds of Employee contributions upon the Participant's death; or
- (iv) to pay increased benefits that result from a Plan amendment.

2. Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 9.4.B.2.a or b) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.

3. Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

D. Requirements For Annuity Distributions That Commence During Participant's Lifetime.

1. Joint Life Annuities Where the Beneficiary is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-spouse beneficiary, annuity payments to be made on or

after the Participant's Required Beginning Date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of Treasury Regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-spouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.

2. **Period Certain Annuities.** Unless the Participant's spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of Treasury Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age seventy under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of Treasury Regulations plus the excess of seventy over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Section 9.4.D.2, or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

E. **Requirements for Minimum Distributions Where Participant Dies Before Date Distributions Begin.**

1. **Participant Survived by Designated Beneficiary.** If the Participant dies before the date distribution of his or her interest begins and there is a designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section 9.4.B.2.a or b, over the life of the designated Beneficiary or over a period certain not exceeding:
  - a. unless the annuity starting date is before the first distribution calendar year, the life expectancy of the

Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

- b. if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the annuity starting date.
2. 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.
  3. Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 9.4.E will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 9.4.B.2.a.

F. Definitions.

1. Designated Beneficiary. The individual who is designated as the Beneficiary under Section 1.6 and is the designated beneficiary under Code § 401(a)(9) and Section 1.401(a)(9)-1, Q&A-4, of Treasury Regulations.
2. Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 9.4.B.
3. Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.
4. Required Beginning Date. The date specified in Section 1.33.

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be adopted  
this \_\_\_\_ day of February, 2003.

UNION TRUSTEES

MANAGEMENT TRUSTEES

Richard Bryan  
Richard Bryan  
Date: 2-19-03

H. Fred Philipp, Jr.  
H. Fred Philipp, Jr.  
Date: 2-19-03

Richard Broeker  
Richard Broeker  
Date: 2.19.03

Paul Meyer  
Paul Meyer  
Date: 2-19-03

Robert Lucks  
Robert Lucks  
Date: 2-19-03

Dan Wienstroer  
Dan Wienstroer  
Date: 2-19-03

**AMENDMENT NO. 2 TO THE  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION PLAN AND TRUST AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby adopt the following Amendment No. 2 to the Painters District Council No. 2 Pension Trust and Plan Agreement, which said document is a Restatement of the Plan and Trust effective July 1, 1997.

1. This Amendment shall supercede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.
2. Effective July 1, 1999, change Section 6.6.C.1 to read as follows:
  1. If a Participant dies after the earliest retirement age under the Plan which applies to that Participant, the amount of the Qualified Pre-Retirement Survivor Annuity payable to the surviving spouse is the amount which would have been payable to the surviving spouse as a survivor annuity if the Participant had retired with a Qualified Joint and Survivor Annuity (except that the survivor portion shall be 75 percent rather than 50 percent) on the day before the Participant's Death. If, however, the surviving spouse elects to defer the Annuity Starting Date under Subsection 6.6.C.4, the amount of the monthly benefit shall be computed under that subsection.
3. Effective July 1, 1999, change Section 6.6.C.4 to read as follows:
  4. Notwithstanding the above, the surviving spouse may defer his or her Annuity Starting Date to the Participant's Normal Retirement Date.

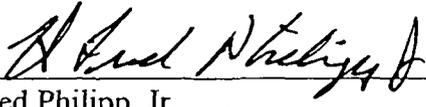
In the event the surviving spouse defers the Annuity Starting Date for the survivorship benefit, the amount will be the amount which would have been payable to the surviving spouse as a survivor annuity if the Participant had retired with a Qualified Joint and Survivor Annuity (except that the survivor portion shall be 75 percent rather than 50 percent) two days before the deferred Annuity Starting Date and died the next day. If the Participant's spouse elects to defer the Annuity Starting Date for the survivorship benefits, and fails to survive the Annuity Starting Date, no survivorship benefits will be payable. However, in such event, benefits may be payable under Section 6.7.
4. Effective July 1, 1999 change Section 6.6.C.4 to read as follows:
  6. Notwithstanding the above, for any Participant whose death occurs before July 1, 1999, the basic computation for the Qualified Pre-Retirement Survivor Annuity shall be performed in accordance with the provisions of Subsection 6.6.C.1, 2 or 4, as appropriate, except that the following language shall be deleted in each such subsection for purposes of such calculation: "(except the survivor portion shall be 75 percent rather than 50 percent)".

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be adopted this \_\_\_\_ day of November, 2003.

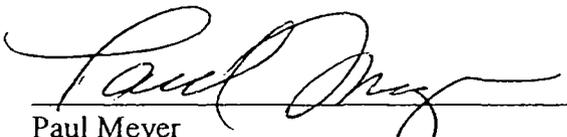
UNION TRUSTEES

MANAGEMENT TRUSTEES

  
Kevin Kenny  
Date: 11-20-03

  
H. Fred Philipp, Jr.  
Date: 11/20/2003

  
Richard Broeker  
Date: 11.20.03

  
Paul Meyer  
Date: 11-20-03

  
Robert Lucks  
Date: 11-20-03

  
Dan Wienstroer  
Date: \_\_\_\_\_

**AMENDMENT NO.3 TO THE  
PAINTERS DISTRICT COUNCIL NO.2  
PENSION PLAN AND TRUST AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby adopt the following Amendment No. 3 to the Painters District Council No. 2 Pension Trust and Plan Agreement, which said document is a Restatement of the Plan and Trust effective July 1, 1997.

1. The introductory paragraph is hereby deleted and replaced with the following:

THIS AGREEMENT, first made and entered into as of the first day of July, 1964, by and between ST. LOUIS PAINTERS AND DECORATORS JOINT TRADE BOARD, INC., a Missouri pro forma decree corporation, hereinafter referred to as the BOARD, and any other employers, hereinafter referred to as EMPLOYERS, who adhere to the area practice and who have a contract with Painters District Council No. 2, hereinafter referred to as the UNION, and certain named individuals, as initial trustees, whose successors currently are KEVIN M. KENNY, RICHARD H. BROEKER, ROBERT A. LUCKS, V. PAUL MEYER, H. FRED PHILIPP, JR., and DANIEL G. WIENSTROER.

2. The first sentence of the first paragraph of Article XVI is hereby deleted and replaced with the following:

Trustees herein have been selected as follows: KEVIN M. KENNY, RICHARD H. BROEKER and ROBERT A. LUCKS have been selected by the Union and H. FRED PHILIPP, JR., V. PAUL MEYER and DANIEL G. WIENSTROER have been selected by the Employers.

3. Effective July 1, 2004 add the following new Section 9.5:

9.5 Retroactive Annuity Starting Date.

In the event payment of a Participant's Plan benefits commences later than his Annuity Starting Date, the Participant shall be paid, in a single sum at the time payment of his Plan benefits actually commences, the total amount of Plan benefits that would have been paid to him for the period commencing on his Annuity Starting Date and ending on the day before payment of his Plan benefits actually commences had Plan benefits been paid to him for such period. Such payment shall be adjusted for simple interest at a rate equal to the average rate for thirty year Treasury securities for the month immediately preceding the month in which the Participant's Annuity Starting Date occurs for the period from the Participant's Annuity Starting Date to the date of payment described herein. The payment described herein is not an "eligible rollover distribution" for purposes of Section 12.7.

UNION TRUSTEES

Kevin M. Kenny  
Kevin M. Kenny  
Date: 5-20-04

Richard H. Broeker  
Richard H. Broeker  
Date: 5.20.04

Robert A. Lucks  
Robert A. Lucks  
Date: 5-20-04

MANAGEMENT TRUSTEES

H. Fred Philipp, Jr.  
H. Fred Philipp, Jr.  
Date: 5/20/04

V. Paul Meyer  
V. Paul Meyer  
Date: 5-20-04

Daniel G. Wienstroer  
Daniel G. Wienstroer  
Date: 5-20-04

**AMENDMENT NO. 4 TO THE  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION PLAN AND TRUST AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby adopt the following Amendment No. 4 to the Painters District Council No. 2 Pension Trust and Plan Agreement, which said document is a Restatement of the Plan and Trust effective July 1, 1997.

1. Effective July 1, 2004, Section 5.3 is hereby deleted and replaced with the following:

5.3 Amount of Benefit Stated in the Normal Benefit Form. The amount of monthly benefit that a Participant accrues stated in the normal form of benefits (a life annuity with a sixty (60) month guarantee) commencing at Normal Retirement Date, is the sum of the amount determined under Subsection 5.3.A plus the amount determined under Section 5.3.B.

- A. The amount determined under this Subsection is \$2.50 multiplied by number of years of Accredited Past Service for any Participant who participated on and after July 1, 1964. An eligible Participant receives a year of Accredited Past Service for each continuous year of service in Covered Employment prior to July 1, 1964. No Participant who first participated in the Plan after July 1, 1964 shall be entitled to Accredited Past Service benefits. The amount determined under this Subsection is subject to the rules concerning Permanent Breaks in Service.
- B. The amount determined under this Subsection is the sum of the Future Service Credits earned by the Participant under all applicable tables specified in this Subsection. Accredited Future Service Benefits will be accrued under this Subsection for each twelve (12) consecutive month period commencing with July 1, 1964, and subsequent anniversaries thereof ("benefit accrual year"), based on the number of Hours of Service completed by the Participant in Covered Employment during the particular benefit accrual year, subject to the following rules:
1. No Future Service Credits will be accrued by a Participant for any benefit accrual year during which the Participant fails to complete at least 400 Hours of Service.
  2. The accrual of Future Service Credits under this Subsection is subject to the rules concerning Permanent Breaks in Service.

3. The amounts set out in these tables are subject to the rules contained in Subsection 5.3.C.

The amount of Future Service Credits accrued by a Participant during each benefit accrual year is:

Total Hours of Service as defined below from July 1 to June 30 each year	Future Service Credits from 7/1/64 thru 6/30/72	Future Service Credits 7/1/72 through 6/30/76
400 to and including 600 hours	\$1.50	\$1.50
601 to 800 hours	1.80	2.25
801 to 1,000 hours	2.10	3.00
1,001 to 1,200 hours	2.40	3.75
1,201 to 1,400 hours	2.70	4.50
1,401 to 1,600 hours	3.00	5.25
1,601 to 1,800 hours	3.30	6.00
1,801 to 2,000 hours	3.60	6.75
2,001 to 2,200 hours	3.90	7.50
2,201 to 2,400 hours	4.20	8.25
2,401 <sup>1</sup> and over	4.20	8.25

Total Hours of Service as defined below from July 1 to June 30 each year	Future Service Credits 7/1/76 thru 6/30/78	Future Service Credits 7/1/78 thru 6/30/80	Future Service Credits 7/1/80 thru 6/30/84	Future Service Credits 7/1/84 thru 11/30/84
400 to and including 600 hours	\$ 3.00	\$ 4.50	\$ 5.65	\$ 6.50
601 to 800 hours	4.50	6.75	8.45	9.60
801 to 1,000 hours	6.00	9.00	11.25	12.75
1,001 to 1,200 hours	7.50	11.25	14.05	15.90
1,201 to 1,400 hours	9.00	13.50	16.90	19.05
1,401 to 1,600 hours	10.50	15.75	19.70	22.20
1,601 to 1,800 hours	12.00	18.00	22.50	25.35
1,801 to 2,000 hours	13.50	20.25	25.30	28.45
2,001 to 2,200 hours	15.00	22.50	28.15	31.65
2,201 to 2,400 hours	16.50	24.75	30.95	34.80
2,401 and over	16.50	24.75	30.95	34.80

<sup>1</sup> 2,401 Hours of Service in an accrual benefit year is considered full-time employment for purposes of accrual of Accredited Future Service Benefits for all accrual years through the year ending June 30, 1993. For accrual benefit years beginning July 1, 1993 and thereafter, 3,201 Hours of Service is considered full-time employment for purposes of accrual of Accredited Future Service Benefits.

Subsection 5.3.C.1, but increased by twenty (20) percent. The resulting Accrued Benefit shall be added to the Accredited Future Service Benefits, if any, accrued for service on and after July 1, 1985, to arrive at the Participant's total Accrued Benefit.

3. The tables marked "Subject to Subsection 5.3.C.3" do not apply to Participants, who are employed by contributing Employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774. The Accredited Future Service Benefits accrued by Participants who are employed by contributing Employers signatory to agreements with Local 774 shall be the sum of the following two amounts:

a. For years of service prior to July 1, 1999, the Accredited Future Service Benefits for any future service benefit accrual year shall be the amount set out in the last most recently effective table which is not marked "Subject to Subsection 5.3.C.3". The Accrued Benefit for such a Participant for the years of service prior to July 1, 1999, shall be the total of all amounts accrued under the applicable tables which are not marked "Subject to Subsection 5.3.C.3," adjusted by Subsection 5.3.C.1, if applicable.

b. For years of service from July 1, 1999 through June 30, 2000, the Accredited Future Service Benefits shall be determined under the following table:

<u>Total Hours of Service in the Plan Year</u>	<u>Future Service Credits</u>
400 to 600 hours	\$12.05
601 to 800 hours	17.40
801 to 1000 hours	22.75
1001 to 1200 hours	28.15
1201 to 1400 hours	33.50
1401 to 1600 hours	38.90
1601 to 1800 hours	44.30
1801 to 2000 hours	49.60
2001 to 2200 hours	55.05
2201 to 2400 hours	60.40
2401 and over	60.40

c. For years of service from July 1, 2000 through June 30, 2004, the Accredited Future Service Benefits shall be determined under the following table:

<u>Total Hours of Service in the Plan Year</u>	<u>Future Service Credits</u>
400 to 600 hours	\$13.15
601 to 800 hours	18.95
801 to 1000 hours	24.75
1001 to 1200 hours	30.55
1201 to 1400 hours	36.35
1401 to 1600 hours	42.20
1601 to 1800 hours	48.05
1801 to 2000 hours	53.80
2001 to 2200 hours	59.65
2201 to 2400 hours	65.45
2401 and over	65.45

- d. For years of service on and after July 1, 2004, the Accredited Future Service Benefits shall be determined under the following table:

<u>Total Hours of Service in the Plan Year</u>	<u>Future Service Credits</u>
400 to 600 hours	\$ 9.25
601 to 800 hours	13.30
801 to 1000 hours	17.35
1001 to 1200 hours	21.40
1201 to 1400 hours	25.45
1401 to 1600 hours	29.55
1601 to 1800 hours	33.65
1801 to 2000 hours	37.70
2001 to 2200 hours	41.80
2201 to 2400 hours	45.85
2401 and over	45.85

4. Notwithstanding the above, Participants shall have their Accrued Benefit for the period July 1, 1984 through June 30, 1985 computed under the following table, if the computation results in a higher benefit than the combined total of the Accrued Benefit computed under the two tables entitled, "Future Service Credits 7/1/84 thru 11/30/84" and "Subject to Subsection 5.3.C.3 Future Service Credits 12/1/84 thru 6/30/85":

<u>Total Hours of Service</u> <u>Plan Year</u>	<u>7/1/84 thru 6/30/85</u>
400 to 600	\$12.19
601 to 800	17.42
801 to 1,000	22.81
1,001 to 1,200	28.21
1,201 to 1,400	33.63
1,401 to 1,600	39.00
1,601 to 1,800	44.40
1,801 to 2,000	49.77
2,001 to 2,200	55.19
2,201 to 2,400	60.58
2,401 and over	60.58

This Subsection does not apply to Participants who were employed by Contributing Employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774 during the period 12/1/84 through 6/30/85.

- D. Any Participant or Beneficiary (except for Participants or Beneficiaries of Participants whose benefits are based on service for contributing Employers who were or are signatory to agreements with Sign and Pictorial Painters, Local Union 774) whose Annuity Starting Date was prior to January 1, 1992 (including disability benefits), shall, effective with the monthly benefit payment due for January 1992, have his monthly benefit increased by the greater of five percent (5%) of the monthly payment or Ten Dollars (\$10.00).
- E. Effective April 1, 1999, each individual who is receiving monthly benefits from this Plan, including surviving spouses, shall receive a one-time only payment of \$500.00. This supplemental payment is applicable to Participants (and the surviving spouses thereof) who have an Annuity Starting Date on or before April 1, 1999.
- F. Effective July 1, 2002, a Participant shall be credited with Future Service Credits with respect to Hours of Service he earns in Covered Employment before becoming a Participant for which Employer contributions are made to the Trust.
- G. A Participant shall be credited partial Accredited Past and Future Service Credits in accordance with the Reciprocal Agreement for Joint Industry Pension Funds of all District Councils and Local Unions Affiliated with the International Brotherhood of Painters and Allied Trades as adopted by the Trustees.

UNION TRUSTEES



Kevin M. Kenny

Date: \_\_\_\_\_

Richard H. Broecker

Date: \_\_\_\_\_

Robert A. Lucks

Date: \_\_\_\_\_

MANAGEMENT TRUSTEES

H. Fred Philipp, Jr.

Date: \_\_\_\_\_

V. Paul Meyer

Date: \_\_\_\_\_

Daniel G. Wienstroer

Date: \_\_\_\_\_

UNION TRUSTEES

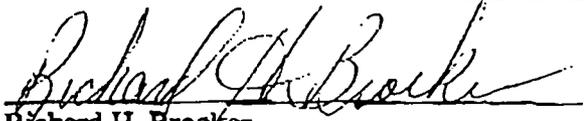
MANAGEMENT TRUSTEES

Kevin M. Kenny

Date: \_\_\_\_\_

H. Fred Philipp, Jr.

Date: \_\_\_\_\_



Richard H. Broeker

Date: \_\_\_\_\_

6.7.04

V. Paul Meyer

Date: \_\_\_\_\_

Robert A. Lucks

Date: \_\_\_\_\_

Daniel G. Wienstroer

Date: \_\_\_\_\_

UNION TRUSTEES

\_\_\_\_\_  
Kevin M. Kenny

Date: \_\_\_\_\_

\_\_\_\_\_  
Richard H. Broeker

Date: \_\_\_\_\_

*Robert A. Lucks*  
\_\_\_\_\_

Robert A. Lucks

Date: 6/10/04

MANAGEMENT TRUSTEES

\_\_\_\_\_  
H. Fred Philipp, Jr.

Date: \_\_\_\_\_

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V. Paul Meyer

Date: \_\_\_\_\_

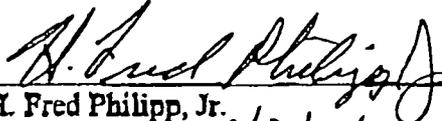
\_\_\_\_\_  
Daniel G. Wienstroer

Date: \_\_\_\_\_

UNION TRUSTEES

MANAGEMENT TRUSTEES

Kevin M. Kenny  
Date: \_\_\_\_\_

  
H. Fred Philipp, Jr.  
Date: 6/3/04

Richard H. Broeker  
Date: \_\_\_\_\_

V. Paul Meyer  
Date: \_\_\_\_\_

Robert A. Lucks  
Date: \_\_\_\_\_

Daniel G. Wienstroer  
Date: \_\_\_\_\_

UNION TRUSTEES

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Kevin M. Kenny

Date: \_\_\_\_\_

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Richard H. Broeker

Date: \_\_\_\_\_

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Robert A. Lucks

Date: \_\_\_\_\_

MANAGEMENT TRUSTEES

\_\_\_\_\_  
H. Fred Philipp, Jr.

Date: \_\_\_\_\_

*V. Paul Meyer*  
\_\_\_\_\_  
V. Paul Meyer

Date: *6-11-04*

\_\_\_\_\_  
Daniel G. Wienstroer

Date: \_\_\_\_\_

UNION TRUSTEES

MANAGEMENT TRUSTEES

Kevin M. Kenny

Date: \_\_\_\_\_

H. Fred Philipp, Jr.

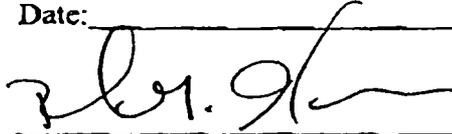
Date: \_\_\_\_\_

Richard H. Broeker

Date: \_\_\_\_\_

V. Paul Meyer

Date: \_\_\_\_\_



Robert A. Lucks

Date: \_\_\_\_\_

Daniel G. Wienstroer

Date: 6-10-04

**RECORD OF ACTION IN LIEU OF  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION FUND TRUSTEES' MEETING**

The undersigned, being all the Trustees of Painters District Council No. 2 Pension Trust ("Trust"), hereby adopt the following Resolution by unanimous written consent:

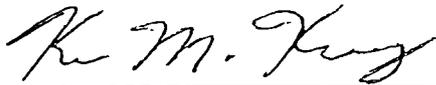
WHEREAS, the Fourth Amendment to the Painters District Council #2 Pension Plan (the "Plan") as amended and restated effective July 1, 1997, was presented to the Trustees;

NOW, THEREFORE, BE IT RESOLVED, the Fourth Amendment to the Plan is hereby approved and adopted.

IN WITNESS WHEREOF, the undersigned, being all of the Trustees of the Trust, having caused this resolution to be adopted this \_\_\_\_\_ day of June, 2004.

**UNION TRUSTEES**

**MANAGEMENT TRUSTEES**



\_\_\_\_\_  
Kevin M. Kenny

\_\_\_\_\_  
H. Fred Philipp, Jr.

\_\_\_\_\_  
Richard H. Broeker

\_\_\_\_\_  
V. Paul Meyer

\_\_\_\_\_  
Robert A. Lucks

\_\_\_\_\_  
Daniel G. Wienstroer

Being all the Trustees of the Trust

**RECORD OF ACTION IN LIEU OF  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION FUND TRUSTEES' MEETING**

The undersigned, being all the Trustees of Painters District Council No. 2 Pension Trust ("Trust"), hereby adopt the following Resolution by unanimous written consent:

WHEREAS, the Fourth Amendment to the Painters District Council #2 Pension Plan (the "Plan") as amended and restated effective July 1, 1997, was presented to the Trustees;

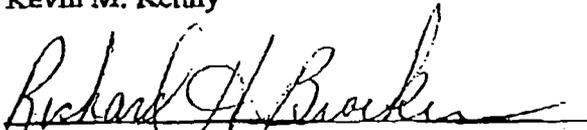
NOW, THEREFORE, BE IT RESOLVED, the Fourth Amendment to the Plan is hereby approved and adopted.

IN WITNESS WHEREOF, the undersigned, being all of the Trustees of the Trust, having caused this resolution to be adopted this \_\_\_\_\_ day of June, 2004.

**UNION TRUSTEES**

**MANAGEMENT TRUSTEES**

\_\_\_\_\_  
Kevin M. Kenny

  
Richard H. Broeker

\_\_\_\_\_  
Robert A. Lucks

\_\_\_\_\_  
H. Fred Philipp, Jr.

\_\_\_\_\_  
V. Paul Meyer

\_\_\_\_\_  
Daniel G. Wlenstroer

Being all the Trustees of the Trust

**RECORD OF ACTION IN LIEU OF  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION FUND TRUSTEES' MEETING**

The undersigned, being all the Trustees of Painters District Council No. 2 Pension Trust ("Trust"), hereby adopt the following Resolution by unanimous written consent:

WHEREAS, the Fourth Amendment to the Painters District Council #2 Pension Plan (the "Plan") as amended and restated effective July 1, 1997, was presented to the Trustees;

NOW, THEREFORE, BE IT RESOLVED, the Fourth Amendment to the Plan is hereby approved and adopted.

IN WITNESS WHEREOF, the undersigned, being all of the Trustees of the Trust, having caused this resolution to be adopted this \_\_\_\_ day of June, 2004.

**UNION TRUSTEES**

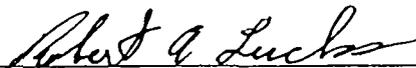
**MANAGEMENT TRUSTEES**

\_\_\_\_\_  
Kevin M. Kenny

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H. Fred Philipp, Jr.

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Richard H. Broeker

\_\_\_\_\_  
V. Paul Meyer

  
\_\_\_\_\_  
Robert A. Lucks

\_\_\_\_\_  
Daniel G. Wienstroer

Being all the Trustees of the Trust

Total Hours of Service as defined below from July 1 to June 30 each year	Subject to Subsection 5.3.C.3 Future Service Credits 12/1/84 thru 6/30/85 <sup>2</sup>	Subject to Subsection 5.3.C.3 Future Service Credits 7/1/85 thru 6/30/86
400 to 600 hours	\$16.25	\$21.85
601 to 800 hours	23.00	30.85
801 to 1,000 hours	30.00	40.10
1,001 to 1,200 hours	37.00	49.30
1,201 to 1,400 hours	44.05	58.60
1,401 to 1,600 hours	51.00	67.80
1,601 to 1,800 hours	58.00	77.00
1,801 to 2,000 hours	65.00	86.25
2,001 to 2,200 hours	72.00	95.50
2,201 to 2,400 hours	79.00	104.75
2,401 and over	79.00	104.75

	Subject to Subsection 5.3.C.3 Future Service Credits from 7/1/86 thru 6/30/89	Subject to Subsection 5.3.C.3 Future Service Credits 7/1/89 thru 6/30/93
400 to 600 hours	\$ 31.45	\$ 35.30
601 to 800 hours	44.35	49.75
801 to 1,000 hours	57.40	64.30
1,001 to 1,200 hours	70.45	78.90
1,201 to 1,400 hours	83.60	93.60
1,401 to 1,600 hours	96.65	108.20
1,601 to 1,800 hours	109.70	122.80
1,801 to 2,000 hours	122.80	137.40
2,001 to 2,200 hours	135.90	152.05
2,201 to 2,400 hours	147.05	164.75
2,401 and over	147.05	164.75

<sup>2</sup> Subject to Section 5.3.C.4.

Total Hours of Service as defined below from July 1 to June 30 each year	Subject to Subsection 5.3.C.3, Future Service Credits from 7/1/93 thru 6/30/94	Subject to Subsection 5.3.C.3, Future Service Credits from 7/1/94 thru 6/30/96	Subject to Subsection 5.3.C.3, Future Service Credits from 7/1/96 thru 6/30/04	Subject to Subsection 5.3.C.3, Future Service Credits from and after 7/1/04
400 to 600 hours	\$ 38.70	\$ 42.10	\$ 44.95	\$31.50
601 to 800 hours	54.55	59.40	63.90	44.75
801 to 1,000 hours	70.50	76.70	81.65	57.20
1,001 to 1,200 hours	86.50	94.15	100.60	70.45
1,201 to 1,400 hours	102.60	111.60	118.35	82.85
1,401 to 1,600 hours	118.60	128.95	136.10	95.30
1,601 to 1,800 hours	134.60	146.40	155.05	108.55
1,801 to 2,000 hours	150.60	163.75	172.80	121.00
2,001 to 2,200 hours	166.70	181.25	191.75	134.25
2,201 to 2,400 hours	180.60	196.45	209.50	146.65
2,401 to 2,600 hours	197.30	214.60	227.25	159.10
2,601 to 2,800 hours	213.10	231.80	246.15	172.35
2,801 to 3,000 hours	228.90	249.00	263.90	184.75
3,001 to 3,200 hours	244.50	265.90	281.65	197.20
3,201 or more	244.50	265.90	281.65	197.20

C. The amount of Accredited Future Service Benefits accrued by a Participant under the foregoing tables is subject to the following rules:

1. Any Participant or Beneficiary whose Annuity Starting Date was prior to July 1, 1984 (including disability benefits), shall, effective with the monthly payment due on July 1, 1984, receive benefits in the amount of his June 1984 payment, increased by twenty (20) percent.

The monthly benefit amount of any Participant or Beneficiary whose Annuity Starting Date (including disability benefits) is July 1, 1984 or thereafter, shall be based on the greater of:

- a. The Participant's Accrued Benefit as of the Annuity Starting Date determined under the tables set out in Subsection 5.3.B; or
  - b. The Participant's Accrued Benefit as of June 30, 1984 determined under the tables set out in Subsection 5.3.B, increased by twenty (20) percent.
2. Notwithstanding other provisions of this Article V and excepting Participants or Beneficiaries of Participants who are employed by contributing Employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774, the Accrued Benefit, as of June 30, 1985, of any Participant or Beneficiary, whose Annuity Starting Date is on or after July 1, 1985, shall be the benefit computed under the tables set forth in Subsection 5.3.B as of June 30, 1985, without regard to the increase in the foregoing

**RECORD OF ACTION IN LIEU OF  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION FUND TRUSTEES' MEETING**

The undersigned, being all the Trustees of Painters District Council No. 2 Pension Trust ("Trust"), hereby adopt the following Resolution by unanimous written consent:

WHEREAS, the Fourth Amendment to the Painters District Council #2 Pension Plan (the "Plan") as amended and restated effective July 1, 1997, was presented to the Trustees;

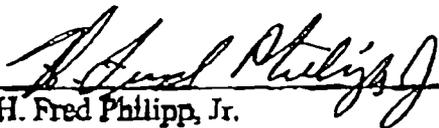
NOW, THEREFORE, BE IT RESOLVED, the Fourth Amendment to the Plan is hereby approved and adopted.

IN WITNESS WHEREOF, the undersigned, being all of the Trustees of the Trust, having caused this resolution to be adopted this \_\_\_\_\_ day of June, 2004.

**UNION TRUSTEES**

**MANAGEMENT TRUSTEES**

\_\_\_\_\_  
Kevin M. Kenny

  
\_\_\_\_\_  
H. Fred Philipp, Jr.

\_\_\_\_\_  
Richard H. Broecker

\_\_\_\_\_  
V. Paul Meyer

\_\_\_\_\_  
Robert A. Lucks

\_\_\_\_\_  
Daniel G. Wienstroer

Being all the Trustees of the Trust

**RECORD OF ACTION IN LIEU OF  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION FUND TRUSTEES' MEETING**

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NOW, THEREFORE, BE IT RESOLVED, the Fourth Amendment to the Plan is hereby approved and adopted.

IN WITNESS WHEREOF, the undersigned, being all of the Trustees of the Trust, having caused this resolution to be adopted this \_\_\_\_\_ day of June, 2004.

**UNION TRUSTEES**

**MANAGEMENT TRUSTEES**

\_\_\_\_\_  
Kevin M. Kenny

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H. Fred Philipp, Jr.

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Richard H. Broeker

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V. Paul Meyer

\_\_\_\_\_  
Robert A. Lucks

\_\_\_\_\_  
Daniel G. Wienstroer

Being all the Trustees of the Trust

**RECORD OF ACTION IN LIEU OF  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION FUND TRUSTEES' MEETING**

The undersigned, being all the Trustees of Painters District Council No. 2 Pension Trust ("Trust"), hereby adopt the following Resolution by unanimous written consent:

WHEREAS, the Fourth Amendment to the Painters District Council #2 Pension Plan (the "Plan") as amended and restated effective July 1, 1997, was presented to the Trustees;

NOW, THEREFORE, BE IT RESOLVED, the Fourth Amendment to the Plan is hereby approved and adopted.

IN WITNESS WHEREOF, the undersigned, being all of the Trustees of the Trust, having caused this resolution to be adopted this \_\_\_\_ day of June, 2004.

**UNION TRUSTEES**

**MANAGEMENT TRUSTEES**

\_\_\_\_\_  
Kevin M. Kenny

\_\_\_\_\_  
H. Fred Philipp, Jr.

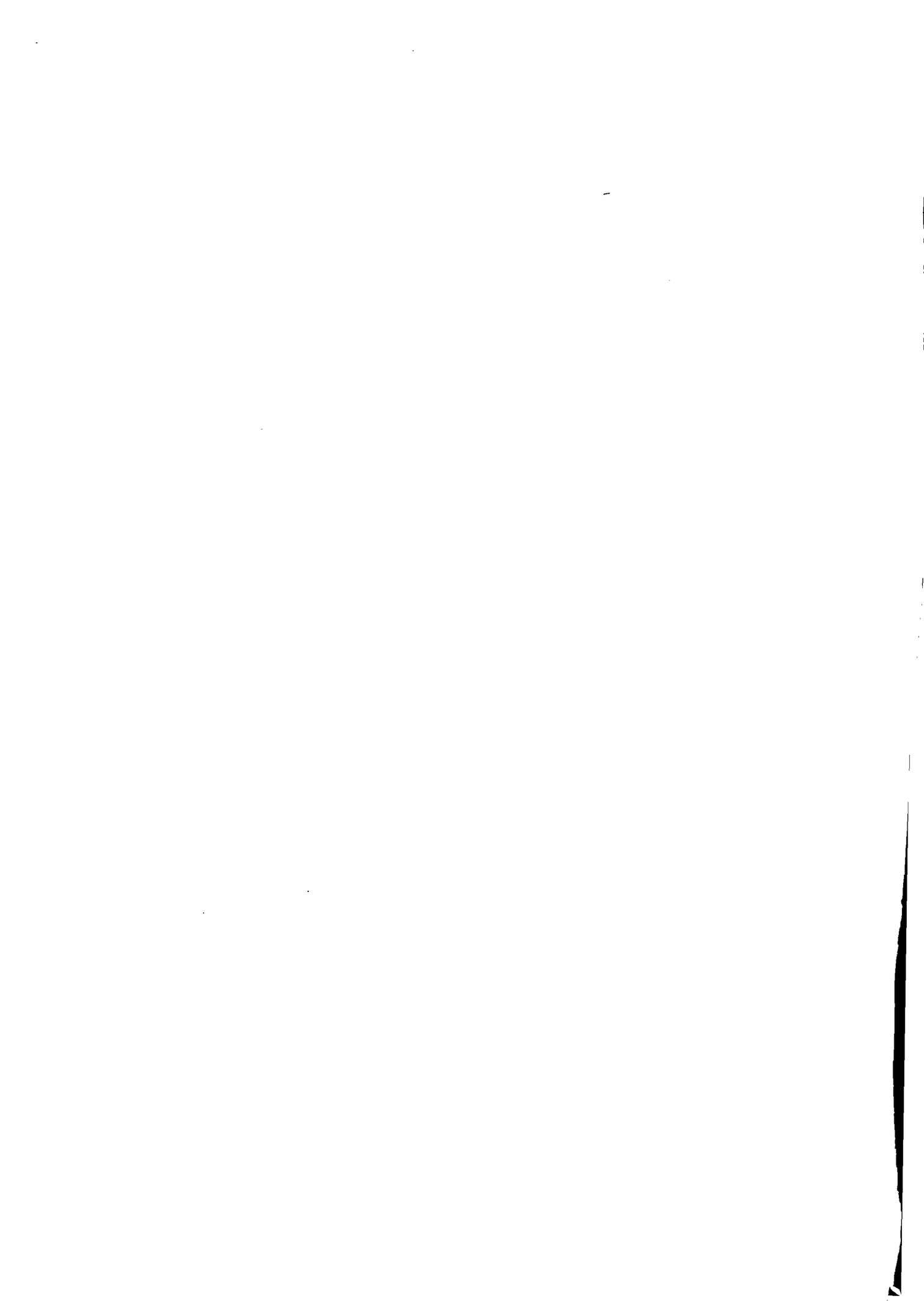
\_\_\_\_\_  
Richard H. Brocker

\_\_\_\_\_  
V. Paul Meyer

\_\_\_\_\_  
Robert A. Lucks

  
\_\_\_\_\_  
Daniel G. Wienstroer

Being all the Trustees of the Trust



**AMENDMENT NO. 5 TO THE  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION PLAN AND TRUST AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby adopt the following Amendment No. 4 to the Painters District Council No. 2 Pension Trust and Plan Agreement, which said document is a Restatement of the Plan and Trust effective July 1, 1997.

1. Effective November 18, 2004, the introductory paragraph is hereby deleted and replaced with the following:

THIS AGREEMENT, first made and entered into as of the first day of July, 1964, by and between ST. LOUIS PAINTERS AND DECORATORS JOINT TRADE BOARD, INC., a Missouri pro forma decree corporation, hereinafter referred to as the BOARD, and any other employers, hereinafter referred to as EMPLOYERS, who adhere to the area practice and who have a contract with Painters District Council No. 2, hereinafter referred to as the UNION, and certain named individuals, as initial trustees, whose successors currently are KEVIN M. KENNY, RICHARD H. BROEKER, JOSEPH M. BARRETT, V. PAUL MEYER, H. FRED PHILIPP, JR., and DANIEL G. WIENSTROER.

2. Effective November 18, 2004, the first sentence of the first paragraph of Article XVI is hereby deleted and replaced with the following:

Effective November 17, 2004, Trustees herein have been selected as follows: KEVIN M. KENNY, RICHARD H. BROEKER and JOSEPH M. BARRETT have been selected by the Union and H. FRED PHILIPP, JR., V. PAUL MEYER and DANIEL G. WIENSTROER have been selected by the Employers.

3. Effective July 1, 2004 add the following new Section 9.5:

9.5 Retroactive Annuity Starting Date.

A. In the event payment of a Participant's Plan benefits, which are payable in a form other than the form described in Section 8.5.C on his Annuity Starting Date, commences later than his Annuity Starting Date, the Participant shall be paid, in a single sum at the time payment of his Plan benefits actually commences, the total amount of Plan benefits that would have been paid to him for the period commencing on his Annuity Starting Date and ending on the day before payment of his Plan benefits actually commences had Plan benefits been paid to him for such period. Such payment shall be adjusted for simple interest at a rate equal to the average rate for thirty year Treasury securities for the month immediately preceding the month in which the Participant's Annuity Starting Date occurs for the period from the Participant's Annuity Starting Date to the date of payment

described herein. The payment described in this Subsection 9.5.A is not an “eligible rollover distribution” for purposes of Section 12.7.

B. In the event payment of a Participant’s Plan benefits, which are payable in the form described in Section 8.5.C on his Annuity Starting Date, commences later than his Annuity Starting Date, the Participant shall be paid, in a single sum at the time payment of his benefits actually commences, the greater of:

1. The amount that would have been payable to him on his Annuity Starting Date adjusted for simple interest at a rate equal to the average rate for thirty year Treasury securities for the month immediately preceding the month in which his Annuity Starting Date occurs for the period from his Annuity Starting Date to the date of payment described herein.
2. The Actuarial Equivalent of the Participant’s benefits that would have been payable to him on his Annuity Starting Date determined as of the date of payment as described herein.

In the event the amount payable under 1. or 2. of this subsection 9.5.B exceeds the amount described in Section 8.5.C, such amount shall not be paid pursuant to Section 8.5.C and shall be paid as otherwise provided in the Plan.

4. Effective November 18, 2004, Article X is hereby deleted and replaced with the following:

## **ARTICLE X**

### **Benefit Claims Procedure**

Any claim for benefits under the Plan shall be made in writing to the Plan Administrator on forms which will be provided upon request to the Fund Office. A claim for disability benefits must be made within 120 days of the date the Plan Participant first qualifies for disability retirement. A claim concerning the amount of Disability Benefits must be made by the Participant within 120 days of the date the Participant first learns of the amount of the benefit which is disputed.

The Plan Administrator shall furnish the claimant with a written notice of his decision within ninety (90) days after receipt of the claim, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing the claim is required, written notice of the extension shall be furnished to the claimant prior to the

expiration of the initial ninety (90) day period. In no event shall such an extension exceed a period of ninety (90) days after the expiration of the initial ninety (90) day period.

In the event that the decision of the Plan Administrator is to wholly or partially deny a claim, the claimant shall be provided with a written decision which shall set forth in a manner calculated to be understood by the claimant the following:

- A. The specific reason or reasons for the denial;
- B. Specific reference to pertinent Plan provisions on which the denial is based;
- C. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- D. Appropriate information as to the steps to be taken if the Participant or Beneficiary wishes to submit his or her claim for review.

In the event a claim is wholly or partially denied, a claimant or his duly authorized representatives may appeal the claim to the Trustees by written application to the Trustees filed within sixty (60) days after receipt by the claimant of written notification of denial of claim. Said application for review shall be available at the Fund Office. The claimant shall have a right to have a duly authorized representative review pertinent documents and submit issues and comments in writing. If the claimant does not appeal within the sixty (60) day period, the decision of the Plan Administrator shall be final and binding and the claimant cannot sue on his claim in a court of law.

The decision by the Trustees shall be made no later than the date of the meeting of the Board which immediately follows the Plan's receipt of a request for review, unless the request for review is filed within thirty (30) days preceding the date of such meeting. In such a case, a decision may be made by no later than the date of the second meeting following the Plan's receipt of the request for review.

UNION TRUSTEES

MANAGEMENT TRUSTEES

Kevin M. Kenny  
Kevin M. Kenny  
Date: 8-18-04

H. Fred Philipp, Jr.  
H. Fred Philipp, Jr.  
Date: 8/18/04

Richard H. Broeker  
Richard H. Broeker  
Date: 8.18.04

V. Paul Meyer  
V. Paul Meyer  
Date: 8-18-04

Robert A. Lucks  
Robert A. Lucks  
Date: 8-18-04

Daniel G. Wienstroer  
Daniel G. Wienstroer  
Date: 8-18-04

**AMENDMENT NO. 6 TO THE  
PAINTERS DISTRICT COUNCIL NO. 2  
PENSION PLAN AND TRUST AGREEMENT**

The Trustees of the Painters District Council No. 2 Pension Trust hereby adopt the following Amendment No. 6 to the Painters District Council No. 2 Pension Trust and Plan Agreement, which said document is a Restatement of the Plan and Trust effective July 1, 1997.

1. Effective March 28, 2005, Subsection 8.5.C is hereby deleted and is replaced with the following:

C. Notwithstanding the foregoing, the Trustees shall distribute the Participant's or Beneficiary's benefits in the form of a lump sum payment on or prior to the Annuity Starting Date if the Actuarial Equivalent Value of the benefits does not exceed \$5,000. In the event of a distribution greater than \$1,000 in accordance with the provisions of this Subsection 8.5.C., if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover in accordance with Section 12.7 or to receive the distribution directly in accordance with this Subsection 8.5.C., then the Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.

UNION TRUSTEES

MANAGEMENT TRUSTEES

Kevin M. Kenny  
Kevin M. Kenny  
Date: 5-19-05

H. Fred Philipp, Jr.  
H. Fred Philipp, Jr.  
Date: 5/19/05

Richard H. Broeker  
Richard H. Broeker  
Date: 5.19.05

V. Paul Meyer  
V. Paul Meyer  
Date: 5-19-05

Joseph M. Barrett  
Joseph M. Barrett  
Date: 5/19/05

Daniel G. Wienstroer  
Daniel G. Wienstroer  
Date: 5/19/05

***PAINTERS DISTRICT COUNCIL NO. 2***  
***PENSION PLAN AND TRUST AGREEMENT***  
***(Restated Effective July 1, 1997)***



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THIS AGREEMENT, first made and entered into as of the first day of July, 1964, by and between ST. LOUIS PAINTERS AND DECORATORS JOINT TRADE BOARD, INC., a Missouri pro forma decree corporation, hereinafter referred to as the BOARD, and any other Employers, who adhere to the area practice and who have a contract with Painters District Council No. 2, hereinafter referred to as the UNION, and certain named individuals, as initial trustees, whose successors currently are RICHARD BRYAN, RICHARD BROEKER, ROBERT LUCKS, PAUL MEYER, H. FRED PHILIPP, JR., and DAN WIENSTROER.

WHEREAS, the Trustees of the Painters District Council No. 2 Pension Trust have amended this Plan from time to time, pursuant to authority contained herein,

WHEREAS, it is desired to amend the Plan by restating the Plan in its entirety in order to conform to the Employee Retirement Income Security Act of 1974, as amended; the United States Internal Revenue Code of 1986, as amended; the Labor Management Relations Act of 1947, as amended; and other laws.

NOW, THEREFORE, said Agreement as amended is hereby continued and restated effective July 1, 1997, unless specifically provided otherwise herein, for the benefit of such persons as are now or shall hereafter become entitled to Plan benefits pursuant to the terms hereof as follows:

## ARTICLE I

### Definitions

1.1 Accredited Future Service Benefits. “Accredited Future Service Benefits” means the total amount of Plan Benefits a Participant earns as provided in Subsections 5.3.B and 5.3.C.

1.2 Accredited Past Service Benefits. “Accredited Past Service Benefits” means the amount of Plan benefits a Participant, who was a Participant on and after July 1, 1964, earned for each year of service in Covered Employment prior to July 1, 1964, as provided in Subsection 5.3.A.

1.3 Accrued Benefit. “Accrued Benefit” means the amount of Plan benefits earned by a Participant at any given time.

1.4 Actuarial Equivalent. “Actuarial Equivalent” means a benefit of equivalent actuarial value determined by discounting all future payments for interest and mortality on the following basis:

- A. For annuities, the interest rate is six and one-half percent and the mortality table is the 1971 Male Group Annuity Mortality Table.
- B. For single sum payments made before July 1, 2002, the interest rate is the rate established at the beginning of the Plan Year, by the Pension Benefit Guaranty Corporation for valuing a lump sum distribution upon a plan termination in which the single sum distribution is made, and the mortality table is the 1971 Male Group Annuity Mortality Table.
- C. For single sum payments made after June 30, 2002 which are made in a stability period, the interest rate assumption shall be the applicable interest rate for the stability period and the mortality table shall be the applicable mortality table.
  1. “Applicable interest rate for the stability period” means the annual interest rate on thirty year Treasury securities for the look back month for the stability period as specified by the Commission of Internal Revenue Service for such month in the Internal Revenue Bulletin.
  2. “Stability period” means the Plan Year.

3. “Look back month” for a stability period means the calendar month of May immediately preceding such stability period.
4. “Applicable Mortality Table” means the Commissioner of Internal Revenue’s standard table, as described in Code § 807(d)(5), used to determine reserves for group annuity contracts issued on the date as of which the present value is being determined, without regard to any other subparagraph of Code § 807(d), that is prescribed by the Commissioner of Internal Revenue in Revenue Rulings, notices or other guidance published in the Internal Revenue Bulletin.

1.5 Annuity Starting Date. The “Annuity Starting Date” is the first day of the first period for which an amount is payable as an annuity. The Participant may elect this Annuity Starting Date after fulfilling all of the conditions for entitlement to benefits, subject to the following:

- A. Subject to the waiver described in Section 8.4, the date must be at least thirty (30) days and no more than ninety (90) days after the Participant has received the notice of right to waive Qualified Joint and Survivor Annuity. The notice will be given to the Participant upon request. The Notice does not apply to alternate payees or beneficiaries.
- B. The Annuity Starting Date will not be later than the Participant’s Required Beginning Date.

A Participant who begins receiving benefits before his or her Normal Retirement Age and then earns additional benefit accruals under the Plan through re-employment will have a separate Annuity Starting Date, as provided in Subsection 6.3.F, with respect to the additional accruals.

1.6 Beneficiary. “Beneficiary” means a person (other than a Pensioner) who is receiving benefits under this Plan because of his or her designation for such benefits by a Participant or by provisions of this Plan. See also Sections 5.2 and 6.7.C.

1.7 Code. “Code” means the Internal Revenue Code of 1986, as amended.

1.8 Collective Bargaining Agreement. “Collective Bargaining Agreement” means an agreement between the Union and an Employer which requires contributions to the Trust.

1.9 Continuous Employment. “Continuous Employment” means any Periods of Service not separated by quit, discharge, or other termination of employment between the periods.

1.10 Contributions. “Contributions” shall mean the rate or amount to be paid to the fund under the Trust as specified in collective bargaining agreements between the Employer and the Union.

1.11 Contributing Employer or Employer. “Contributing Employer” or “Employer” means an Employer signatory to a Collective Bargaining Agreement with the Union requiring contributions to the Trust and any other Employer authorized by the Plan to make contributions pursuant to the Plan, provided:

- A. The Employer has been accepted as a Contributing Employer by the Trustees, and
- B. The Trustees have not, by resolution, terminated the Employer’s status as a “Contributing Employer” because the Employer has failed, for a period of one hundred twenty (120) days after the due date, to make contributions pursuant to the Plan as provided for in its Collective Bargaining Agreement.

An Employer shall not be deemed a Contributing Employer simply because it is part of a controlled group of corporations or of a trade or business under common control, some other part of which is a Contributing Employer.

1.12 Contribution Date. “Contribution Date” shall mean the date of commencement of contributions as set forth in an agreement between the Employer and the Union as being the date on which the Employer’s obligation to contribute to the Pension Trust shall start.

1.13 Contribution Period. “Contribution Period” means, with respect to a category of employment, the period during which the Employer is a Contributing Employer with respect to the category of employment.

1.14 Covered Employment. “Covered Employment” means employment of an Employee by an Employer. However, “Covered Employment” shall not include employment with an Employer after termination of that Employer’s status as a Contributing Employer for failure to pay contributions due pursuant to the provisions of Article III.

1.15 Employee. “Employee” means a person who is an Employee of an Employer and who is: (a) covered by a Collective Bargaining Agreement; or (b) a person for whom any other Employer authorized by the Plan to contribute pursuant to the Plan and makes such contributions. The term “Employee” shall not include any self-employed person or sole proprietor of a business organization, any other person who is prohibited by Federal law from participating in the Plan or, effective July 1, 2002, a pre-apprentice or apprentice within the meaning of the Collective Bargaining Contract.

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

1.17 Fund Office. “Fund Office” means the principal location where plan records are kept and Plan employees work.

1.18 Hour of Service. “Hour of Service” means:

- A. An Hour of Service is each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer during the applicable computation period.
- B. An Hour of Service is each hour for which an Employee is paid, or entitled to payment, by the 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 service or leave of absence, except that:
  - 1. No more than four hundred (400) Hours of Service shall be credited under this Subsection 1.18.B to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period);

2. An hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for purpose of complying with applicable workmen's compensation, or unemployment compensation or disability insurance laws; and
3. Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of this Subsection 1.18.B, a payment shall be deemed to be made by or due from an Employer regardless of whether such payment is made by or due from the Employer directly or indirectly through, among others, a trust fund or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular Employees in the aggregate.

- C. An Hour of Service is each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same hours of service shall not be credited both under Subsection 1.18.A or 1.18.B, as the case may be, and under this Subsection 1.18.C.
- D. Effective July 1, 1986, only for purposes of computing Hours of Service for determining whether a One-Year Break in Service has occurred, an Hour of Service includes each hour up to a maximum of four hundred (400) Hours of Service, during a period of absence from covered employment, if the absence from such employment was due to any one of the following:
  1. Pregnancy of the Participant;
  2. Birth of a child of the Participant;
  3. Placement of a child with the Participant in connection with the adoption of such child by the Participant; or
  4. Caring for such child by the Participant.

The amount of Hours to be credited for the period of absence shall be the number of Hours that normally would have been credited to the Participant, but for the absence from Covered Employment, if such an amount can be ascertained. If this amount is not able to be ascertained, the Participant shall be credited with eight Hours of Service for each working day during the leave.

The Hours of Service shall be credited in the vesting computation year in which they occur, if the leave occurs totally within one vesting computation year. If the leave takes place in more than one vesting computation year, the Hours of Service shall be credited in the vesting year during which the absence begins, if the

crediting is necessary to prevent a One-Year Break in Service; otherwise the Hours of Service shall be credited in the following vesting computation year.

Hours of Service under this subparagraph shall be computed only for purposes of determining whether a One-Year Break in Service has occurred. Such Hours will not be counted toward accrual of Plan benefits nor will they be counted toward determining whether the Participant has completed a Year of Service for vesting purposes.

The Participant is required to furnish, upon request by the Plan Administrator or an authorized representative thereof such timely information as the Plan may reasonably require to establish that the absence was for one of the reasons stated in this subparagraph and/or to establish the number of days for which there was such an absence.

- E. Effective January 1, 1994, an Hour of Service for purposes of determining whether a Participant has completed a Year of Service for vesting purposes will include Hours of Service the Participant would have earned but for his having taken approved leave under the Family and Medical Leave Act. Such hours will not be counted for purposes of accrual of Plan benefits.
- F. An Hour of Service is each hour for which an Employee would have been scheduled for work for an Employer during the period of time he is absent from work because of periods of Qualified Military Service, but only if the Employee returns to the employment of the Employer within the period he retains reemployment rights pursuant to Federal law.

Hours of Service shall be computed and credited in accordance with Department of Labor Regulations Sections 2530.200b-2(b) and (c).

1.19 Non-Bargained Employee. A "Non-Bargained Employee" is an employee who is not covered by a collective bargaining agreement between the Union and a Contributing Employer, but for whom contributions are made to the Trust. This term includes any employee of the Union, Painters District Council No. 2 Unity Hall Corporation or any employee of the Trustees of Painters District Council No. 2 Welfare Plan, Pension Trust, Vacation Fund and/or Apprenticeship and Journeyman Fund, to the extent such employer has agreed to make contributions to the Trust on behalf of said employee. Wherever the context so admits or requires, "Employee" shall also mean "Non-Bargained Employee".

1.20 Normal Retirement Age/Normal Retirement Date. “Normal Retirement Age” means age sixty-five (65) or, if later, the age of the Participant on the fifth anniversary of his participation in the Plan. Participation before a Permanent Break in Service shall not be counted. “Normal Retirement Date” means the first date of the month coincident with or next following the month in which the Participant reaches his “Normal Retirement Age”.

1.21 One-Year Break in Service. “One-Year Break in Service” has the meaning as defined in Subsection 7.3.A.

1.22 Participant. “Participant” means Pensioner or an Employee who meets the requirements for participation in the Plan as set forth in Article III.

1.23 Pension Plan or Plan. “Pension Plan” or “Plan” means those documents as adopted by the Trustees and as thereafter amended by the Trustees, which govern the creation, existence and administration of the Painters District Council #2 Pension Plan.

1.24 Pensioner. “Pensioner” means a person to whom a pension under this Plan is being paid or to whom a pension would be paid but for time for administrative processing.

1.25 Period of Service. “Period of Service” means a Participant’s period of employment in Covered Employment.

1.26 Permanent Break in Service. “Permanent Break in Service” has the meaning as defined in Subsection 7.3.C.

1.27 Plan. “Plan” means the Painters District Council #2 Pension Plan established pursuant to this Plan and Trust Agreement.

1.28 Plan Administrator. “Plan Administrator” means the individual appointed by the Trustees to administer the Plan.

1.29 Plan Agreement. “Plan Agreement” means those provisions of the Plan and Trust Agreement which govern the creation, existence and administration of the Plan.

1.30 Plan Year. “Plan Year” means the twelve-month period from July 1 through the next June 30. For purposes of Department of Labor ERISA regulations, the Plan Year shall be the vesting computation period, the benefit accrual computation period, and after the initial period of employment, the computation period for eligibility to participate in the Plan.

1.31 Qualified Joint and Survivor Annuity. “Qualified Joint and Survivor Annuity” means the annuity as described in Section 8.1.B.

1.32 Qualified Military Service. “Qualified Military Service” means service in the Uniformed Services as defined in Code § 414(u).

1.33 Required Beginning Date. “Required Beginning Date” means April 1 immediately following the close of the calendar year in which the Participant attains age 70 ½, ceases working in Covered Employment, or, in the case of deceased Employee, would have attained age seventy and one-half, whichever occurs last. For an individual who owns, or is considered as owning, within the meaning of Code § 318 (determined without regard to Code §§ 414(b), (c), (m) or (o)), five (5) percent or more of an Employer, “Required Beginning Date” means the first day of April immediately following the close of the calendar year in which he attains age 70 ½.

1.34 Treasury Regulations. “Treasury Regulations” means Federal income tax regulations as promulgated by the Secretary of Treasury or his delegate, as amended from time to time.

1.35 Trust. “Trust” means the Painters District Council No. 2 Pension Trust established pursuant to this Pension Plan and Trust Agreement.

1.36 Trust Agreement. “Trust Agreement” means those provisions of this Pension Plan and Trust Agreement which govern the creation, existence and administration of the Trust.

1.37 Trustees. “Trustees” means the Board of Trustees as established and constituted from time to time in accordance with the Trust Agreement.

1.38 Union. “Union” means Painters District Council No. 2.

1.39 Year of Vesting Service. “Year of Vesting Service” has the meaning as provided in Section 7.2.

## ARTICLE II

### Governing Documents

This Pension Plan and Trust Agreement contains the governing provisions of the Plan and the Trust. This Agreement shall be known as the "Painters District Council No. 2 Pension Plan and Trust Agreement."

The Plan and Trust are designed to provide retirement, survivor, disability and death benefits for Participants and Beneficiaries, who are entitled to receive such benefits as defined in this Plan and Trust Agreement.

## **ARTICLE III**

### **Participation**

The term Participant shall mean any Employee of a Contributing Employer who is engaged in Covered Employment during the Contribution Period for that Employer and any Non-Bargained Employee who becomes eligible to participate in the Plan pursuant to this Article III. An Employee becomes a Participant upon completion of one Hour of Service in Covered Employment and a Non-Bargained Employee becomes a Participant upon completion of an Hour of Service for which his employer makes contributions to the Trust. Unless otherwise specifically provided, a Participant's participation ceases as of the first day of the Plan Year following the Plan Year during which the Participant experiences a One-Year Break in Service.

An Employee who has lost his status as a Participant shall again become a Participant upon completion of one Hour of Service in Covered Employment and a Non-Bargained Employee who has lost his status as a Participant shall become a Participant upon completion of an Hour of Service for which his employer makes contributions to the Trust.

## ARTICLE IV

### Employer Participation

When an Employer of one or more eligible Employees signifies its agreement to the Trustees in writing to pay for the benefits as provided herein and to be bound by the terms of the Plan and Trust, such Employer shall, if accepted by the Trustees, become a Contributing Employer. The Trustees have the right to refuse to accept an Employer as a Contributing Employer or to terminate an Employer's status as a Contributing Employer, in their discretion.

Each Contributing Employer who agrees in writing to contribute for the purpose of providing benefits under this Plan and executes an agreement subscribing to and being bound by the terms of this Agreement, shall contribute the money per hour as shall be negotiated from time to time by Employers and the Union on behalf of Participants who shall be employed by Contributing Employers as evidenced by agreements from time to time between Contributing Employers and the Union.

The contributions as established from time to time by the Collective Bargaining Agreement shall be due on the date set out in the Collective Bargaining Agreement. If the payment of contributions is delinquent, the Employer shall be assessed liquidated damages of ten (10) percent for up to thirty (30) days of delinquency. Thereafter, liquidated damages of one and one-half percent (1½%) per month shall be assessed, compounded monthly until the full contribution is made.

In any legal action instituted to recover delinquent contributions or to recover unpaid liquidated damages, the Contributing Employer shall be obligated to pay reasonable attorneys' fees and accounting fees in addition to all principal amounts due and in addition to all other relief prescribed by law.

## ARTICLE V

### Accrual of Benefits

5.1 General Rules. This Article sets forth the rules for determining and computing the amount of a Participant's Accrued Benefit under the Plan. The accumulation and retention of Accrued Benefit credits are subject to the requirements concerning Years of Vesting Service and Breaks In Service. The benefit amounts are subject to reduction on account of the Qualified Joint and Survivor Annuity and modification if the Participant retires with an Annuity Starting Date other than his Normal Retirement Date, or with a form of benefits other than the normal form of benefits, as described in Section 5.2.

Eligibility to receive a benefit based on the Participant's Accrued Benefit depends on meeting the conditions for benefit entitlement (Article VI) and/or the rules concerning Years of Vesting Service and Permanent Break in Service.

5.2 Normal Form of Benefit. For purposes of this Plan the normal form of benefits is a life annuity, with a sixty (60) month guarantee. This form includes the payment of a monthly amount commencing with the Annuity Starting Date and continuing until the month in which the Participant dies. If the death of the Participant occurs after his Annuity Starting Date, but before all sixty (60) guaranteed monthly payments have been made, the remaining payments shall be made to the named Beneficiary, if then surviving, or if such Beneficiary is not then surviving, to the contingent Beneficiary, if then surviving. If no Beneficiary is surviving when a payment is to be made to a Beneficiary, payment shall be made to the person or persons in the first surviving class of the following classes of successive Beneficiaries:

- A. The Participant's widow or widower;
- B. The Participant's surviving children;
- C. The Participant's surviving parents;

- D. The Participant's surviving brothers and sisters;
- E. The Participant's estate.

If a Beneficiary who is receiving guaranteed payments dies before all guaranteed payments are made, payments will continue to the contingent Beneficiary, if one is then surviving. If no contingent Beneficiary is then surviving, the remaining payments will be made to the estate of the Beneficiary who last received a payment, until all guaranteed payments have been made.

The amount of benefit stated in the Plan, under Section 5.3, is the amount which the Participant would receive each month, if the Participant receives a life annuity with a sixty (60) month guarantee, commencing at his Normal Retirement Date. In the event the Participant receives a form of payment different from the life annuity with a sixty (60) month guarantee, or in the event the Participant begins to receive benefits at a time other than his Normal Retirement Date, the monthly amount received will be the Actuarial Equivalent of the amount of benefit stated in Section 5.3; that is, it will be the Actuarial Equivalent of the amount which the Participant would be entitled to under the life annuity with a sixty (60) month guarantee form of payment, commencing at Normal Retirement Date.

5.3 Amount of Benefit Stated in the Normal Benefit Form. The amount of monthly benefit that a Participant accrues stated in the normal form of benefits (a life annuity with a sixty (60) month guarantee) commencing at Normal Retirement Date, is the sum of the amount determined under Subsection 5.3.A plus the amount determined under Section 5.3.B.

- A. The amount determined under this Subsection is \$2.50 multiplied by number of years of Accredited Past Service for any Participant who participated on and after July 1, 1964. An eligible Participant receives a year of Accredited Past Service for each continuous year of service in Covered Employment prior to July 1, 1964. No Participant who first participated in the Plan after July 1, 1964 shall be entitled to Accredited Past Service benefits. The amount determined under this Subsection is subject to the rules concerning Permanent Breaks in Service.
- B. The amount determined under this Subsection is the sum of the Future Service Credits earned by the Participant under all applicable tables specified in this

Subsection. Accredited Future Service Benefits will be accrued under this Subsection for each twelve (12) consecutive month period commencing with July 1, 1964, and subsequent anniversaries thereof ("benefit accrual year"), based on the number of Hours of Service completed by the Participant in Covered Employment during the particular benefit accrual year, subject to the following rules:

1. No Future Service Credits will be accrued by a Participant for any benefit accrual year during which the Participant fails to complete at least 400 Hours of Service.
2. The accrual of Future Service Credits under this Subsection is subject to the rules concerning Permanent Breaks in Service.
3. The amounts set out in these tables are subject to the rules contained in Subsection 5.3.C.

The amount of Future Service Credits accrued by a Participant during each benefit accrual year is:

Total Hours of Service as defined below from July 1 to June 30 each year	Future Service Credits from 7/1/64 thru 6/30/72	Future Service Credits 7/1/72 through 6/30/76
400 to and including 600 hours	\$1.50	\$1.50
601 to 800 hours	1.80	2.25
801 to 1,000 hours	2.10	3.00
1,001 to 1,200 hours	2.40	3.75
1,201 to 1,400 hours	2.70	4.50
1,401 to 1,600 hours	3.00	5.25
1,601 to 1,800 hours	3.30	6.00
1,801 to 2,000 hours	3.60	6.75
2,001 to 2,200 hours	3.90	7.50
2,201 to 2,400 hours	4.20	8.25
2,401 <sup>1</sup> and over	4.20	8.25

<sup>1</sup> 2,401 Hours of Service in an accrual benefit year is considered full-time employment for purposes of accrual of Accredited Future Service Benefits for all accrual years through the year ending June 30, 1993. For accrual benefit years beginning July 1, 1993 and thereafter, 3,201 Hours of Service is considered full-time employment for purposes of accrual of Accredited Future Service Benefits.

Total Hours of Service as defined below from July 1 to June 30 each year	Future Service Credits 7/1/76 thru 6/30/78	Future Service Credits 7/1/78 thru 6/30/80	Future Service Credits 7/1/80 thru 6/30/84	Future Service Credits 7/1/84 thru 11/30/84
400 to and including 600 hours	\$ 3.00	\$ 4.50	\$ 5.65	\$ 6.50
601 to 800 hours	4.50	6.75	8.45	9.60
801 to 1,000 hours	6.00	9.00	11.25	12.75
1,001 to 1,200 hours	7.50	11.25	14.05	15.90
1,201 to 1,400 hours	9.00	13.50	16.90	19.05
1,401 to 1,600 hours	10.50	15.75	19.70	22.20
1,601 to 1,800 hours	12.00	18.00	22.50	25.35
1,801 to 2,000 hours	13.50	20.25	25.30	28.45
2,001 to 2,200 hours	15.00	22.50	28.15	31.65
2,201 to 2,400 hours	16.50	24.75	30.95	34.80
2,401 and over	16.50	24.75	30.95	34.80

Total Hours of Service as defined below from July 1 to June 30 each year	Subject to Subsection 5.3.C.3 Future Service Credits 12/1/84 thru 6/30/85 <sup>2</sup>	Subject to Subsection 5.3.C.3 Future Service Credits 7/1/85 thru 6/30/86
400 to 600 hours	\$16.25	\$21.85
601 to 800 hours	23.00	30.85
801 to 1,000 hours	30.00	40.10
1,001 to 1,200 hours	37.00	49.30
1,201 to 1,400 hours	44.05	58.60
1,401 to 1,600 hours	51.00	67.80
1,601 to 1,800 hours	58.00	77.00
1,801 to 2,000 hours	65.00	86.25
2,001 to 2,200 hours	72.00	95.50
2,201 to 2,400 hours	79.00	104.75
2,401 and over	79.00	104.75

<sup>2</sup> Subject to Section 5.3.C.4.

	Subject to Subsection 5.3.C.3 Future Service Credits from 7/1/86 thru 6/30/89	Subject to Subsection 5.3.C.3 Future Service Credits 7/1/89 thru 6/30/93
400 to 600 hours	\$ 31.45	\$ 35.30
601 to 800 hours	44.35	49.75
801 to 1,000 hours	57.40	64.30
1,001 to 1,200 hours	70.45	78.90
1,201 to 1,400 hours	83.60	93.60
1,401 to 1,600 hours	96.65	108.20
1,601 to 1,800 hours	109.70	122.80
1,801 to 2,000 hours	122.80	137.40
2,001 to 2,200 hours	135.90	152.05
2,201 to 2,400 hours	147.05	164.75
2,401 and over	147.05	164.75

Total Hours of Service as defined below from July 1 to June 30 each year	Subject to Subsection 5.3.C.3, Future Service Credits from 7/1/93 thru 6/30/94	Subject to Subsection 5.3.C.3, Future Service Credits from 7/1/94 thru 6/30/96	Subject to Subsection 5.3.C.3, Future Service Credits from and after 7/1/96
400 to 600 hours	\$ 38.70	\$ 42.10	\$ 44.95
601 to 800 hours	54.55	59.40	63.90
801 to 1,000 hours	70.50	76.70	81.65
1,001 to 1,200 hours	86.50	94.15	100.60
1,201 to 1,400 hours	102.60	111.60	118.35
1,401 to 1,600 hours	118.60	128.95	136.10
1,601 to 1,800 hours	134.60	146.40	155.05
1,801 to 2,000 hours	150.60	163.75	172.80
2,001 to 2,200 hours	166.70	181.25	191.75
2,201 to 2,400 hours	180.60	196.45	209.50
2,401 to 2,600 hours	197.30	214.60	227.25
2,601 to 2,800 hours	213.10	231.80	246.15
2,801 to 3,000 hours	228.90	249.00	263.90
3,001 to 3,200 hours	244.50	265.90	281.65
3,201 or more	244.50	265.90	281.65

C. The amount of Accredited Future Service Benefits accrued by a Participant under the foregoing tables is subject to the following rules:

1. Any Participant or Beneficiary whose Annuity Starting Date was prior to July 1, 1984 (including disability benefits), shall, effective with the

monthly payment due on July 1, 1984, receive benefits in the amount of his June 1984 payment, increased by twenty (20) percent.

The monthly benefit amount of any Participant or Beneficiary whose Annuity Starting Date (including disability benefits) is July 1, 1984 or thereafter, shall be based on the greater of:

- a. The Participant's Accrued Benefit as of the Annuity Starting Date determined under the tables set out in Subsection 5.3.B; or
  - b. The Participant's Accrued Benefit as of June 30, 1984 determined under the tables set out in Subsection 5.3.B, increased by twenty (20) percent.
2. Notwithstanding other provisions of this Article V and excepting Participants or Beneficiaries of Participants who are employed by contributing Employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774, the Accrued Benefit, as of June 30, 1985, of any Participant or Beneficiary, whose Annuity Starting Date is on or after July 1, 1985, shall be the benefit computed under the tables set forth in Subsection 5.3.B as of June 30, 1985, without regard to the increase in the foregoing Subsection 5.3.C.1, but increased by twenty (20) percent. The resulting Accrued Benefit shall be added to the Accredited Future Service Benefits, if any, accrued for service on and after July 1, 1985, to arrive at the Participant's total Accrued Benefit.
3. The tables marked "Subject to Subsection 5.3.C.3" do not apply to Participants, who are employed by contributing Employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774. The Accredited Future Service Benefits accrued by Participants who are employed by contributing Employers signatory to agreements with Local 774 shall be the sum of the following two amounts:
- a. For years of service prior to July 1, 1999, the Accredited Future Service Benefits for any future service benefit accrual year shall be the amount set out in the last most recently effective table which is not marked "Subject to Subsection 5.3.C.3". The Accrued Benefit for such a Participant for the years of service prior to July 1, 1999, shall be the total of all amounts accrued under the applicable tables which are not marked "Subject to Subsection 5.3.C.3," adjusted by Subsection 5.3.C.1, if applicable.
  - b. For years of service from July 1, 1999 through June 30, 2000, the Accredited Future Service Benefits shall be determined under the following table:

<u>Total Hours of Service in the Plan Year</u>	<u>Future Service Credits</u>
400 to 600 hours	\$12.05
601 to 800 hours	17.40
801 to 1000 hours	22.75
1001 to 1200 hours	28.15
1201 to 1400 hours	33.50
1401 to 1600 hours	38.90
1601 to 1800 hours	44.30
1801 to 2000 hours	49.60
2001 to 2200 hours	55.05
2201 to 2400 hours	60.40
2401 and over	60.40

- c. For years of service on and after July 1, 2000, the Accredited Future Service Benefits shall be determined under the following table:

<u>Total Hours of Service in the Plan Year</u>	<u>Future Service Credits</u>
400 to 600 hours	\$13.15
601 to 800 hours	18.95
801 to 1000 hours	24.75
1001 to 1200 hours	30.55
1201 to 1400 hours	36.35
1401 to 1600 hours	42.20
1601 to 1800 hours	48.05
1801 to 2000 hours	53.80
2001 to 2200 hours	59.65
2201 to 2400 hours	65.45
2401 and over	65.45

4. Notwithstanding the above, Participants shall have their Accrued Benefit for the period July 1, 1984 through June 30, 1985 computed under the following table, if the computation results in a higher benefit than the combined total of the Accrued Benefit computed under the two tables entitled, "Future Service Credits 7/1/84 thru 11/30/84" and "Subject to Subsection 5.3.C.3 Future Service Credits 12/1/84 thru 6/30/85":



## ARTICLE VI

### Conditions for Benefit Entitlement/Types of Benefits

In order to be entitled to receive benefits under this Plan, a Participant or Beneficiary must meet the requirements for one of the types of benefits described in this Article VI.

6.1 Normal Retirement Benefit. If a Participant reaches his Normal Retirement Date while still an active Participant in the Plan (i.e. prior to his participation ceasing within the meaning of Article III), the Participant shall be entitled to a Normal Retirement Benefit. If a Participant reaches his Normal Retirement Date while not an active Participant, but has met one of the requirements of Article VII such that he has become vested in his Accrued Benefit, the Participant shall be entitled to a Normal Retirement Benefit upon reaching his Normal Retirement Date.

A Normal Retirement Benefit is paid in the form provided under Article VIII and is based on the Participant's Accrued Benefit as computed under Article V, without reduction for early retirement.

A Participant who has met the requirements for a Normal Retirement Benefit is entitled to begin to receive benefits as of his Normal Retirement Date without regard to whether he continues to work in Covered Employment and without regard to whether he is entitled to Social Security Benefits.

In the event a Participant accrues additional Accredited Future Service Benefits for service after his Normal Retirement Date, he shall be credited with such Benefits. However, any such additional Accredited Future Service Benefits shall be reduced (but not below zero) by the Actuarial Equivalent of any Normal Retirement Benefits paid to the Participant subsequent to his Normal Retirement Date. Notwithstanding the reduction set forth in the previous sentence, a

Participant who completes 1,200 or more Hours of Service in any Plan Year after his Annuity Starting Date, commencing with the Plan Year beginning July 1, 1994, shall accrue at least the benefit set forth in the following table:

<b>Hours of Service Worked in a Plan Year</b>	<b>Additional Monthly Benefit Stated in the Normal Form of Benefit</b>
1,200 - 1,399	\$10
1,400 - 1,599	\$15
1,600 - 1,799	\$20
1,800 - 1,999	\$25
2,000 - 2,199	\$30
2,200 - 2,399	\$35
2,400 - 2,599	\$40
2,600 - 2,799	\$45
2,800 - 2,999	\$50
3,000 - 3,199	\$55
3,200 or more	\$60

Additional Accredited Future Service Benefits earned in any benefit accrual year for service after the Participant's Normal Retirement Date, shall become payable as soon as administratively feasible following the end of that benefit accrual year; the first payment shall include retroactive payments to and including the first payment due July 1. The Participant's post Normal Retirement Age election as to the form of benefits will apply to the additional Accredited Service Benefits accrued after his Normal Retirement Date.

6.2 Postponed Retirement Date. Subject to the requirements of Subsection 9.4, a Participant who has met the requirements for a Normal Retirement Benefit may elect to postpone his Annuity Starting Date to a date of his choice after his Normal Retirement Date. In such event, the Participant shall notify the Trustees of his intent to postpone his Annuity Starting Date and, if he knows, of his postponed Annuity Starting Date. The Participant shall, within a reasonable

time of said notification, receive the notification described in Subsection 8.4. The Participant's election period for purposes of Subsection 8.3, shall be the ninety (90) day period immediately preceding the Participant's elected postponed Annuity Starting Date. In the event of a postponed Annuity Starting Date, the amount of Participant's monthly benefit shall be actuarially adjusted to reflect the later commencement date. The actuarial adjustment for any additional Accredited Future Service Benefits which a Participant accrues for service after his Normal Retirement Date shall run from the date that the benefits would have first been payable (i.e., September 1 following the end of the benefit accrual year in which the Benefits accrued). In no event shall the Participant be permitted to postpone his Annuity Starting Date to a date after his Required Beginning Date.

### 6.3 Early Retirement Benefit.

- A. A Participant may elect an Early Retirement Benefit (to be computed in accordance with Subsection 6.3.E) by electing an Annuity Starting Date at any time before his Normal Retirement Date, after meeting the following eligibility requirements:
  - 1. Attainment of age sixty-two (62), and
  - 2. Completion of ten (10) Years of Vesting Service under the Plan.
- B. Effective July 1, 1988, and thereafter, the following provisions shall apply for all Participants, except Participants who are employed by Contributing Employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774 (the early retirement eligibility and benefit amounts of these excluded Participants are to continue to be determined under Subsection 6.3.A).
  - 1. A Participant may elect an Early Retirement Benefit (to be computed in accordance with Subsection 6.3.E) by electing an Annuity Starting Date at any time before his Normal Retirement Date, after meeting the following eligibility requirements:
    - a. Attainment of age sixty (60), and
    - b. Completion of ten (10) Years of Vesting Service under the Plan.
  - 2. A Participant may elect an Early Retirement Benefit (to be computed without the reduction set forth in Subsection 6.3.E) by electing an Annuity

Starting Date at any time before his Normal Retirement Date, after meeting the following eligibility requirements:

- a. Attainment of age 60, and
- b. Completion of 10 Years of Vesting Service under the Plan, and
- c. Accrual of twenty-five (25) years of credited service, as defined herein. For purposes of this Subsection 6.3.B.2.c, a year of credited service is any year in which the Participant accrues any benefit under the Plan (including an Accredited Past Service Benefits and Accredited Future Service Benefits under the Plan).

C. Effective September 1, 1998, and thereafter, the following provisions shall apply for all Participants who are active Participants on or after April 1, 1998, except Participants who are employed by Contributing Employers who are signatory to agreements with Sign and Pictorial Painters Local Union 774 (the early retirement eligibility and benefit amount of these excluded Participants are to continue to be determined under Subsection 6.3.A). A Participant may elect an Early Retirement Benefit (to be computed without the reduction set forth in Subsection 6.3.E) by electing an Annuity Starting Date, at any time before his Normal Retirement Date, after meeting the following eligibility requirements:

1. Attainment of age 58, and
2. Completion of 10 Years of Vesting Service under the Plan, and
3. Accrual of thirty (30) years of credited service, as defined in Subsection 6.3.B.2.c.

The eligibility provisions of this Subsection represent alternative eligibility provisions to those set out in Subsections 6.3.A and 6.3.B and do not replace the eligibility provisions set out in those Subsections.

D. Except as specified in Section 8.2 below, the Early Retirement Benefit shall be paid in the normal form of a Normal Retirement Benefit under the Plan (a life annuity with a sixty (60) month guarantee). The Participant may elect any Annuity Starting Date after the date of his election and after meeting the applicable eligibility requirements.

E. The amount of Early Retirement Benefit which the Participant is entitled to receive each month, stated in the form of a life annuity with a sixty (60) month guarantee, is the Participant's Normal Retirement Benefit amount, computed in accordance with the provisions of Section 5.3, reduced by one-half of one percent (1/2 of 1%) for each full month that the Participant is younger than age sixty-five (65) as of his Early Retirement Annuity Starting Date.

F. A Participant shall be credited with additional Accredited Future Service Benefits for service after his Early Retirement Annuity Starting Date. However, effective

July 1, 2000, any such additional Accredited Future Service Benefits for a Plan Year shall be reduced (but not below zero) by the subsidized portion of any early retirement benefits paid to the Participant for such Plan Year but before such Participant's Normal Retirement Date. "Subsidized portion" means the difference between the amount of a Participant's Early Retirement Benefit which is actually paid to him and the amount which would have been paid to him if the reduction under Subsection 6.3.E applied to the Early Retirement Benefit. Effective July 1, 2000, any such additional Accredited Future Service Benefits accrued for a Plan Year after a Participant's Normal Retirement Date shall be reduced (but not below zero) by the Actuarial Equivalent of the amount of a Participant's retirement benefit which is paid to him for such Plan Year. Notwithstanding the reductions set forth in this Subsection, a Participant who completes 1,200 or more Hours of Service in any Plan Year after his Early Retirement Annuity Starting Date, commencing with the Plan Year beginning July 1, 2000, shall accrue at least the benefits provided in the table set forth in Section 6.1. The Annuity Starting Date for Accredited Future Service Benefits earned on or after a Participant's Early Retirement Date and before his Normal Retirement Date shall be his Normal Retirement Date. The Annuity Starting Date for Accredited Future Service Benefits earned on and after a Participant's Normal Retirement Date shall be the first day of the Plan Year immediately following the Plan Year in which such benefits are earned. The Participant will receive the notices and election options set forth in Article VIII with regard to benefits accrued on and after a Participant's Early Retirement Date and before his Normal Retirement Date. The election a Participant makes with respect to such benefits, the payment of which commences as of his Normal Retirement Date, will govern additional Accredited Future Service Benefits accrued after his Normal Retirement Date.

#### 6.4 Total and Permanent Disability Benefit.

- A. A Participant who becomes totally and permanently disabled, while still a Participant in the Plan, and after the Participant has earned ten (10) Years of Vesting Service, may elect to receive the total and permanent Disability Benefits described in this Section.

For purposes of this Article, participation ceases on the first day of the Plan Year following the Plan Year during which a Participant experiences a One Year Break in Service.

For purposes of this Article, effective March 1, 1986, a Participant shall be deemed to be totally and permanently disabled only if he is determined to be totally and permanently disabled by the Social Security Administration.

The benefit provided by this Article is not available to a former Participant whose participation ceased within the meaning of this Section, prior to his becoming disabled. The benefit provided by this Article is not available to a Participant who the Trustees determine has become disabled while engaged in the commission of a felony or as a result of willful intention to injure himself or to induce an illness that could result in disability.

- B. Such Participant who shall be so certified as totally and permanently disabled shall be entitled to receive a monthly disability pension in the amount of his Accrued Benefit stated in the normal form of Benefits as provided under Section 5.2 (but in no event less than Twenty-five Dollars (\$25.00) per month), commencing with the month in which he is eligible to receive his first disability payment from the Social Security Administration and he shall continue to receive such disability pension until the earliest of his death, recovery from total and permanent disability, the election of an Early Retirement Benefit, or attainment of Normal Retirement Age.

Upon attaining Normal Retirement Age (or at an early retirement Annuity Starting Date, if elected by the Participant), the Participant's Benefits shall convert to one of the forms of benefit payable for the normal retirement Benefit (or early retirement Benefit) and the total and permanent disability benefit shall cease. At that time the Participant shall receive the notices and elections that a Participant would receive at Normal Retirement Age or at the early retirement Annuity Starting Date. The Participant's monthly benefit after converting to an early or Normal Retirement Benefit will in no event be less than Twenty-five Dollars (\$25.00) per month.

- C. Nothing in this Section shall affect the right of a Participant who is otherwise eligible for any benefit under this Plan. Nor shall the receipt of benefits under this Section cause a reduction in the amount of retirement or other benefits which may be due to the Participant or his Beneficiary under other provisions of this Plan. A Participant who receives benefits under this Section shall be entitled to the same retirement benefits (pre-retirement survivor annuity, early retirement Benefit and normal retirement Benefit) in the same form, under the same conditions and with the same notification and election procedures as he would otherwise have been entitled to if he had not received the disability benefits.

6.5 Death Benefit. Effective March 1, 1986, in addition to the benefits otherwise provided by this Plan and Trust, the Plan and Trust shall pay a death benefit in the amount of \$3,000 to the designated Beneficiary of any Participant who has retired under this Plan on July 1, 1982 or thereafter, provided that the Participant was an active Participant at the time of his Annuity Starting Date. For purposes of this paragraph, the term "retirement" means that the Participant commences receiving a benefit payment under this Plan other than a Total and Permanent Disability Payment. For purposes of this paragraph, the term active Participant means a Participant whose participation has not ceased under Article III.

Effective with respect to Participants who die September 1, 1989 or thereafter and who otherwise meet the requirements of this Section 6.5 for a death benefit, the amount of the death benefit shall be \$5,000. This increase shall not apply to any Participant who was employed by an Employer which is signatory to an agreement with Sign and Pictorial Painters Local Union 774, during the Plan Year during which the Participant last completed an Hour of Service.

Effective with respect to Participants who die October 1, 1991 or thereafter and who otherwise meet the requirements of this Section 6.5 for a death benefit, the Participant is eligible for a death benefit only if the Participant was (at the time of his Annuity Starting Date under the Pension Plan) a covered Participant for the death benefit under the Painters District Council No. 2 Welfare Fund or the Painters District Council No. 2 Group Insurance Trust. For purposes of the death benefit for deaths that occur on or after October 1, 1991, it is not required that the Participant shall have been an active Participant in the Plan at the time of his Annuity Starting Date.

6.6 Qualified Pre-Retirement Survivor Annuity.

- A. General Rule. A Qualified Pre-Retirement Survivor Annuity (as defined in this Section) is payable to the surviving spouse of any Participant who dies after August 22, 1984 but before his Annuity Starting Date, who has been married to the surviving spouse for a period of one year immediately preceding the date of death, and who had met one of the requirements of Article VII and was therefore vested as of the date of his death.
- B. Definition. A Qualified Pre-Retirement Survivor Annuity is an annuity payable to the surviving spouse of a Participant who meets the requirement of Section 6.6.A, computed under Section 6.6.C.
- C. Computation of Qualified Pre-Retirement Survivor Annuity.
  1. If a Participant dies after the earliest retirement age under the Plan which applies to that Participant, the amount of the Qualified Pre-Retirement Survivor Annuity payable to the surviving spouse is the amount which would have been payable to the surviving spouse as a survivor annuity if the Participant had retired with a Qualified Joint and Survivor Annuity on the day before the Participant's Death. If, however, the surviving spouse

elects to defer the Annuity Starting Date under Subsection 6.6.C.4, the amount of the monthly benefit shall be computed under that Subsection.

2. If a Participant dies before the earliest retirement age under the Plan which applies to that Participant, the amount of the Qualified Pre-Retirement Survivor Annuity payable to the surviving spouse is the amount which would have been payable to the surviving spouse as a survivor annuity, if the Participant had:
  - a. Separated from service on the day he last worked in covered employment;
  - b. Survived to the earliest retirement date under the Plan which applies to that Participant.
  - c. Retired on that date with a Qualified Joint and Survivor Annuity, as defined in Section 8.1 (except that the survivor portion shall be 75 percent rather than 50 percent), and
  - d. Died on the next day.

If, however, the surviving spouse elects to defer the Annuity Starting Date under Subsection 6.6.C.4, the amount of the monthly benefit shall be computed under that subsection.

3. Subject to the next succeeding paragraph (subsection 6.6.C.4), the monthly payments to the surviving spouse shall commence on the first day of the month coinciding with or following the later of:
  - a. The date of the Participant's death, or
  - b. The earliest retirement date under the Plan which applies to that Participant;

and shall continue until and including the payment for the month in which the surviving spouse dies. No survivorship benefits shall be payable if the Participant's spouse fails to survive to the date on which the annuity payments are to begin. However, in such event, benefits may be payable under Section 6.7.

4. Notwithstanding the above, the surviving spouse may defer his or her Annuity Starting Date to the Participant's Normal Retirement Date.

In the event the surviving spouse defers the Annuity Starting Date for the survivorship benefit, the amount will be the amount which would have been payable to the surviving spouse as a survivor annuity if the Participant had retired with a Qualified Joint and Survivor Annuity two days before the deferred Annuity Starting Date and died the next day. If the Participant's spouse elects to defer the Annuity Starting Date for the survivorship benefits, and fails to survive the Annuity Starting Date, no

survivorship benefits will be payable. However, in such event, benefits may be payable under Section 6.7.

5. The Trustees shall distribute the survivorship benefits to the surviving spouse at any time prior to the Annuity Starting Date, in lump sum form, if the single sum Actuarial Equivalent of the benefit does not exceed \$5,000 (\$3,500 for distribution prior to August 6, 1997).
6. Notwithstanding the above, for any Participant whose death occurs before July 1, 1999, the basic computation for the Qualified Pre-Retirement Survivor Annuity shall be performed in accordance with the provisions of Subsection 6.6.C.2, except that for this computation, Subsection 6.6.C.2.c, shall read

“c. Retired on that date with a Qualified Joint and Survivor Annuity, as defined in Section 8.1, and”

#### 6.7 Beneficiary Annuity.

- A. A Beneficiary Annuity, as defined in Subsection 6.7.B shall be paid to the Beneficiary determined under Subsection 6.7.C of any Participant who meets either of the following eligibility requirements:
  1. A vested Participant who dies before his Annuity Starting Date but has not met the requirements for a Qualified Pre-Retirement Survivor Annuity, as defined in Section 6.6; or
  2. A vested Participant who dies before his Annuity Starting Date while eligible for a Qualified Pre-Retirement Survivor Annuity, but whose surviving spouse dies prior to the surviving spouse's Annuity Starting Date under the Qualified Pre-Retirement Survivor Annuity.
- B. The Beneficiary Annuity is the monthly amount which would have been payable as a Normal Retirement Benefit (a life annuity with a sixty (60) month guarantee) commencing at the Participant's Normal Retirement Date, provided, however, that this amount is payable to the Beneficiary or Beneficiaries determined under Section 6.7.C only for sixty (60) months. Benefit payments to the Beneficiary will commence with the first day of the first month following the month in which the Participant would have reached age sixty (60) or if later, the first day of the month following the month in which the Participant dies or if later, the first day of the month following the death of the surviving spouse.
- C. The Beneficiary or Beneficiaries entitled to the Beneficiary Annuity shall be determined in the same manner as the Beneficiary is determined under Section 5.2.
- D. This Section shall be effective with regard to an eligible Participant whose death occurs on or after January 19, 1995.

## ARTICLE VII

### Vesting Requirements

7.1 General Rule. A Participant meets the requirements of Article VII, and is therefore “vested” for purposes of eligibility for Plan benefits, if he meets one of the following requirements:

- A. A Participant who has completed ten (10) Years of Vesting Service as defined in Section 7.2 (excluding Years of Vesting Service prior to a Permanent Break in Service) is vested;
- B. A Participant who has completed five Years of Vesting Service as defined in Section 7.2 (excluding Years of Vesting Service prior to a Permanent Break in Service) and whose participation ceases within the meaning of Article III after the Participant has reached the age of forty-five (45) is vested.
- C. A Participant whose termination of participation within the meaning of Article III occurs after the Participant has reached the age of sixty (60) is vested.
- D. A Participant, who has one Hour of Service on or after July 1, 1989 and who is not a Participant as a result of being covered under a Collective Bargaining Agreement, is vested if he has completed five (5) Years of Vesting Service (excluding Years of Vesting Service prior to a Permanent Break in Service).
- E. A Participant, who has one Hour of Service on or after July 1, 1998, is vested if he had completed five (5) Years of Vesting Service as defined in Section 7.2 (excluding Years of Vesting Service prior to a Permanent Break in Service).

7.2 Year of Vesting Service.

- A. The vesting computation period is the twelve month period commencing July 1 of each year and ending June 30 of the following year.
- B. A Participant whose Participation ceased (within the meaning of Article III) on or after January 1, 1976, earns a Year of Vesting Service for any vesting computation period up to and including the vesting computation period which ended June 30, 1992, during which the Participant completed one Hour of Service.
- C. For each vesting computation period, commencing with the vesting computation period that begins July 1, 1992, a Participant earns a Year of Vesting Service for each such vesting computation period during which the Participant completes four hundred (400) or more Hours of Service.

- D. Years of Vesting Service prior to a Permanent Break in Service are forfeited and do not count toward Years of Vesting Service.
- E. A Participant who ceased participation prior to December 1, 1974 will be deemed to have completed ten (10) Years of Vesting Service (or five (5) Years of Vesting Service if applicable) only if the Participant completes said Years of Vesting Service in accordance with the rules contained in this Section 7.2 and if the date of the Participant's cessation of participation is after the tenth anniversary (or if applicable, the fifth anniversary) of the date that the Participant first participated in the Plan.
- F. For purposes of computing Years of Vesting Service for vesting only, Hours of Service with a Contributing Employer for which the Employer is not obligated to contribute to this Trust shall be counted provided that such noncovered service is contiguous with the Participant's service for which contributions were required. Noncovered service shall be considered as contiguous with covered service if there is no intervening quit, discharge or other termination. No benefits are accrued for contiguous noncovered service.
- G. Hours of Service shall be credited to a Participant for purposes of this Section 7.2 under the terms of the Reciprocal Agreement for Joint Industry Pension Funds of all District Councils and Local Unions Affiliated with the International Brotherhood of Painters and Allied Trades as adopted by the Trustees.

### 7.3 Break-in-Service

- A. A One Year Break in Service occurs when, during any vesting computation period up to and including the vesting computation period that ended on June 30, 1992, a Participant has no Hours of Service. For vesting computation periods beginning with the vesting computation period that begins on July 1, 1992 and thereafter, a One Year Break in Service occurs when, during any such vesting computation period, a Participant or former Participant completes less than 400 Hours of Service.
- B. A Participant who experiences a One Year Break in Service after he becomes vested within the meaning of 7.1, is entitled to have his pre-break service counted for vesting and benefit accrual purposes.
- C. A Participant who experiences a One Year Break in Service prior to becoming vested and who subsequently becomes a Participant in the Plan shall be entitled to have his Years of Vesting Service and his years of Accredited Past and Future Service Benefits for purposes of benefit computation prior to that One Year Break in Service counted unless the break in service is a "Permanent Break in Service" within the meaning of the following Section 7.3.D. Conversely, Years of Vesting Service and Accredited Prior and Future Service Benefits earned prior to a "Permanent Break in Service" will not be counted.
- D. A Permanent Break in Service occurs if a nonvested Participant experiences consecutive One Year Breaks in Service which equal or exceed the greater of:

1. five Years of Vesting Service;
2. the number of the Participant's Years of Vesting Service before the Break in Service.

## ARTICLE VIII

### Form of Benefit Payments

- 8.1 Definitions. The following definitions apply for purposes of this Article VIII.
- A. The term “Annuity Starting Date” shall have the meaning set out in Section 1.5.
  - B. A “Qualified Joint and Survivor Annuity” for a Participant who is married to his spouse on his Annuity Starting Date is a form of annuity which pays a lifetime monthly pension payment to the Participant and upon the Participant’s death, pays one-half of that amount in monthly payments to the Participant’s “surviving spouse” for the life of the surviving spouse. The Qualified Joint and Survivor Annuity for a married Participant will be the Actuarial Equivalent of the amount which the Participant would receive under the Normal Form of Benefits under this Plan. The monthly amount of the Participant’s pension is reduced in accordance with the actuarial assumptions used by the Plan and the ages of the Participant and his spouse.
  - C. The “surviving spouse” for purposes of this Article is the spouse to whom the Participant was lawfully married as of the Annuity Starting Date. If the “surviving spouse” predeceases the Participant, no survivorship annuity will be payable, even if the Participant remarries. The death of the surviving spouse prior to the Participant’s death will not affect the amount of the monthly payment to the Participant.

8.2 General Rule Concerning Form of Benefits. Effective for any Participant whose Annuity Starting Date is July 1, 1976 or thereafter, and who is married on his Annuity Starting Date, benefits shall be paid in the form of a Qualified Joint and Survivor Annuity unless the Participant validly waives the Qualified Joint and Survivor Annuity in accordance with the provisions of Section 8.3. In the event (i) the Participant has been married less than one (1) year on his Annuity Starting Date, (ii) his benefits are paid in the form of a Qualified Joint and Survivor Annuity as of his Annuity Starting Date, and (iii) the Participant’s marriage terminates prior to the first anniversary of the marriage for any reason, other than the death of the Participant, benefits shall be paid to the Participant, commencing as of the first day of the month immediately following the month in which his marriage terminates, in the form of the Normal Retirement Benefit, or, if elected by the Participant under Section 8.5, in the form of an optional

form of benefit. In the event the marriage terminates on account of the death of the Participant before the first anniversary of marriage, under the circumstances described in the immediately preceding sentence, all benefits payable to the Participant and his spouse shall terminate as of the date of the Participant's death.

8.3 Waiver of the Qualified Joint and Survivor Annuity.

- A. A Participant who is otherwise required to receive his benefits in the form of a Qualified Joint and Survivor Annuity may waive said form of benefits by filing with the Administrator a valid waiver during the election period. The election period is the ninety (90) day period prior to the Annuity Starting Date. Any valid election made during any election period prior to an Annuity Starting Date which is on or after the Participant's Normal Retirement Age will govern all payments of benefits earned thereafter. Any election may be revoked at any time during the election period.
- B. In order to be valid, an election to waive the Qualified Joint and Survivor Annuity must meet the following requirements:
  - 1. It must be in writing.
  - 2. Except as otherwise provided in Section 8.4, it must be filed no less than thirty (30) days and no more than ninety (90) days after the Participant receives the Notice and Explanation described in Section 8.4. The Notice and Explanation is presumed to be received on the third day after the date it is mailed.
  - 3. In the case of a Participant who has had one or more Hours of Service after August 23, 1984, the waiver must be consented to in writing by the Participant's spouse (unless such consent is not required under Subsection 8.3.B.4). Said consent must also acknowledge in writing the effect of the election. The consent and acknowledgment required by this Subsection must be witnessed by a notary public or a Plan representative.

Effective for any election filed with regard to an Annuity Starting Date on or after July 1, 1987, the waiver and consent must name the designated Beneficiary or Beneficiaries, if any, who will receive survivorship benefits under the Plan and must name the form of benefits to be paid under the Plan (subject to the following paragraph). If a consent names a designated Beneficiary and/or a specific form of benefits, then any subsequent change to said designated Beneficiary and/or form of benefits is invalid unless a new consent is obtained from the spouse, which meets the requirements of this Section.

If the consent does not name a specific Beneficiary or Beneficiaries or a specific form of benefits, or if the Participant and spouse desire that future changes in the Beneficiary and/or form of benefits may be made without spousal consent, the consent must acknowledge that the spouse has the right to limit consent to a specific Beneficiary and a specific form of benefits and the consent must voluntarily waive whichever (or both) of said rights, in accordance with the desires of the Participant and his spouse.

4. The consent described in this Section 8.3 is not required if it is established to the satisfaction of a Plan representative that the consent otherwise required cannot be obtained because:
  - a. there is no spouse;
  - b. the spouse cannot be located; or
  - c. such other circumstances exist as may be prescribed by the Secretary of the Treasury as sufficient to obviate the requirement of the spousal consent.

#### 8.4 Notice and Explanation of Qualified Joint and Survivor Annuity and the Right to Waive Qualified Joint and Survivor Annuity.

- A. Within a reasonable time of not less than thirty (30) days and no more than ninety (90) days prior to the Annuity Starting Date, the Plan must provide the Participant with a notice in writing explaining the terms of the Qualified Joint and Survivor Annuity and the right to waive that Annuity Form of Benefit. This Notice will be provided within a reasonable period of time before the Participant's Normal Retirement Age and a reasonable period of time before any early retirement date or postponed retirement date. A Participant may not elect an Annuity Starting Date at any time before the 31st day after he has received the Notice, provided that the Annuity Starting Date may be less than thirty-one days after receipt of the written explanation provided: (a) the Participant has been provided with information that clearly indicates the Participant has at least thirty days to consider whether to waive the Qualified Joint and Survivor Annuity and elect (with spousal consent) a form of distribution other than a Qualified Joint and Survivor Annuity; (b) the Participant is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the seven day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and (c) the Annuity Starting Date is a date after the date that the written explanation was provided to the Participant.
- B. The Notice and Explanation must contain a written explanation of the following:
  1. The terms and conditions of the Qualified Joint and Survivor Annuity;

2. The Participant's right to make an election to waive the Qualified Joint and Survivor Annuity and the procedure for making the election;
3. The effect of an election to waive the Qualified Joint and Survivor form of benefit;
4. The rights of the Participant's spouse, including the right to withhold consent; and
5. The right to revoke an election to waive Qualified Joint and Survivor Annuity and the effect of such revocation.

8.5 Optional Forms of Retirement Benefits.

- A. In the event a Participant validly waives the Qualified Joint and Survivor Annuity, he may elect to receive his benefits in any of the following optional forms:
  1. Life Annuity with a sixty (60) month guarantee (described in Section 5.2 of this Plan).
  2. A Life Annuity with one hundred and twenty (120) months guarantee, which is the same form of payments as the life annuity with sixty (60) month guarantee as described in Section 5.2, but the number of monthly guaranteed payments is one hundred and twenty (120). This option may only be selected if the one hundred and twenty (120) monthly payments will not extend payments beyond the life expectancy of the Participant and his designated beneficiary.
  3. A Life Only Annuity which provides monthly benefit payments to the Participant for his lifetime with no further payments after the monthly payment for the month in which the Participant dies.
  4. A Joint and Full Survivor Annuity which provides monthly benefit payments to the Participant throughout his lifetime and, upon his death, continues monthly payments in the same amount to the "surviving spouse".
  5. A Joint and Two-Thirds Survivor Annuity, which provides monthly benefit payments to the Participant throughout his lifetime and, upon his death, continues monthly payments equal to sixty-six and two-thirds (66-2/3) percent of the amount that the Participant was receiving, to the "surviving spouse".
- B. All optional forms of benefits (including the Qualified Joint and Survivor Annuity) shall be adjusted so that the actuarial value of the benefit is the Actuarial Equivalent of the Participant's Accrued Benefit stated in the Normal Form of Benefit (Section 5.2).

- C. Notwithstanding the foregoing, the Trustees shall distribute the Participant's benefits or the Beneficiary's benefits in the form of a lump sum payment on or prior to the Annuity Starting Date if the Actuarial Equivalent value of the benefits does not exceed \$5,000 (\$3,500 for distributions before August 6, 1997).

## ARTICLE IX

### Application for and Timing of Benefit Distribution

9.1 Applications. A Participant or Beneficiary must apply in writing for any benefit payable under this Plan in a timely manner, in advance of his Annuity Starting Date. To be timely for this purpose, an application must be sufficient to give notice to the Plan Administrator of the applicant's request to commence receipt of benefits under this Plan. Every Participant, Beneficiary or Pensioner shall furnish, at the request of the Plan Administrator, any information or proof reasonably required to determine his benefit rights. If a person makes a willfully false statement material to an application or furnishes fraudulent information or proof, benefits not vested under this Plan (as defined in Article VII) may be denied, suspended or discontinued as determined by the Trustees. The Trustees shall have the right to recover any benefit payments made in reliance on any false or fraudulent statement, information or proof submitted by a Participant, Beneficiary or Pensioner.

9.2 Trustees. The Trustees shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case and the application and interpretation of the Plan including decisions concerning the eligibility of a Participant or Beneficiary to participate or his entitlement to benefits, and decisions of the Trustees shall be final and binding on all parties. In the event an application for benefits is denied in whole or in part, the Participant or Beneficiary must follow the Benefit Claim Procedure set forth in Article X. Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise such powers in a uniform and non-discriminatory manner.

9.3 Timing of Benefit Commencement. Payment of benefits may begin sooner but shall begin no later than sixty (60) days after the last of the following dates, unless the Participant elects a later date (see Section 6.2).

- A. The end of the Plan Year in which the Participant attained Normal Retirement Age;
- B. The end of the Plan Year in which the Participant left covered service;
- C. The Annuity Starting Date selected by the Participant on an application for benefits filed with the Plan; or
- D. The date the Trustees were first able to ascertain entitlement to, or the amount of, the Participant's Benefits.

9.4 Limitations on the Timing of Benefit Distribution.

- A. As set forth in Section 6.2, a Participant may elect to postpone his Annuity Starting Date to a date which is past his Normal Retirement Date, provided that Annuity Starting Date cannot be postponed beyond a Participant's Required Beginning Date.
- B. Notwithstanding any provisions in the Plan to the contrary, benefit payments must meet the requirements of either of the following subsections:
  - 1. Benefits shall be distributed in full prior to the "Required Beginning Date", or
  - 2.
    - a. Distribution to a Participant must begin no later than the Required Beginning Date and must be made over the life of the Participant (or lives of the Participant and the Participant's spouse), or over a period not exceeding the life expectancy of the Participant (or the life expectancies of the Participant and the Participant's spouse). Distributions (as described in this Subsection) may be made to a Participant and a nonspouse Beneficiary provided the period used to determine the "life expectancies" remains that of the Participant and the Participant's spouse.
    - b. If distribution of benefits has begun in accordance with the provisions of Subsection 9.4.B.2.a, and if the Participant dies before his or her entire interest is distributed, the remaining portion of the Participant's interest must be distributed at least as rapidly as under the distribution method being used as of the date of his death.

c. If a Participant dies before the distribution of the Participant's interest has begun in accordance with Subsection 9.4.B.2.a, then the entire interest of the Employee must be distributed by December 31 of the fifth calendar year following the year of the Participant's death, subject to the following:

- (1) The five-year payout requirement shall not apply if:
  - (a) any portion of the Participant's interest is payable to (or for the benefit of) a designated Beneficiary;
  - (b) such portion will be distributed (in accordance with Treasury Regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary); and
  - (c) such distributions begin not later than one year after the Participant's death or such later date as may be prescribed by Treasury Regulations.

(2) If the designated Beneficiary referred to in Subsection 9.4.B.2.c is the surviving spouse of the Participant, then:

- (a) the date on which distributions are required to begin under Subsection 9.4.B.2.c(1)(c) shall not be earlier than the April 1 immediately following the date on which the Participant would have attained age 70-1/2; and
- (b) if the surviving spouse dies before the distribution to such spouse begins, this Subsection shall be applied as if the surviving spouse were the Participant.

3. For purposes of this Subsection 9.4.B with respect to distributions under the Plan made on or after calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Code § 401(a)(9) in accordance with the Treasury Regulations under Code § 401(a)(9) that were proposed on January 17, 2001 (the "2001 Proposed Regulations"), notwithstanding any provision of the Plan to the contrary. If the total amount of required minimum distributions made to a Participant for 2001 prior to January 1, 2002 are equal to or greater than the amount of required minimum distributions determined under the 2001 Proposed Regulations, then no additional distributions are required for such Participant for 2001 on or after such date. If the total amount of required minimum distributions made to a Participant for 2001 prior to January 1, 2002 are less than the amount determined under the 2001 Proposed Regulations, then the amount of required minimum distributions

for 2001 on or after such date will be determined so that the total amount of required minimum distributions for 2001 is the amount determined under the 2001 Proposed Regulations. This amendment shall continue in effect until the last calendar year beginning before the effective date of the final Regulations under Code § 401(a)(9) or such other date as may be published by the Internal Revenue Service.

## ARTICLE X

### Benefit Claims Procedure

Any claim for benefits under the Plan shall be made in writing to the Plan Administrator on forms which will be provided upon request to the Fund Office. The Plan Administrator shall furnish the claimant with a written notice of his decision within ninety (90) days after receipt of the claim, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing the claim is required, written notice of the extension shall be furnished to the claimant prior to the expiration of the initial ninety (90) day period. In no event shall such an extension exceed a period of ninety (90) days after the expiration of the initial ninety (90) day period.

In the event that the decision of the Plan Administrator is to wholly or partially deny a claim, the claimant shall be provided with a written decision which shall set forth in a manner calculated to be understood by the claimant the following:

- A. The specific reason or reasons for the denial;
- B. Specific reference to pertinent Plan provisions on which the denial is based;
- C. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- D. Appropriate information as to the steps to be taken if the Participant or Beneficiary wishes to submit his or her claim for review.

In the event a claim is wholly or partially denied, a claimant or his duly authorized representatives may appeal the claim to the Trustees by written application to the Trustees filed within sixty (60) days after receipt by the claimant of written notification of denial of claim. Said application for review shall be available at the Fund Office. The claimant shall have a right to

have a duly authorized representative review pertinent documents and submit issues and comments in writing.

The decision by the Trustees shall be made no later than the date of the meeting of the Board which immediately follows the Plan's receipt of a request for review, unless the request for review is filed within thirty (30) days preceding the date of such meeting. In such a case, a decision may be made by no later than the date of the second meeting following the Plan's receipt of the request for review.

If special circumstances require an extension of time for reviewing the decision of the Plan Administrator, the decision of the Trustees shall be rendered no later than the third meeting of the Trustees following the Plan's receipt of the request for review. If such an extension of time for review is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the Trustees shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent plan provisions on which the decision is based.

The benefit claims procedure provided herein is exclusive and no action shall be brought in any court or before any agency to recover any benefits or seek any relief under the Plan prior to the exhaustion of the remedies set forth herein.

## ARTICLE XI

### Limitations on Benefits

#### 11.1 Maximum Limitation.

A. Notwithstanding the other provisions of this Plan, the annual retirement benefit to which a Participant shall be entitled hereunder, when aggregated with the benefits under all other defined benefit plans maintained by an Employer, shall not exceed the lesser of:

1. \$90,000 payable as a straight life annuity for the Participant's life; or
2. One hundred percent (100%) of the Employee's average annual compensation for the three highest consecutive calendar years during which he participated in the Plan or any other Plan maintained by the Employer, payable as a straight life annuity for the Participant's life.

The \$90,000 limit set forth in Subsection 11.1.A.1 above shall be increased automatically to account for increases in the cost of living. Such cost of living adjustment shall be limited to scheduled increases in accordance with Treasury Regulations under Code § 415(d), and shall be effective no sooner than January 1 of each year.

B. For purposes of this Section "compensation" shall mean the Employee's earned income, wages, salaries and fees for professional services, elective deferrals described in Code § 402(g)(3), amounts which are contributed or deferred by the Participant and, for Plan Years beginning after December 31, 2000, which are not included in gross income of a Participant under Code § 132(f)(4) and other amounts received for personal services actually rendered in the course of employment with Employers maintaining the Plan (including, but not limited to, commissions paid to salesmen, percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following:

1. Employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed or Employer contributions under a simplified Employee pension plan to the extent such contributions are deductible by an Employee, or any distributions from a plan of deferred compensation.
2. Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an Employer either becomes freely transferable or is no longer subject to a substantial risk of forfeiture.
3. Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option plan.

- C. In the case of a Participant who has less than ten (10) years of Accredited Past and Future Service Benefits for purposes of benefit accrual, the limitations set forth in Subsections 11.1.A and B shall be multiplied by a fraction, the numerator of which is the number of the Participant's such years of Accredited Past and Future Service Benefits and the denominator of which is ten (10).
- D. Notwithstanding the limitations of Subsection 11.1.A, if a Participant was covered by the Plan before July 1, 1987, he may receive an annual retirement benefit which is not less than the amount of his current Accrued Benefit as of the close of the last Plan Year ending July 1, 1987, as determined under the terms of the Plan as then in effect disregarding any amendments or cost of living adjustments after June 30, 1987.
- E. Effective January 1, 1995, if the Participant's Accrued Benefit is paid in any form other than a straight life annuity or a Qualified Joint and Survivor Annuity, the benefit must be adjusted to its Actuarial Equivalent in the form of a straight life annuity for purposes of applying the limitations in Subsection 11.1.A. For purposes of this adjustment, any ancillary benefit which is not directly related to retirement income benefits shall be disregarded. The Actuarially Equivalent benefit under this Subsection shall be calculated utilizing an interest rate assumption which is the greater of (a) the rate specified in Subsection 1.4.A or (b) five (5) percent per year. However, in the case of any benefit paid in a single sum, the interest rate assumption shall not be less than the greater of the "Applicable Interest Rate," as defined in Subsection 1.4.C.1. The mortality assumption utilized for purposes of calculating the actuarially equivalent benefit under this Subsection shall be determined using the table specified in Subsection 1.4.A.
- F. If payment of the Accrued Benefit of a Participant commences before the Participant's Social Security Retirement Age, but on or after age sixty-two (62), the dollar limitation specified in Subsection 11.1.A.1 shall be determined as follows:
1. If a Participant's Social Security Age is sixty-five (65) for benefits commencing on or after age sixty-two (62), the limitation is reduced by 5/9 of one percent for each month by which benefits commence before the month in which the Participant attains age sixty-three (63).
  2. If the Participant's Social Security Retirement Age is greater than sixty-five (65) for benefits commencing on or after age sixty-two (62), the limitation is reduced by 5/9 of one percent for each of the first thirty-six (36) months and 5/12 of one percent for each of the additional months (up to twenty-four (24) months) by which benefits commence before the month of the Participant's Social Security Retirement Age.

If the benefits of the Participant commence prior to age sixty-two (62), the defined benefit dollar limitation of Subsection 11.1.A.1 applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity that is the Actuarial Equivalent of the limitation for age sixty-two

(62), as determined above, reduced for each month by which benefits commence before the month in which the Participant attains age sixty-two (62). Effective for Plan Years beginning after June 30, 1995, the limitation applicable at age prior to sixty-two (62) is determined (i) as the lesser of the Actuarial Equivalent of the limitation for age sixty-two (62) computed using the interest rate and mortality table specified in Subsection 1.4.A, or (ii) the Actuarial Equivalent of the limitation for age sixty-two (62) computed using a five percent (5%) interest rate and the applicable mortality table as defined in Subsection 1.4.A. Any decrease in the limitation determined in accordance with this provision shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

- G. If payment of the Participant's Accrued Benefit commences after the Participant's Social Security Retirement Age, the limitation specified in Subsection 11.1.A.1 applicable to the Participant at the later age is the Annual Benefit payable in the form of a straight life annuity commencing at the later age that is Actuarially Equivalent to the limitation applicable to the Participant at the Participant's Social Security Retirement Age. Effective for Plan Years beginning after June 30, 1995, the Actuarial Equivalent of the limitation at the Participant's Social Security Retirement Age is determined as (i) the lesser of the Actuarial Equivalent of the limitation at the Participant's Social Security Retirement Age computed using the interest rate and mortality table specified in Subsection 1.4.A or (ii) the Actuarial Equivalent of the limitation at the Participant's Social Security Retirement Age computed using a five percent (5%) interest rate assumption and the applicable mortality table as defined in Subsection 1.4.A. For these purposes, mortality between a Participant's Social Security Retirement Age and the age at which benefits commence must be ignored.
- H. Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the limits of Subsection 11.1.A if:
1. The retirement benefits payable for a Plan year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (regardless of whether terminated) ever maintained by an Employer do not exceed \$1,000 multiplied by the Participant's number of Years of Vesting Service or parts thereof (not to exceed ten (10)) with the Employers, and
  2. Such an Employer has not at any time maintained a defined contribution plan, a welfare benefit fund under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in Code § 419(A)(d)(3)), or an individual medical account in which the Participant participated (for these purposes, Employee contributions, whether voluntary or involuntary, under a defined benefit plan are not treated as a separate defined contribution plan).

- I. "Social Security Retirement Age" means age sixty-five (65) in the case of a Participant born before January 1, 1938; age sixty-six (66) for a Participant born after December 31, 1937, but before January 1, 1955; and age sixty-seven (67) for a Participant born after December 31, 1954.
- J. If a Participant covered by this Plan participates in both defined benefit and defined contributions plans maintained by the Employer, the sum of 1 and 2 below may not exceed 1.0:
  1. The sum of the projected annual benefit of the Employee under all defined benefit pension plans of the Employer determined as of the close of the Plan Year, divided by the lesser of:
    - a. The product of 1.25 multiplied by the dollar limitation in effect under Code § 415(b)(1)(A) for such year, or
    - b. The product of 1.4 multiplied by the amount which may be taken into account under Code § 415(b)(1)(B) with respect to such Employee for such year.
  2. The sum of the annual additions to the Employee's account under all defined contributions plans of the Employer as of the close of the Plan Year and for all prior calendar years divided by the sum of the lesser of a. or b. for such year and for each prior Year of Vesting Service with the Employer (regardless of whether any such defined contribution plan was in existence during those years), where:
    - a. Is the product of 1.25 multiplied by the dollar limitation in effect under Code § 415(c)(1)(A) for such year (without regard to Code § 415(c)(6)); and
    - b. Is the product of 1.4 multiplied by the same amount which may be taken into account under Code § 415(c)(1)(B) (or § 415(c)(7), if applicable) with respect to such individual under such plan for such year; provided however, that the Trustees may elect that the amount taken into account for each Employee for all years ending before January 1, 1983, under a and b above shall be determined pursuant to the special transition rule in such Code § 415(e)(6).

If this Plan is aggregated with another Plan that was in existence on July 1, 1982, and the above limitations are not met, each Participant for whom the limits are violated will not receive any annual additions or accruals in this Plan. In the event that at the earlier to occur of each December 31 or the date of an Employee's retirement or termination, the sum of 1 and 2 above exceeds 1.0 and the benefit of such Employee under such other Plan or Plans is not reduced to bring such sum to 1.0, then such Employee's benefits under this Plan shall be reduced by an amount sufficient to cause the sum of 1 and 2 above for each Employee to equal 1.0.

This Subsection 11.1.J. shall not be applicable for Plan Years beginning after December 31, 1999.

## ARTICLE XII

### Miscellaneous Provisions

12.1 Military Service. Qualified Military Service by a Participant shall, upon his return to employment covered by this Plan, be credited for purposes of participation, benefit accrual and vesting to the extent required by law.

12.2 Spendthrift Trust/Non-Alienation or Assignability of Benefits

- A. No Participant shall, under this Trust, have any legal right, title or interest in the Trust or any contract issued concerning his participation, and any such Participant's interest, beneficial or otherwise, shall be limited to that provided in this Trust and under any contract on such Participant.

To the extent permitted by law, and except as provided in paragraph (B) and under Code § 401(a)(13)(C), the Participant shall not be permitted to anticipate, encumber, alienate or assign any of his rights, claims or interest in his benefits under the Plan, except upon the written authority of the Trustees, nor shall any payments, benefits, or rights arising by reason of this Plan or Trust, be in any way subject to the Participant's debts, contracts or engagements, nor to any judicial processes to levy upon or attach the same for payment thereof.

- B. All other provisions of this Section and this Plan notwithstanding, the Plan shall pay benefits in accordance with any domestic relations order which is determined to be a Qualified Domestic Relations Order as defined in Code § 414(p). The Trustees shall adopt a written procedure for determining the qualified status of domestic relations orders and for administering distributions under such qualified orders.

12.3 Non Reversion to Employer. It is expressly understood that in no event shall any of the corpus or assets of the Trust revert to the Employers or be subject to any claims of any kind or nature by the Employers.

12.4 Funds in Trustees' Possession for Benefit of Participant and Beneficiaries. Any funds coming into the hands of the Trustees from any source whatsoever, less reasonable expenses of administering this Trust as may be determined from time to time by the Trustees, shall be used solely to provide the benefits enumerated herein for eligible Participants and

Beneficiaries. The sources of these funds shall include contributions from Employers, interest and other earnings on investments and dividends from an insurance company.

12.5 Limitation of Liability. The Plan has been established on the basis of an actuarial calculation which has established, to the extent possible, so that contributions will, if continued, be sufficient to maintain the Plan on a permanent basis, fulfilling the funding requirements of ERISA. Except for liabilities which may result from provisions of ERISA, or other applicable law, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions as stipulated in the Collective Bargaining Agreement, and there shall be no liability upon the Trustees individually, or collectively, or upon the Union to provide benefits established by this Plan, if the Trust does not have assets to make such payments.

12.6 Liability of Employer/Liability of Participants. The liability of any individual Employer to the Fund shall in no event extend to the obligations of another participating Employer or other participating Employers.

The individual Participants shall not be required or permitted to make any payments or contributions to the cost of the operation of the Plan or Trust or in connection with the administration of the Trust hereby established or otherwise. No individual Participant shall be liable or responsible for any debts, liabilities or obligations of the Trust or Trustees.

12.7 Rollover Distributions.

- A. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. Definitions.

1. 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 Code § 401(a)(9); the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), and, effective for distributions after December 31, 1998, any hardship distribution described in Code § 401(k)(2)(B)(i)(IV).
2. Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), or a qualified trust described in Code § 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
3. Distributee: A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code § 414(p), are distributees with regard to the interest of the spouse or former spouse.
4. Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

12.8 Top-Heavy Provisions.

A. Definitions. For purposes of this Section, the following words and phrases shall have the meanings stated below unless a different meaning is clearly required by the context:

1. Key Employee.

"Key Employee" means an Employee or former Employee (and the Beneficiary of such Employee) meeting the definition of "Key Employee" contained in Code § 416(i)(1) and Section 1.416-1 of Treasury Regulations.

2. Non-Key Employee.

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

3. Annual Compensation Limitation.

a. The amount of a Participant’s compensation (as defined in Subsection 11.1.B above) from any single Employer that may be taken into account for any Plan purpose in any Plan Year is \$150,000, as that amount may be adjusted from time to time by the Secretary of the Treasury under Code § 401 (a)(17).

b. Notwithstanding any other provision of the Plan, the Accrued Benefit of any Participant whose compensation exceeded \$150,000 in any Plan Year beginning before August 1, 1994, shall be the greater of:

the sum of

(1) The Participant’s Accrued Benefit as of June 30, 1994, determined under Article V as though the Participant had terminated employment on that date and without regard to any Plan amendments adopted after that date (but taking into account remedial amendments that apply retroactively before that date under Code § 401(b), plus

(2) the amount of the Participant’s Accrued Benefit earned on or after July 1, 1994 under Article V, taking into account only Accredited Future Service Benefits earned after June 30, 1994, and

the Participant’s Accrued Benefit, determined under Article V, taking into account all Accredited Past and Future Service Benefits earned before and after July 1, 1994.

4. Determination Date.

“Determination Date” means, with respect to any Plan Year, the last day of the preceding Plan Year, or in the case of the first Plan Year of any Plan, the last day of such Plan Year.

B. Top-Heavy Plan Requirements.

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

1. This Plan shall be a Top-Heavy Plan for any Plan Year commencing after December 31, 1983, in which, as of the Determination Date,

a. the present value of Accrued Benefits of Key Employees and

- b. the sum of the aggregate accounts of Key Employees under this Plan and all plans of an Aggregation Group

exceeds sixty percent (60%) of the present value of Accrued Benefits and the aggregate accounts of all Key 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 Plan (or whether any Aggregation Group which includes this Plan is a Top-Heavy Group). In addition, for Plan Years beginning after December 31, 1984, if a Participant or former Participant has not performed services for any Employer maintaining the Plan at any time during the five-year period ending on the Determination Date, the aggregate account and/or present value of Accrued Benefits 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.

- 2. 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.
- 3. "Aggregation Group" means either a Required Aggregation Group or a Permissive Aggregation Group as hereinafter determined.
  - a. 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 a Key Employee participates to meet the requirements of Code §§ 401(a)(4) or 410, will be required to be aggregated by Code § 416(g)(2)(A)(i)(II). 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 Plan. No plan in the Required Aggregation Group is a Top-Heavy Plan if the Required Aggregation Group is not a Top-Heavy Group.
  - b. 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 Code §§ 401(a)(4) and 410. Such group shall be known as a "Permissive Aggregation Group."

In the case of a Permissive Aggregation Group, only a plan that is part of the Required Aggregation Group will be considered a Top-

Heavy Plan if the Permissive Aggregation Group is a Top-Heavy Plan. 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.

- c. 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.
4. In the case of a defined benefit plan, a Participant's present value of accrued benefits shall be determined:
    - a. 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;
    - b. for the first Plan Year, as if:
      - (1) the Participant terminated service as of the Determination Date; or
      - (2) 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.
    - c. for any other Plan Year, as if the Participant terminated service as of the actuarial valuation date.
    - d. 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.
  5. The calculation of a Participant's present value of accrued benefit as of a Determination Date shall be the sum of the following:
    - a. the present value of accrued benefit using actuarial assumptions stated in the most recent actuarial valuation;
    - b. 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 of accrued benefit as of the valuation date.

Notwithstanding anything herein to the contrary, all distributions, including distributions made prior to July 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;

- c. 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;
- d. with respect to unrelated rollovers and plan-to-plan transfer (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 June 30, 1984, as part of the Participant's present value of accrued benefits. However, rollovers or plan-to-plan transfers accepted prior to July 1, 1984, shall be considered as part of the Participant's present value of accrued benefits; and
- e. 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.
- f. "Top-Heavy Group" means an Aggregation Group in which, as of the Determination Date, the sum of:
  - (1) the present value of accrued benefits of Key Employees under all defined benefit plans included in the group; and
  - (2) the aggregate accounts of Key Employees under all defined contribution plans included in the group exceeds sixty percent (60%) of a similar sum determined for all Participants.
- g. Notwithstanding anything herein to the contrary, the effective date otherwise provided for herein for the application of Code § 416 to this Plan (Plan Years beginning after December 31, 1983) shall be extended in accordance with any federal law or regulatory authority.

C. Top-Heavy Vesting.

1. Notwithstanding the determination of Vested Status in accordance with Article VII of the Plan, for any Top-Heavy Plan Year, the vested portion of any Participant's Accrued Benefit shall be determined on the basis of the Participant's number of Years of Vesting Service according to the following schedule:

<b>Service for Vesting (excluding Years of Service for Vesting prior to effective date of this Plan)</b>	<b>Vested Percentage</b>
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1 year	0%
2 year	0%
3 years	100%

2. If, in any subsequent Plan Year, the Plan ceases to be a Top-Heavy Plan, the Trustees may elect to:
- continue to apply this vesting schedule in determining the vested portion of any Participant's Accrued Benefit; or
  - revert to the vesting schedule in effect before this Plan became a Top-Heavy Plan pursuant to Code § 411(a)(10). The nonforfeitable percentage of the Accrued Benefit before the Plan ceased being Top-Heavy, therefore, must not be reduced and any Participant with three or more Years of Vesting Service must be given the option of remaining under the Top-Heavy vesting schedule. Any such reversion shall be treated as a Plan amendment.
3. The Top-Heavy vesting schedule does not apply to the Accrued Benefit of any Employee who does not have one Hour of Service after the Plan has initially become a Top-Heavy Plan and such Employee's Accrued Benefit attributable to Employer contributions will be determined without regard to this Article.

D. Top-Heavy Benefit Requirement.

1. The minimum monthly Accrued Benefit for a Participant's period of Top-Heavy Employment derived from Employer contributions to be provided under this Section for each Non-Key Employee who is a Participant shall equal the product of:
- one-twelfth (1/12th) of compensation, as defined in Subsection 11.1.B, averaged over the five consecutive calendar years (or actual number of calendar years if less) in the Participant's period of employment in a Top-Heavy Plan Year which produces the highest average, and

- b. the lesser of
  - (3) two percent (2%) multiplied by Years of Vesting Service during a Participant's period of employment in a Top-Heavy Plan Year; or
  - (4) twenty percent (20%).

A Participant's Years of Vesting Service during his period of Top-Heavy Employment are Years of Vesting Service he earns (or is deemed to earn), excluding periods prior to April 1, 1984 and periods during which the Plan was not in top-heavy status.

- 2. For purposes of providing the minimum benefit under Code § 416, a Non-Key Employee who is not a Participant solely because:
  - a. his annual compensation is below a stated amount, or
  - b. he declined to make mandatory contributions to the Planwill be considered to be a Participant.
- 3. For purposes of this Section, Years of Vesting Service for any Plan Year ending prior to July 1, 1984, or for any Plan Year during which the Plan was not a Top-Heavy Plan shall be disregarded.
- 4. For purposes of this Section, Annual Compensation for any "limitation year" ending prior to July 1, 1984, or subsequent to the last "limitation year" during which the Plan is a Top-Heavy Plan shall be disregarded. The term "limitation year" means the Plan Year.
- 5. If the Plan provides for the normal retirement benefit to be paid in a form other than a single life annuity, the Accrued Benefit under this Section shall be the Actuarial Equivalent of the minimum Accrued Benefit under Article V.
- 6. If payment of the minimum Accrued Benefit commences at a date other than Normal Retirement Age, the minimum Accrued Benefit shall be adjusted in accordance with Article VI of the Plan.
- 7. If a Non-Key Employee participates in this Plan and a defined contribution plan included in a Required Aggregation Group which is Top-Heavy, the minimum benefits shall be provided under this Plan.
- 8. To the extent required to be nonforfeitable under Article VII of the Plan the minimum accrued benefit under this Section may not be forfeited under Code §§ 411(a)(3)(B) or 411(a)(3)(D).

12.9 Construction of Plan. Construction of the Plan shall be governed by the laws of the State of Missouri except to the extent Federal law preempts Missouri law.

12.10 Right of Employment. Nothing in the Plan or any amendment thereto shall give a Participant, Beneficiary, Employee or any other person a right unless it is specifically provided by the Trustees pursuant to the terms of the Plan.

12.11 Gender, Singular and Plural. Terms in the masculine shall be deemed to include the feminine and terms in the plural shall be deemed to include the singular and vice versa, wherever the context so admits or requires.

## ARTICLE XIII

### Right to Amend

The Trustees shall have the sole right to amend this Plan and Trust, without the consent of any Participant, at any time from time to time as may be deemed advisable; provided, however, that no amendment to this Trust shall deprive any Participant of any Accrued Benefit or vested equitable interest herein, if any, nor shall such amendment be contrary to any laws in existence or enacted by the Federal or State Government directly concerning this Trust, provided that the Trustees may adopt an amendment.

- A. If it is necessary to establish or maintain the qualification of the Plan or the Trust Fund and to maintain compliance of the Plan with the requirements of ERISA; or
- B. If the amendment meets the requirements of ERISA § 302(c)(8) and Code § 412(c)(8), and the Secretary of Labor has been notified of such amendment and has either approved of it or, within ninety (90) days after the date on which such notice was filed, has failed to disapprove.

Either the Trustees representing the Union or the Trustees representing the Employers may propose amendments to this Trust. Such amendment will become effective when it has been approved and executed by a majority of the Trustees. All amendments adopted relevant to the continuing qualification of this Plan and Trust shall be submitted to the Internal Revenue Service for its determination of the qualification of such amendment.

## ARTICLE XIV

### Termination

- A. Right to Terminate. The Trustees shall have the right to discontinue or terminate this Plan in whole or in part. The rights of all affected Participants to benefits accrued to the date of the termination, partial termination, or discontinuance to the extent funded as of such date shall be nonforfeitable.
- B. Priorities of Allocation. In the event of termination, the assets then remaining in the Plan, after providing for any administrative expenses, shall be allocated among the Pensioners, Beneficiaries, and Participants in the following order:
1. First in the case of benefits payable as a pension:
    - a. In the case of the pension of a Participant or Beneficiary which was in pay status as of the beginning of the three year period ending on the termination date of the Plan, to each pension, based on the provisions of the Plan (as in effect during the five year period ending on such date) under which such pension would be the least. The lowest pension in pay status during the three year period shall be considered the pension in pay status for such period.
    - b. In the case of a pension of a Participant or Beneficiary which would have been in pay status as of the beginning of such three year period if the Participant had retired prior to the beginning of the three year period if his pension had commenced (in the standard form) as of the beginning of such period, to each such pension based on the provisions of the Plan (as in effect during the five year period ending on such date) under which the pension would be the least.
  2. Second, to all other benefits (if any) of the individuals under the Plan guaranteed under Title IV of ERISA.
  3. Third, to all other vested benefits under the Plan.
  4. Fourth, to all other benefits under the Plan.
- C. Allocation Procedure. For purposes of Subsection B hereof:
1. The amount allocated under any paragraph of Subsection B with respect to any benefit shall be properly adjusted for any allocation of assets with respect to that benefit under a prior paragraph of that subsection.
  2. If the assets available for allocation under any paragraph of Subsection B (other than paragraphs 3 and 4) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro-rata among such individuals on the basis of the

present value (as of the termination date) of their respective benefits described in that paragraph.

3. This Subsection applies if the assets available for allocation under paragraph B.3 are not sufficient to satisfy in full the benefits of individuals described in that paragraph.
  - a. If this paragraph applies, except as provided in subparagraph b below, the assets shall be allocated to the benefits of individuals described in paragraph B.3 on the basis of the benefits of individuals which would have been described in such paragraph B.3 under the Plan as in effect at the beginning of the five year period ending on the date of the Plan termination.
  - b. If the assets available for allocation under subparagraph a above, are sufficient to satisfy in full the benefits described in such subparagraph (without regard to this subparagraph), then for purposes of subparagraph a, benefits of individuals described in such subparagraph shall be determined on the basis of the Plan as amended by the most recent amendment effective during such five year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subparagraph a and any assets remaining to be allocated under subparagraph a on the basis of the Plan as amended by the next succeeding Plan amendment effective during such period.

## ARTICLE XV

### **Merger or Consolidation**

The Trustees shall not merge or consolidate this Plan with any other Plan or transfer the assets or liabilities of this Plan to any other Plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit said Participant would have been entitled to receive.

## ARTICLE XVI

### Trustees

Trustees herein have been selected as follows: RICHARD BRYAN, RICHARD BROEKER, and ROBERT A. LUCKS have been selected by the Union and H. FRED PHILIPP, JR., PAUL MEYER, and DAN WIENSTROER have been selected by the Employers. The total number of Trustees designated by the Union and the total number of Trustees designated by the Employers shall at all times be equal, regardless of the number of Employers who may be contributing to the Trust. The term 'Trustee' as used herein shall mean any natural person designated as a Trustee and selected by the Union or the Employers. The Board of Trustees shall be the Plan sponsor, administrator and named fiduciaries of the Plan.

Any Trustee may resign by giving thirty (30) days' notice in the United States mail to the other Trustees of his intent to so resign. The Union may discharge any of the Trustees appointed by it, by giving thirty (30) days' notice in the United States mail of such intent to discharge. The Employers may discharge any of the Trustees appointed by them, by giving thirty (30) days notice in the United States mail of such intent to discharge. The removal of a Trustee shall be automatic at the end of a thirty (30) day period of notification by either the Trustee or the Union or the Employers, as described above, of resignation or removal.

In the event any of the Trustees selected by the Union shall die, be incapable of acting hereunder, resign or be removed, a successor Trustee shall immediately be appointed by the Union. In the event any of the Trustees selected by the Employers shall die, become incapable of acting hereunder, resign or be removed, a successor Trustee shall immediately be appointed by the Employers. Failure of the Union or the Employers to select a successor Trustee promptly shall not prevent the remaining Trustees from carrying on the affairs of this Trust.

For purposes of this Plan, the Trustees are authorized to perform any of the above functions and shall be the Plan fiduciaries. As such, the Trustees shall discharge their duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; by diversifying the investments of the Plan so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so, and in accordance with the documents and instruments governing the Plan (to the extent said documents and instruments are consistent with the law). The Trustees may act in one or more fiduciary capacities with respect to the Plan and may allocate to others certain aspects of the management and operation responsibilities of the Plan including the employment of investment (and other) advisors and investment managers for all or part of the Plan assets and the delegation of any ministerial duties or functions to qualified individuals. The Trustees shall be responsible for determining the Plan's short and long-run financial needs from time to time and on the basis thereof shall establish a funding policy and method which will carry out the Plan's objectives and needs. The Trustees shall from time to time adopt appropriate resolutions defining such investment objectives.

The Trustees shall further have the right to audit the books of a participating Employer when such is deemed necessary or desirable for the effective administration of the Trust.

The Trustees shall designate one Trustee as Chairman for purposes of presiding at the meetings of Trustees to serve for a term of one year commencing with the date of election and until a successor Chairman is thereafter selected. The Chairman shall be alternately selected from the Trustees representing the Employers and Trustees representing the Union. The Trustees

shall, at the time of designation of the Chairman, designate one Trustee to serve as Managing Trustee for one year contemporaneously with the Chairman's term. The Managing Trustee shall act as the co-chairman and shall be alternatively selected from the Trustees representing Employers and Trustees representing the Union. The position of Chairman shall annually be rotated between a Trustee representing Employers and a Trustee representing the Union and the position of Managing Trustee shall annually be rotated between a Trustee representing Employers and a Trustee representing the Union. During an annual term of office, the positions of Chairman and Managing Trustee shall not both be held by Trustees representing Employers or Trustees representing the Union.

A quorum for the transaction of business shall consist of the presence at the meeting of at least four (4) Trustees, two (2) of whom represent Employers and two (2) of whom represent the Union. Decisions of the Trustees shall be made by majority vote. If an unequal number of Employer and Union Trustees attend a meeting, the voting power of the group with the fewest Trustees present shall be and stand increased to that of the group with the most Trustees present so that there shall be equal voting strength between Employer and Union Trustees at all times at such meeting. A deadlock shall be deemed to exist whenever either of following situations arise: (i) whenever a proposal, nomination, motion or resolution or other matter is voted upon and the votes cast are evenly divided and remain evenly divided; and (ii) whenever a quorum is lacking at a meeting duly called and there shall be absent from said meeting two (2) or more Trustees of one group, and a majority of the Trustees present declare a deadlock due to the inability to obtain a quorum. In the event of such deadlock in either case arising, the Employer Trustees and the Union Trustees shall meet promptly for the purpose of agreeing upon an impartial umpire to break such deadlock by casting the deciding vote or deciding any dispute in question or matter under consideration. In the event of the inability of the Employer Trustees and Union Trustees to

agree upon the selection of such impartial umpire, then such impartial umpire shall, on the petition of either the Employer Trustees or Union Trustees, be appointed by the United States District Court for the district wherein the Fund Office is located. The decision of any such impartial umpire shall be final and binding on the Trustees and all concerned.

Either the Chairman or the Managing Trustee or any two (2) Trustees may call a meeting of the Trustees at any time by giving at least five (5) days' written notice of the time and place thereof to each Trustee. Any meeting so called may be postponed once for a reasonable period upon the request of any Trustee upon showing of justifiable cause therefor. Any meeting of the Trustees may also be held at any time without notice if all of the Trustees consent thereto in writing or if all attend and act. If all of the Trustees shall concur in writing upon any proposition, no formal meeting thereon need be held by Trustees. The Managing Trustee, in the written notice, shall notify the Trustees of the subjects to be discussed but this shall not be construed to limit any other subjects of discussion properly placed before the meeting.

The Trustees and Plan office personnel may receive reimbursement for expenses properly and actually incurred in the performance of their duties, including but not limited to expenses incurred in attending educational conferences, seminars and meetings, provided that the Trustees determine in each case the subject matter of the conference, seminar or meeting is relevant to the administration of this Trust and that the expenses incurred are reasonable. The Trustees may adopt travel expenditure guidelines for such expenses. Reasonable compensation may be paid to the Trustees for services rendered in the performance of their duties as Trustees provided such payments are made in accordance with the Federal and State laws and regulations then in effect governing Trusts.

## ARTICLE XVII

### Trustees' Powers and Duties

The Trustees shall have general supervision of the operation of the Trust fund and shall conduct the business and activities of the same according to law and this Plan and Trust Agreement. The Trustees shall have the obligation to receive, hold and administer monies or other funds received by them from Employers (and from any Employer who may hereafter agree to be bound by the terms and provisions of this instrument), or otherwise, in Trust under the terms hereof. In order to carry out and effectuate the purposes hereof, the Trustees shall have the power and authority to adopt uniform rules and regulations as are consistent with and necessary for effectuating the provisions of this Agreement.

The Trustees shall deposit all monies received by them in such bank or banks as they may designate for the purpose and may, in their sole and absolute discretion if they deem it advisable, invest and reinvest such funds as they do not require for current expenditure in such securities as are legal for the investment of pension trust funds under the laws of the United States and the State of Missouri.

No party dealing with the Trustees in relation to this Trust shall be obligated to see to the application of any money or property of the Trust fund, or to see that the terms of this Trust have been complied with or be obliged to inquire into the necessity or expedience of any act of the Trustees and every instrument executed by the Trustees shall be conclusive in favor of every person relying thereon, provided: (1) that at the time of the delivery of said instrument the Trust hereby created was in full force and effect; and (2) that said instrument was executed in accordance with the terms and conditions contained in this Trust Agreement.

The payment of money to the Trustees shall effectually discharge the person or persons paying or transferring the same, and such person or persons shall not be bound to see to the application or be answerable for the loss or misapplication thereof.

The Trustees shall have the sole responsibility for the administration of the Plan. The Trustees shall have full power and authority to administer the Plan and to interpret its provisions. Its decisions, interpretations and administration made in good faith may be relied upon by Employees, Employers and all other parties in interest as proper under the Plan. A misstatement or other mistake of fact shall be corrected when it becomes known, and such adjustment shall be made as the Trustees considers equitable and practical. The Trustees shall have the authority to delegate one or more of its duties to another party or parties, provided that the nature of the duties allocated shall be specifically stated.

The Trustees shall have the authority to delegate duties among themselves and to others to the full extent permitted by law.

The Trustees shall have the authority to reasonably request of any Employer, and an Employer when so reasonably requested, shall furnish to the Trustees such information and reports as may be necessary in the performance of their duties under this Plan and Trust Agreement.

The Trustees and all their agents who handle funds of this Trust shall furnish such bond as may be required by law, and shall be responsible, further, for the proper execution and administration of the terms of the Trust.

The Trustees shall: (a) prescribe procedures for appeals from the denial of any trust benefits, and serve as an appeals board for a full, fair and final review of any such denial; (b) retain a qualified public accountant and an enrolled actuary; (c) prepare annual registrations

required with respect to rights of terminated employees with vested interests and with respect to trust mergers and terminations; (d) comply with requirements with respect to Plan descriptions and other reports to be provided to the Secretary of Labor and Participants; (e) submit annual reports and make proper notification of reportable events; (f) provide statements of Accrued Benefits at the request of the Participant; (g) pay Plan termination insurance premiums to the Pension Benefit Guaranty Corporation, and, when required, file a Notice of Termination with the Pension Benefit Guaranty Corporation; (h) maintain the funding standard account for the purposes of the Plan required by ERISA, or as thereafter amended; (i) designate the Managing Trustee as the agent for service of process in any legal action initiated under ERISA, or as thereafter amended; (j) adopt a cost method, actuarial assumptions, basis for evaluation of assets, and a funding method and policy for purposes of actuarial cost calculations under the Plan, in accordance with ERISA, or as thereafter amended; (k) authorize the enrolled actuary to study the actual experience under the Plan in comparison to actuarial assumptions and to make actuarial calculations to determine whether anticipated benefits may reasonably be provided by anticipated contributions and existing assets of the Plan at least once every three years; (l) have the authority to take such further actions, retain or employ such additional personnel (including but not limited to Investment Managers within the meaning of ERISA) and (m) expend Trust assets as they deem necessary in the administration and operation of the Trust and in the vested interests of the Participants.

Any amount payable to or for the benefit of a minor, an incompetent person or other person incapable of receipting therefore shall be deemed paid when paid to the conservator of such person's estate or to the party providing or reasonably appearing to provide for the care of such person, and such payment shall fully discharge the Trustees with respect thereto.

## **ARTICLE XVIII**

### **Governmental Approval**

It is the intent that the provisions of this Plan and Trust Agreement conform with all Federal and State laws, including ERISA, and all applicable regulations thereunder. It is specifically intended that this Agreement be submitted to the Internal Revenue Service for its approval as conforming with all Internal Revenue Service regulations regarding qualified pension plans, and if any of the provisions are in conflict with any laws or regulations referred to herein, said provisions will be amended to conform with any laws or rulings.

**ARTICLE XIX**

**Effective Date**

This Restated Plan shall be effective July 1, 1997, unless otherwise specifically provided.

UNION TRUSTEES

EMPLOYER TRUSTEES

\_\_\_\_\_  
RICHARD BRYAN

\_\_\_\_\_  
PAUL MEYER

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
RICHARD BROEKER

\_\_\_\_\_  
H. FRED PHILIPP, JR.

Date: \_\_\_\_\_

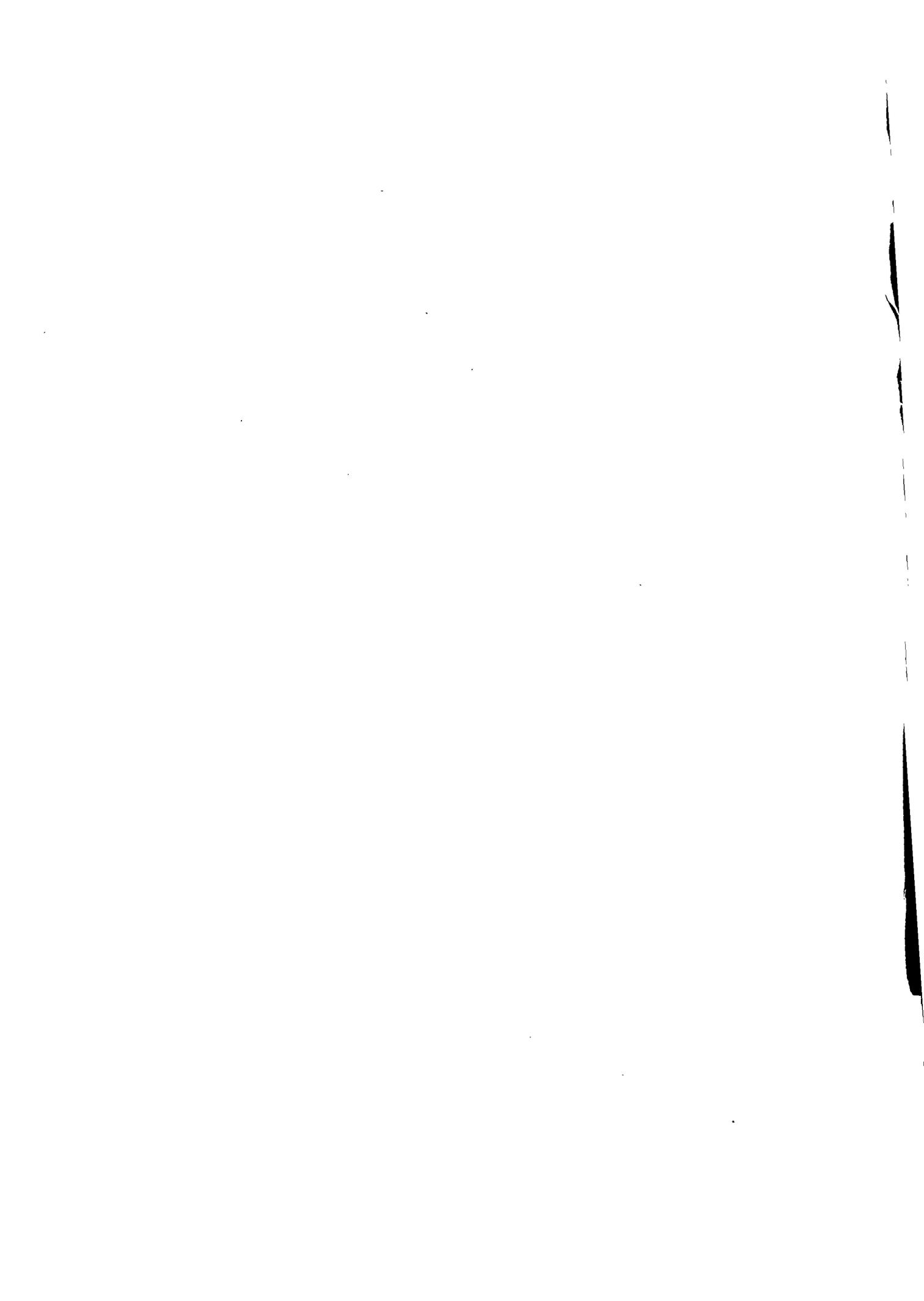
Date: \_\_\_\_\_

\_\_\_\_\_  
ROBERT LUCKS

\_\_\_\_\_  
DAN WIENSTROER

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**PAINTERS DISTRICT COUNCIL NO. 2**

**VACATION PLAN**

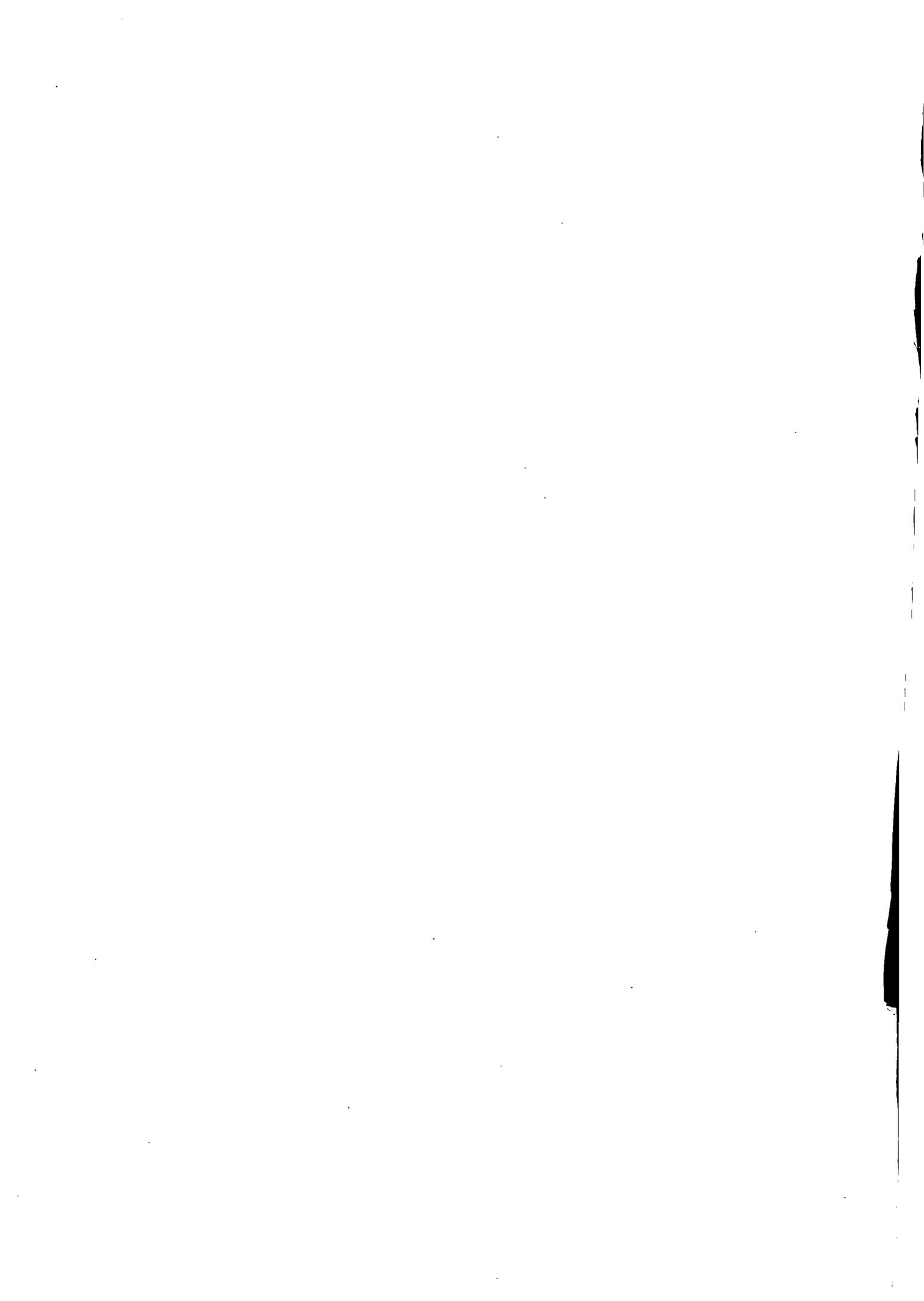
**AND**

**TRUST AGREEMENT**

(Restated Effective July 1, 2001)

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**PAINTERS DISTRICT COUNCIL NO. 2**  
**VACATION PLAN AND TRUST AGREEMENT**

**(Restated effective July 1, 2001)**

This Agreement, first made and entered into on July 13, 1966, to be effective as of the first day of September, 1966, by and between the Painters District Council No. 2 and the Painters Employers of St. Louis, Missouri and vicinity, who adhere to the area practice and who have a contract with the Painters District Council No. 2, and certain named individuals, as initial trustees, whose successors currently are RICHARD BRYAN, DANIEL WOODS and LEN HART (Union trustees) and RANDY FREESE, DANIEL HANSON and EDWARD SMITH (Management trustees), hereinafter referred to collectively as TRUSTEES, and

WHEREAS, Painters District Council No. 2, a labor organization, has entered into collective bargaining agreements with certain Employers, which provide, among other things, for the payment of contributions to the Painters District Council No. 2 Vacation Trust, for the benefit of Participants and Beneficiaries thereof, and

WHEREAS, to effectuate the aforesaid purposes, it is desired to continue and maintain a Trust Fund which will conform to the applicable requirements of the Labor Management Relations Act of 1947, as amended, and will continue to qualify as an "exempt trust", pursuant to the United States Internal Revenue Code and the rules and regulations issued thereunder, and will conform with the Employee Retirement Income Security Act of 1974, and

WHEREAS, to further effectuate the aforesaid purposes, it is desired to continue and maintain a Vacation Plan, pursuant to the Trustees' authority contained in Article II, Section 7 of the original Trust Agreement to adopt rules and regulations, which Plan will conform to the applicable requirements of the Labor Management

Relations Act of 1947, as amended, and will continue to qualify as a plan maintained pursuant to and as part of an "exempt trust" pursuant to the United States Internal Revenue Code and the rules and regulations issued thereunder, and will conform with the Employee Retirement Income Security Act of 1974, as amended, and

WHEREAS, this Vacation Trust Agreement has been amended from time to time in accordance with Article XII entitled RIGHT TO AMEND, and

WHEREAS, it is the desire of the parties thereto to amend and restate in its entirety said Vacation Trust Agreement as heretofore amended and said Vacation Plan, maintained pursuant to and as a part of the Vacation Trust.

NOW, THEREFORE, said Vacation Trust Agreement as amended and said Vacation Plan are hereby continued and restated as of July 1, 2001, for the benefit of such persons as are now or shall hereafter become entitled to the benefits of this Trust pursuant to the terms hereof, as follows to wit:

#### **ARTICLE I - NAME**

This Trust is to be known and designated as "Painters District Council No. 2 Vacation Plan and Trust."

The Trust is accepted in the State of Missouri and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of the United States and the State of Missouri, except where determined under Federal law.

#### **ARTICLE II - OBJECTIVE**

This Trust is designed to provide Vacation benefits for Participants and their beneficiaries who are eligible to receive such benefits as defined in this Agreement, and any rules and regulations issued hereunder.

### ARTICLE III - DEFINITIONS

The term "Participant" as used herein shall mean any person who is employed by an Employer which is bound by a collective bargaining agreement, or other agreement, to contribute to this Trust, in a position for which such contributions are required.

The term "Beneficiary" as used herein shall mean the person or persons entitled to payment of vacation benefits in the event of death of the Participant, as provided in Article X.

The term "Union" shall mean Painters' Local Unions which are under the jurisdiction of Painters District Council No. 2, or the Painters' District Council No. 2 itself.

The term "Employer" shall mean any employer who has agreed in a current, existing written collective bargaining agreement to make contributions to this fund on behalf of its employees who are or may become Participants hereof for the purpose of providing and maintaining vacation benefits for its said employees. However, the Union and/or the pension, health and welfare and/or vacation trust funds maintained by Painters' District Council No. 2 may also be included within the scope of the term "Employer," as used herein, with regard to the employees for whom such entity has agreed to make contributions to the Trust Fund. In such event, the Union's and/or the particular fund's or funds' status as an Employer shall be solely for the purpose of making the required contributions to the Trust Fund, and neither the Union nor any fund shall participate in the selection of any Employer Trustee.

The term "Trustees" as used herein, shall mean the Trustees as designated by the Parties hereto, together with their Successors.

The term "Fund" as used herein, shall mean the Painters' District Council No. 2 Vacation Fund, which shall consist of all contributions received, together with income therefrom and any other property received or receivable and held by the Trustees for the uses, purposes and trusts set forth in this Vacation Plan and Trust Agreement.

#### **ARTICLE IV - EMPLOYER PARTICIPATION**

When an Employer of one or more eligible Participants signifies his agreement to the Trustees in writing to pay for the benefits as specified herein, then the Trustees shall take the necessary steps to provide all eligible Participants of such Employer with the benefits.

#### **ARTICLE V - ELIGIBILITY**

A Participant shall be eligible to participate herein immediately upon commencement of employment with an Employer who is party to a current, existing agreement in writing to make contributions to this Trust as defined in Article III on that employee's behalf.

#### **ARTICLE VI - BENEFITS TO BE PROVIDED**

The Trustees shall provide vacation benefits, as stated in Article VII.

#### **ARTICLE VII - EMPLOYER CONTRIBUTIONS**

Each contributing Employer who agrees in writing to contribute for the purpose of providing vacation benefits and executes an agreement subscribing to and being bound by the terms of this agreement, shall contribute the money per hour as shall be negotiated from time to time by Employers and the Union on behalf of Participants who shall be employed by contributing Employers as evidenced by Agreements from time to time between contributing Employers and the Union. Contributions shall be made for each hour worked by an eligible employee in his employment with Employer.

Such Employer payments to the Vacation Fund shall be made after the Employer first withholds from the Participant's take-home pay all monies required by law to be withheld from wages, considering the payments to the Vacation Fund as part of the Participant's wages.

Employer payments to the Vacation Fund shall be made weekly, not later than Friday of the week following the Employer's pay period. Such payments shall be made at or transmitted to the office of the Vacation Fund. At the time of making such weekly payment each such Employer shall also furnish and deliver to the Trustees of the Vacation Fund, in writing, on a form provided for such purposes by the Trustees, a list showing all Participants who are employed by such Employer, and, with respect to those Participants for whose hours of work such Employer owes contributions as aforesaid to the Vacation Fund, such list shall also disclose the number of hours each such Participant has worked during the weekly period for which contributions are being made.

The liability of the Trustees to pay vacation benefits to eligible Participants shall be limited to the amount of hours worked each week as reported by the Employers of such Participants. The Trustees shall be authorized to accept as true, bona fide and accurate the number of hours worked each week by such Participants. It shall be the duty and obligation of each Participant eligible to receive benefits from the Vacation Fund to check and examine at the office of the Vacation Fund the reports, lists and payments made by his respective Employers on account of the number of hours such Participant has worked, in order to determine the accuracy and truthfulness thereof, and to report any mistakes, errors or false reportings of the number of hours he has worked for such Employers during the periods covered by such Employers' reports and lists. Such Participant, in the event his records do not coincide with the reports

and listings of his Employer(s), shall immediately furnish the Trustees of the Vacation Fund with evidence of the actual number of hours he has worked for such Employer(s) during the period involved. If any eligible Participant shall fail to comply with the provisions of this Section, the amount of his earned vacation benefits shall be limited to the number of hours worked as reported by his Employer(s).

Participants eligible to receive Vacation Fund benefits, or their beneficiaries, shall not be entitled to receive nor shall they acquire or have any right, title or interest in or to any interest or dividends which may be received and credited to their accounts by any bank, savings and loan association or other depository of the monies belonging to the Vacation Fund. Such Participants and their beneficiaries shall be entitled only to the amount of contributions paid into the Vacation Fund by their respective Employers.

Employer contributions and the income earned thereon shall be held, deposited and invested for the sole and exclusive benefit of those entitled to the benefits of this Trust and to pay the benefits provided hereunder and the reasonable administrative and operating expenses of this Trust. If the Trustees in their sole and exclusive discretion determine that the assets of the Trust exceed the amount necessary to pay benefits to all eligible Participants and all administrative and operating expenses, then the Trustees in their sole and exclusive discretion may pay to the Participants the amount or a percentage of the amount of contributions which were obligated to be made on their behalf by contributing Employers but which were not remitted. The Trustees shall establish the terms and conditions of any such payment to the Participants employed by delinquent Employers and shall be the sole judges of the sufficiency of the evidence of a particular Participant's entitlement to participate in such a payment. A Participant who receives a payment as described above shall

receive no further benefits for hours worked during the Plan Year unless and until amounts actually contributed on his behalf for that Plan Year exceed the amount of the payment.

#### **ARTICLE VIII - NO REVERSION TO EMPLOYER**

No part of the corpus or income of this Plan and Trust shall be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of the Participants or their beneficiaries, and no contributing Employers shall be entitled to receive back any part of their contributions to this Trust.

#### **ARTICLE IX - FISCAL YEAR AND PAYMENT OF BENEFITS**

The fiscal year of the Plan and Trust shall be July 1 through June 30.

On December 10 (or the first regular workday thereafter if December 10 is not a regular workday), the Trustees shall pay to each Participant the sum of money which has been credited to his account for the year ending on the October 31 prior to that December 10. No partial withdrawals will be permitted at any time. However, the Trustees may provide for early payment of benefits in the event the Participant becomes permanently and totally disabled.

Prior to December 10, the Fund Office shall send a card in the mail notifying the Participant of his right to a Vacation Benefit and the amount of the contributions accrued to such Participant's account. On this card, the Participant will indicate whether he would like his Vacation Benefit check mailed to him or whether he would like to pick it up in person at the Vacation Fund Office. The Participant will claim his benefits by signing the card and returning it to the Vacation Fund Office. No payment will be made to a Participant until the signed card has been received by the Fund Office. Payment shall be deemed delivered when deposited by the Trustees in the

United States Mail, First Class Mail Postage Prepaid, and addressed to the requesting Participant (or beneficiary, if applicable) at the address given by such Participant or beneficiary on the form described herein.

In the event a Participant or beneficiary fails to make a claim for benefits under this Trust within three years of the date on which such benefits first become payable, the Participant or beneficiary shall forfeit all rights to receive those benefits.

**ARTICLE X - PAYMENT TO BENEFICIARIES OF DECEASED EMPLOYEES**

In the event of the death of any eligible Participant, the Trustees shall, immediately upon being notified of such death, demand from the Employer(s) of such Participant payment of all then unpaid Vacation Fund contributions earned by and due to such Participant's Vacation Benefit Account, and such Employer(s) shall immediately, upon receipt of such demand, pay such unpaid contribution to the Trustees.

Entitlement to Vacation Benefits in the event of the death of the Participant shall be determined as follows: first, to the same beneficiary designated by such Participant and which designation is on file in the records of the Painters' District Council No. 2 Welfare Plan, if any; and if no designation of beneficiary is contained in such file, then, second, to the spouse of such Participant, if living; and if such spouse has predeceased such Participant, then, third, to the child or children of such Participant, in equal shares; and if there is no child of such Participant living, then, fourth, to the legal representatives of such deceased Participant.

The person or persons entitled to receive such vacation benefits remaining unpaid to the Participant at the time of such Participant's death, shall, as soon as reasonably possible after such death, make a written claim for the payment of the same on a form provided for that purpose by the Trustees (which such forms shall be

available at the office of the Vacation Fund), and shall accompany the same with a certified or photostatic copy of the death certificate of such Participant. After the expiration of seven (7) days following receipt of such form and death certificate at the office of the Vacation Fund, the Trustees shall pay such remaining vacation benefits to the person or persons entitled thereto in accordance with the above and foregoing priority schedule. Any person or persons entitled to the payment of the vacation benefits credited to or earned by an eligible Participant up to the time of his death shall be entitled immediately after such death to payment thereof by the Trustees, and shall not be required to wait until the 10<sup>th</sup> of December following such death before making such demand for payment or receiving the payment thereof. It is the intent and purpose of the next preceding sentence to provide, in cases of death of an eligible Participant, for as early closing of his Vacation Benefits Account as is reasonably possible.

#### **ARTICLE XI - FUNDS IN TRUSTEES' POSSESSION**

The Trustees shall have general supervision of the operation of the Trust Fund and shall conduct the business and activities of the Trust Fund according to this Plan and Trust Agreement.

Any funds coming into the hands of the Trustees from any source whatsoever not payable to a Participant, less reasonable expenses of administering this Trust as may be determined from time to time by the Trustees, shall be used solely to provide the benefits enumerated herein for eligible Participants. The source of these funds shall include contributions from Employers, interest earnings on investments, dividends from an insurance company, other credits that may be granted by the insurance company and income from any source whatsoever. Any excess monies in the Trust maybe invested in a form and type of investment that shall be agreed to by

the Trustees keeping in mind at all times that safety of principal shall be the first consideration.

#### **ARTICLE XII - RIGHT TO AMEND**

The Trustees shall have the sole right to amend this Plan and Trust without the consent of any Participant, at any time and from time to time as may be deemed advisable; provided, however, that no amendment to this Plan and Trust shall deprive any Participant of any vested equitable interest herein, if any, nor shall such amendment be contrary to any laws in existence or enacted by the Federal or State Government directly concerning this Plan or Trust.

Either a Trustee representing the Union or a Trustee representing the Employers may propose amendments to this Trust. Such amendment will become effective when it has been approved and executed by a majority of the Trustees. All amendments adopted relevant to the continuing qualification of this Plan and Trust under the Internal Revenue Code shall be submitted to the United States Internal Revenue Service for its determination of the qualification of such amendment, if so required by applicable law.

#### **ARTICLE XIII - TERMINATION**

This Trust may be terminated by a majority of the Trustees, when all agreements between the Union and all contributing Employers providing for contributions to this Trust are no longer in force and effect.

Upon the termination of the Trust by notice as herein provided, the Trust shall, nevertheless, continue for the sole purpose of dissolution and the Trust Fund shall be used by the Trustees for the sole purpose of providing Vacation Benefits to Participants entitled thereto until such funds are completely exhausted, upon the occurrence of which event, the Trust shall be completely terminated. In the event a

surplus remains after payment of all expenses and all benefits due to Participants and beneficiaries, said surplus shall be paid by the Trustees equally to the then Participants of the fund.

At such time as said Trust is terminated, the Trustees shall render a final accounting of the affairs of the Trust and the Trust Fund to the Union and to all then participating Employers, and thereafter, there shall be no claim against the Trustees, and they shall have no further duties or responsibilities.

#### **ARTICLE XIV - TRUSTEES**

Trustees herein have been selected as follows: RICHARD BRYAN, DANIEL WOODS, and LEN HART have been selected by the Union, and RANDY FREESE, DANIEL HANSON and EDWARD SMITH have been selected by the Contributing Employers. Painters District Council No. 2 shall have the right to designate three (3) Trustees, and the Employers shall have the right to designate three (3) Trustees. However, irrespective of the number of Trustees designated or voting on a particular question, the voting power of the Union Trustees and Employer Trustees shall at all times be equal.

Any Trustee may resign by giving thirty (30) days' notice in the United States Mail to the other Trustees and to the Board of intent to so resign. The Union may discharge any of the Trustees appointed by it, by giving thirty (30) days' notice in the United States Mail of such intent to discharge. The Employers may discharge any Trustees appointed by them by giving thirty (30) days' notice in the United States Mail of such intent to discharge. The removal of a Trustee shall be automatic at the end of a thirty-day period of notification by either the Trustee or the Union or the Employers as described above of resignation or removal.

In the event any of the Trustees selected by the Union shall die, be incapable of acting hereunder, resign or be removed, a successor Trustee shall immediately be appointed by the Union. In the event any of the Trustees selected by the Employers shall die, be incapable of acting hereunder, resign or be removed, a successor Trustee shall immediately be appointed by the Employers. Failure of the Union or the Employers to select a successor Trustee promptly shall not prevent the remaining Trustees from carrying on the affairs of this Trust.

A Fiduciary is the person who exercises any discretionary authority or discretionary control representing the management or disposition of plan assets, renders any investment advice for a fee or other compensation, or exercises any discretionary authority or responsibility for plan administration. For purposes of this Plan, the Trustees are authorized to perform any of the above functions and shall be the Plan Fiduciaries. The Fiduciaries may act in one or more fiduciary capacity with respect to the Plan and may allocate to others certain aspects of the management and operation responsibilities of the Plan including the employment of investment (and other) advisors and investment managers and the delegation of any ministerial duties or functions to qualified individuals. Any delegation of duties, general investment powers, or other powers shall be evidenced by a document in writing that shall be filed with the records of the Plan.

The Trustees shall select one (1) of their number who will serve as Chairman, and one (1) to serve as Co-Chairman, and one (1) to serve as Secretary and one (1) to serve as Treasurer. The term of office for each office shall be one (1) year, or until an election is duly held, although the incumbent of any office may be re-elected. If the Chairman is an Employer Trustee, the Co-Chairman shall be a Union Trustee, and

vice versa. The Chairman, or in his absence the Co-Chairman, shall preside at meetings.

The Trustees may designate one (or more) Trustee as Managing Trustee, and may, from time to time thereafter, change such designation. In the event a Managing Trustee is designated, he may be delegated any of the following rights and powers, in the name of and in behalf of, all of the Trustees with full and binding obligation and effect upon all the Trustees, to-wit: to receive contributions, to open bank accounts, to sign checks, to pay insurance premiums, to keep records of receipts, disbursements and monies on hand and held in the Trust Fund, to keep records of all benefits provided Participants in the Vacation Fund, to hire such corporation or persons as may be required for the efficient administration of the Trust Fund, to purchase all supplies needed for the proper bookkeeping and proper administration of the Trust Fund and to expend from the Funds available, any money necessary for these purposes, to have the books of the Trust Fund audited annually, to have the books and auditor's report available for inspection at all times by the other Trustees, Participants, officers of the Union and Employers, and to perform such other functions and duties of a purely ministerial nature as may be determined from time to time by the Trustees in the interest of the proper and efficient administration of the Trust. The Trustees shall further have the right to audit the books of a participating Employer when such is deemed necessary or desirable for the effective administration of the Trust. If no designation of a Managing Trustee is made, then all actions are to be taken in the manner provided herein unless otherwise properly delegated.

A quorum for the transaction of business shall consist of the presence at the meeting of at least four (4) Trustees, two (2) of whom represent Employers and two (2) of whom represent the Union. Decisions of the Trustees shall be made by majority

vote. If an unequal number of Employer and Union Trustees attend a meeting, the voting power of the group with fewer Trustees present shall be and stand increased to that of the group with more Trustees present so that there shall be equal voting strength between Employer and Union Trustees at all times at such meeting. A deadlock shall be deemed to exist whenever either of the following situations arise: (1) whenever a proposal, nomination, motion or resolution or other matter is voted upon and the votes cast are evenly divided and remain evenly divided; and (2) whenever a quorum is lacking at a meeting duly called and there shall be absent from said meeting two (2) or more Trustees of one group, and a majority of the Trustees present declare a deadlock due to the inability to obtain a quorum. In the event of such deadlock in either case arising, the Employer Trustees and the Union Trustees shall meet promptly for the purpose of agreeing upon an impartial umpire to break such deadlock by casting the deciding vote or deciding any dispute in question or matter under consideration. In the event of the inability of the Employer Trustees and Union Trustees to agree upon the selection of such impartial umpire, then such impartial umpire shall, on the petition of either the Employer Trustees or Union Trustees, be appointed by the Chief Judge of the United States District Court for the district wherein the principal office of the Trust is located. The decision of any such impartial umpire shall be final and binding on the Trustees and all concerned.

The Trustees shall meet at least quarterly unless a quorum thereof shall agree in advance that there is no business to come before the meeting. Any two (2) Trustees may call a meeting of the Trustees at any time by giving at least five (5) days' written notice of the time and place thereof to each Trustee; provided, however, that such notice need not be given to any member of the Board of Trustees who has expressly waived the service of such written notice upon him. Any meeting so called may be

postponed once for a reasonable period upon the request of any Trustee upon showing of justifiable cause therefor. Any meeting of the Trustees may also be held at any time without notice if all of the Trustees consent thereto in writing or if all attend and act. If all of the Trustees shall concur in writing upon any proposition, no formal meeting thereon need be held by Trustees. The Managing Trustee in the written notice shall notify the Trustees of the subjects to be discussed but this shall not be construed to limit any other subjects of discussion properly placed before the meeting.

The Trustees and Fund Office personnel may receive reimbursement for expenses properly and actually incurred in the performance of their duties with respect to this Trust, including but not limited to expenses incurred in attending educational conferences, seminars and meetings, provided that the Trustees determine in each case the subject matter of the conference, seminar or meeting is relevant to the administration of this Trust and that the expenses incurred are reasonable. Reasonable compensation may be paid to the Trustees for services rendered in the performance of their duties as Trustees, provided such payments are made in accordance with the Federal and State laws and regulations then in effect governing Trusts.

#### **ARTICLE XV - TRUSTEES' POWERS AND DUTIES**

The Trustees shall have general supervision of the operation of the Trust Fund and shall conduct the business and activities of the same according to law and this Trust Agreement. The Trustees shall have the obligation to receive, hold and administer monies or other funds received by them from Employers (and from any Employer who may hereafter agree to be bound by the terms and provisions of this instrument), or otherwise, in Trust under the terms hereof. In order to carry out and effectuate the purposes hereof, the Trustees shall have the power and authority to

adopt uniform rules and regulations as are consistent with and necessary for effectuating the provisions of this Agreement.

The Trustees shall deposit all monies received by them in such bank or banks as they may designate for the purpose and may, in their sole and absolute discretion, if they deem it advisable, invest and reinvest such funds as they do not require for current expenditure in such securities as are legal for the investment of trust funds under the laws of the United States and the State of Missouri, and such other property, including real property, which it deems to be a proper investment and may execute any and all documents required for the purchase or sale of any such investment.

All withdrawals of monies from a depository of the Fund shall be made only by check signed by one (1) Union Trustee and one (1) Employer Trustee, who have been authorized by the Trustees to sign and countersign, unless the Trustees shall otherwise delegate this authority.

The Trustees shall have power and authority to employ or hire such agents, attorneys, accountants, actuaries, clerical assistance or other employees and personnel as in the opinion of the Trustees may be necessary or desirable in administering the Trust Fund, and the compensation or fees of any such persons shall be paid from the Trust Fund.

The Trustees are specifically and expressly authorized and empowered in their discretion to employ one or more agents or investment managers to provide for the safekeeping and investment of all or part of the assets of the Fund and to delegate to such agent or investment managers all or such of their discretionary powers and duties with respect to the investment and reinvestment of the Trust Fund as the Trustees in their sole discretion shall deem to be for the best interest of the Trust

Fund. The Trustees may alter, amend or revoke any such delegation at their discretion. The Trustees shall not be liable for the acts or omissions of any such agent or investment manager in carrying out duties or powers so delegated, except as may be required by Federal law.

The Trustees may at any time or from time to time delegate to a named fiduciary or fiduciaries all or part of their responsibilities, obligations, duties or powers set forth herein and the Trustees may alter, amend or revoke any such delegation at their discretion. The Trustees shall not be liable for any act or omission of any such named fiduciary in carrying out duties or powers so delegated, except as may be required by Federal law or regulation.

Any delegation of duties, general investment powers or other powers shall be evidenced by a document in writing which shall be filed with the records of the Plan.

No party dealing with the Trustees in relation to this Trust shall be obliged to see to the application of any money or property of the Trust Fund, or to see that the terms of this Trust have been complied with or be obliged to inquire into the necessity or expedience of any act of the Trustees, and every instrument executed by the Trustees shall be conclusive in favor of every person relying thereon (1) that at the time of the delivery of said instrument the Trust hereby created was in full force and effect, (2) that said instrument was executed in accordance with the terms and conditions contained in this Trust Agreement.

The payment of money to the Trustees shall discharge the person or persons paying or transferring the same, and such person or persons shall not be bound to see to the application or be answerable for the loss or misapplication thereof.

The Trustees shall have the authority to reasonably request of any Employer, and an Employer when so reasonably requested shall furnish to the Trustees, such

information and reports as may be necessary in the performance of their duties under this Plan and Trust Agreement.

The Trustees and all their agents who handle funds of this Trust shall furnish such bond as may be required by law, and shall be responsible at all times for all monies received by them and shall be responsible, further, for the proper execution and administration of the terms of the Trust.

The Trustees shall keep or cause to be kept true and accurate books of account and records of their transactions, which books shall be kept in the possession of the Secretary, Treasurer, or such employee or agent as the Trustees may designate. All books of account shall be audited at least annually. A statement of such audit shall be available for inspection by all interested persons, at the principal office of the Trust Fund.

The Trustees shall: (a) prescribe procedures for appeals from the denial of any trust benefits, and serve as an appeals board for a full, fair and final review of any such denial; (b) retain a qualified public accountant; (c) comply with requirements with respect to Plan descriptions and other reports to be provided to the Secretary of Labor and Participants; (d) submit annual reports; and (e) designate the agent for service of process in any legal action initiated under the Employee Retirement Income Security Act of 1974, or as thereafter amended.

The Trustees shall not engage in a prohibited transaction within the meaning of ERISA. The Trustees shall not be precluded from applying to the Secretary of Labor for an exemption with respect to a prohibited transaction.

The Trustees are empowered and authorized to perform any and all transactions for the purpose of acquiring or transferring property, real or personal. By way of clarification, but not limitation, the Trustees are authorized to borrow funds

and to execute any documents required therefor; to sell or otherwise transfer property and to make, execute, acknowledge and deliver any and all deeds, deeds of trust, assignments, conveyances and any other documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

The foregoing is not intended to limit in any way the powers of the Trustees, it being the intent that the Trustees shall have all implied powers of trustees and power and authority to do all these things which in the opinion of the Trustees may be necessary or desirable for the proper and necessary administration and operation of the Trust Fund.

The Trustees' duties under this Agreement shall be discharged solely in the interest of the Participants and Beneficiaries and (1) for the exclusive purpose of providing benefits for such Participants and Beneficiaries and defraying reasonable expenses of administering the Plan; (2) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; (3) by diversifying the investments of the Plan so as to minimize the risk of losses, unless under the circumstances it is clearly prudent not to do so; and (4) in accordance with this Agreement and the Plan insofar as they are consistent with the provisions of Title I of ERISA.

#### **ARTICLE XVI - RESPONSIBILITY AND INDEMNIFICATION**

1. **Responsibility of Trustees.** The Trustees shall be responsible for funds only when and as such funds have been received by them.
2. **Indemnification of Trustees.** The Trustees may purchase and pay, out of the assets of the Fund, insurance for the benefit of the Fund and for the protection of

the fiduciaries under the Vacation Plan to cover liability or losses occurring by reason of the act or omission of a fiduciary, provided that such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary.

The Trustees shall be responsible for the actions of their Co-Trustees, other fiduciaries or agents and employees of the Trust, only under the provisions of ERISA.

The Trustees shall be personally responsible for their own actions only as required by applicable federal law.

#### **ARTICLE XVII - VESTING OF RIGHTS**

No Participants, Employer, Union, or any other person or group of persons shall have any vested interest or right in the Trust Fund or in the payments from the Trust Fund, or in the eligibility requirements for benefits as charged or altered, except to the extent and as expressly provided in this Agreement.

#### **ARTICLE XVIII - BENEFIT CLAIMS PROCEDURE**

In almost all circumstances, a Participant files a claim by returning to the Fund Office the post card or other notice sent to him prior to the annual December distribution. Such claims are paid on or about December 10. Beneficiaries' claims and Participant claims that are not presented prior to the annual distribution, are decided and paid as soon as administratively feasible.

If a claim is denied in whole or in part, the Administrator shall notify the claimant of the denial within ninety (90) days after receipt of the claim, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing the claim is required, written notice of the extension shall be furnished to the claimant prior to the expiration of the initial ninety-day period. In no event shall such an extension exceed a period of ninety days after the

expiration of the initial ninety-day period. The Trustees have designated David von Yeast as the Administrator of the Plan.

The claimant shall be provided with a written decision which shall set forth, in a manner calculated to be understood by the claimant, the following:

- (1) the specific reasons for the denial;
- (2) specific Plan provisions on which the denial is based;
- (3) a description of any additional material or information necessary to reconsider the claim and an explanation of why the additional material or information is necessary;
- (4) an explanation of the review procedure and time limits; and
- (5) notice of the claimant's right to sue the Plan under Section 502 of ERISA following an adverse determination on review.

In the event a claim is wholly or partially denied, a claimant or his duly authorized representative may appeal the claim to the Board of Trustees of the Plan by written application to the Board of Trustees filed within sixty (60) days after receipt by the claimant of written notification of denial of a claim. The claimant or his representative shall have a right to review documents relevant to his claim and to receive free copies of such documents and to submit issues and comments in writing.

The decision by the Board of Trustees shall be made no later than the date of the meeting of the Board which immediately follows the Plan's receipt of a request for review, unless the request for review is filed within thirty (30) days preceding the date of such meeting. In such a case, a decision may be made by no later than the date of the second meeting following the Plan's receipt of the request for review.

If special circumstances require an extension of time for reviewing the decision of the Board of Trustees, the decision of the Board of Trustees shall be rendered not

later than the third meeting of the Board following the Plan's receipt of the request for review. If such an extension of time for review is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the Board shall be in writing and shall include the same classes of information set out in the original denial.

Claims for benefits must be made by a Participant or beneficiary no later than three years following the first date on which benefits could have been paid under this Plan.

The benefit claims procedure provided herein is exclusive and no action shall be brought in any court or before any agency to recover any benefits or seek any relief under this Plan prior to the exhaustion of the remedies set forth herein.

**ARTICLE XIX - LIABILITY OF EMPLOYER**

The liability of any individual Employer to the Fund shall in no event extend to the obligations of another participating Employer or other participating Employers.

IN WITNESS WHEREOF, the Board has caused these presents to be signed by its duly authorized officer, and the Trustees have hereunto set their names the date and year first above written.

<u>UNION TRUSTEES</u>	<u>DATE</u>	<u>EMPLOYER TRUSTEES</u>	<u>DATE</u>
RICHARD BRYAN	9/17/02	RANDY FREESE	9/17/02
DANIEL WOODS	9/17/02	DANIEL HANSON	10/23/02
LEN HART	9/17/02	EDWARD SMITH	9/17/02

**AMENDMENT TO THE PAINTERS  
DISTRICT COUNCIL NO. 2  
VACATION PLAN AND TRUST AGREEMENT**

Effective on January 1, 2001, the Trustees of the Painters District Council No. 2 Vacation Trust amend the Vacation Plan and Trust Agreement by deleting the third paragraph of Article VII and replacing it with the following:

The contributions as established from time to time by the collective bargaining agreement shall be due on the date set out in the collective bargaining agreement. If the payment of contributions is delinquent, the Employer shall be assessed liquidated damages of 10% up to 30 days of delinquency. Thereafter, liquidated damages of 1 1/2% shall be assessed, compounded monthly until the full contribution is made

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	2/9/01	RANDY FREESE	2/9/01
DANIEL WOODS	2/9/01	DANIEL HANSON	2/13/01
DANIEL LEN HART	2/9/01	EDWARD SMITH	2/12/01

**AMENDMENTS TO THE PAINTERS  
DISTRICT COUNCIL NO. 2  
VACATION PLAN AND TRUST AGREEMENT**

The Trustees of the Painters District Council No. 2 Vacation Trust hereby adopt the following amendments:

1. The first clause of the first sentence of the second paragraph of Article IX is changed to provide:

On December 10 (or the first regular workday thereafter if December 10 is not a regular workday, . . .

2. The first clause of the first sentence of the third paragraph of Article IX is changed to provide:

Prior to December 10, . . .

3. The reference to "the 15<sup>th</sup> of December" in the third sentence of the third paragraph of Article X is changed to provide:

the 10<sup>th</sup> of December

4. The first paragraph of the preamble is deleted and the following is inserted in its place:

This Agreement, first made and entered into on July 13, 1966 to be effective as of the first day of September, 1966, by and between the Painters District Council No. 2 and the Painters Employers of St. Louis, Missouri and vicinity, who adhere to the area practice and who have a contract with the Painters District Council No. 2, and certain named individuals, as initial trustees, whose successors currently are RICHARD BRYAN, DANIEL WOODS, and LEN HART (employee trustees) and DANIEL HANSON, EDWARD SMITH, and RANDY FREESE (employer trustees), hereinafter referred to collectively as Trustees, and

5. The first sentence of Article XIV is deleted and the following is inserted in its place:

Trustees herein have been selected as follows: RICHARD BRYAN, DANIEL WOODS and LEN HART have been selected by the Union and DANIEL HANSON, EDWARD SMITH and RANDY FREESE have been selected by the Contributing Employers.

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	3/20/01	DANIEL HANSON	3/20/01
DANIEL WOODS	3/20/01	EDWARD SMITH	3/19/02
LEN HART	3/20/01	RANDY FREESE	3/20/01

**AMENDMENTS TO THE PAINTERS  
DISTRICT COUNCIL NO. 2  
VACATION PLAN AND TRUST AGREEMENT**

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5. The first sentence of Article XIV is deleted and the following is inserted in its place:

Trustees herein have been selected as follows: RICHARD BRYAN, DANIEL WOODS and LEN HART have been selected

by the Union and DANIEL HANSON, EDWARD SMITH and RANDY FREESE have been selected by the Contributing Employers.

Richard Bryan 3-20-01  
RICHARD BRYAN Date

Daniel Hanson 3-20-01  
DANIEL HANSON Date

Daniel Woods 3-20-01  
DANIEL WOODS Date

\_\_\_\_\_  
EDWARD SMITH Date

Len Hart 3-20-01  
LEN HART Date

Randy Freese 3-20-01  
RANDY FREESE Date

# PAINTERS DISTRICT COUNCIL #2 APPRENTICESHIP AND JOURNEYMEN TRAINING TRUST

## APPRENTICESHIP AND TRAINING DECLARATION OF TRUST

THIS AGREEMENT AND DECLARATION OF TRUST, entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in the City of Saint Louis, State of Missouri, by and between Painters District Council #2 of the International Brotherhood of Painters and Allied Trades, AFL-CIO (hereinafter called the UNION) and the Contracting Painters & Decorators of America Chapter #2 of the Painting and Decorating Contractors of America, (hereinafter called the "CHAPTER") and together with such other individual contractors who may now or hereafter become parties to the within plan and

EMPLOYER TRUSTEES

UNION TRUSTEES

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

who, with their successors designated in the manner hereinafter provided for, are hereinafter called the "TRUSTEES".

"WHEREAS, the Union and the Chapter have theretofore entered into a Collective Bargaining Agreement dated the 1st. day of January, 1977, which by some of its terms, require specific contributions by all employers who are parties thereto, for the purpose of financing the establishment and maintenance of a Trust for the operation and implementation of a program or programs providing for the training of apprentices and the retraining or refresher training of journeymen, and it is the desire of the Union and the Chapter to create an appropriate Trust for the administration of such training programs."

NOW THEREFORE, THIS AGREEMENT AND TRUST  
WITNESSETH:

That in consideration of the within premises, and in order to create a suitable Trust for the purpose of providing and implementing the Training Programs desired by the parties hereto, it is mutually understood and agreed as follows:

### ARTICLE I DEFINITIONS

**Section 1.** The term "employer" as used herein shall mean (a) all members of the Chapter and (b) all non-member signatores to the aforesaid Collective Bargaining Agreement or any such renewals or extensions thereof, employing members of the Union, and (c) such other painting and decorating contractors who are signator Collective Bargaining Agreements with other local unions of the Brotherhood with the consent of the parties hereto and providing that such out-of-town contractors comply with the terms and conditions of the aforesaid Collective Bargaining Agreement and this Declaration.

**Section 2.** The term "Union" as used herein shall mean Painters District Council #2 of the International Brotherhood of Painters and Allied Trades, AFL-CIO.

**Section 3.** The term "Employee" as used herein shall mean and include any employee on whose behalf the Union acts as collective bargaining agent and who is covered by a collective bargaining agreement between the Union and any employer paying money into the Trust hereby created pursuant to the terms of this agreement and such collective bargaining agreement or either of said agreements.

**Section 4.** The term "Trustees" as used herein shall mean the Trustees designated in this agreement and their successors designated in the manner provided herein. The term "Union Trustee" shall mean the Trustee designated by the Union in the manner hereinafter specified. The term "Employer Trustee" shall mean a Trustee designated by the Chapter in the manner hereinafter specified.

**Section 5.** The term "Agreement and Declaration of Trust" as used herein shall mean this instrument including any amendments hereto and modifications hereof.

**Section 6.** The term "Employer Contributions" as used herein shall mean payments by Employers to the Trustees of the Training Program Trust.

**Section 7.** The term "Training Program Trust", "Training Program", and "Training Fund" as used herein shall mean the Trust Fund created hereby.

**Section 8.** The term "Collective Bargaining Agreement" as used herein shall mean the Collective Bargaining Agreement entered into between the Chapter, or other employers that are not members of said chapter but employ a member or members of Painters District Council #2, and the Union and any renewals or amendments thereof providing for payments by Employers to the Apprenticeship & Journeymen Training Trust.

**Section 9.** The term "Trust" and "Trust Fund" shall mean the Trust established hereby .

## **ARTICLE II**

### **PAINTERS DISTRICT COUNCIL #2**

### **APPRENTICESHIP AND JOURNEYMEN TRAINING TRUST**

**Section 1.** The parties hereto hereby create and establish a Trust to be known as the Painters Apprenticeship and Journeymen Training Fund.

**Section 2.** The trust hereby established shall consist of all Employer contributions heretofore or hereafter made to the Trustees, or made into any escrow account for the ultimate benefit of the Trust pending the actual execution of this Agreement; all income from whatever source derived and received by the Trust; and any and all property of every kind and description from whatever source received and held by the Trustees for use and purposes set forth in this Agreement and Declaration of Trust .

**Section 3.** The Trust shall be used solely and exclusively for financing a Training Program for apprentice painters and a Program for the retaining or refresher training of Journeymen painters, for related manpower programs which may be approved by the parties hereto, and for implementing any such program by increasing employment opportunities for retrainees and apprentices who have achieved journeyman status, by acquainting the public with the advantages of the training program and use of trained and skilled labor and other industry promotion, all on such terms and in such manner as the Trustees in the exercise of their sound discretion may determine .

**Section 4.** Liability of Employers for payments to the Apprenticeship Training Trust shall be effective as of January 1, 1977. Payments shall be made by the Employers to the Apprenticeship and Journeymen Training Trust on or before the dates determined by the Trustees, after notice by the Trustees to the Employers of such periodic payment dates. The amount to be contributed by any Employer shall be subject to change as the result of any change negotiated in the terms of the prevailing Collective Bargaining Agreement.

**Section 5.** The Trustees are hereby designated as the persons to receive the payments heretofore or hereafter made by the Employers, and the Trustees are hereby vested with all rights, title and interest in and to such monies and all interest accrued thereon, and the Trustees are hereby specifically authorized to receive same.

**Section 6.** The Trustees agree to receive all payments, deposits, money and other property and assets described in Section 2 of this Article II, and to hold same in trust hereunder for the uses and purposes of the Trust hereby created.

**Section 7.** The Trustees shall agree upon and formulate the provisions, regulations and conditions of the Training Program hereby contemplated and the Trustees may make any provisions, regulations or condition relating to such Training Program required to carry out the intent and purpose of this agreement and any and all matters relating thereof, so long as such provisions, regulations and conditions are not inconsistent herewith or contrary to law.

**Section 8.** The Trustees may amend the Training Program Plan from time to time whenever in their discretion amendment is necessary or desirable so long as such amendment, or amendments, do not conflict with the provisions hereof.

### **ARTICLE III**

#### **DESIGNATION OF TRUSTEES-ACCEPTANCE OF TRUST, RESIGNATIONS, REMOVALS, FILLING OF VACANCIES**

**Section 1.** The Trustees under this Agreement and Declaration of Trust, who shall be trustees of the Trust created and established by this agreement, shall be 6 in number, and 3 of whom shall be Union Trustees selected by the Union, and 3 of whom shall be Employer Trustees selected by the Chapter.

**Section 2.** The Trustees hereinbefore named hereby accept the Trust created and established by this Agreement and Declaration of Trust and consent to act as Trustees hereunder, and declare they will administer the Trust hereby created in accordance with the terms hereof. The signature of a Trustee to any counterpart, or copy thereof, shall be conclusive evidence of his acceptance.

**Section 3.** Each Trustee above named and each successor Trustee shall serve as Trustee until his death, incapacity, resignation or removal as herein provided.

**Section 4.** A Trustee may resign and become and remain fully discharged for all further duty or responsibility hereunder upon giving thirty (30) days notice in writing to the remaining Trustees, or such shorter notice as the remaining Trustees may accept as sufficient. Such notice shall set a date when such resignation shall take effect and resignation shall take effect the date specified in the notice unless a successor Trustee shall have been appointed at an earlier date. If a successor Trustee has been appointed at an earlier date than that specified in said notice, then the resignation shall take effect immediately upon the appointment of such successor Trustee.

**Section 5.** If any Employer Trustee shall die, become incapable of acting, resign or be removed, a successor Employer Trustee shall be immediately designated by the Chapter. Such designation shall be effective and binding in all respects immediately upon the filing with the remaining Trustees of a certificate in writing signed by the President or Secretary of the Chapter.

**Section 6.** Any Employer Trustee may be removed at any time by the Chapter by the filing with the remaining Trustees of a certificate in writing to such effect executed by the President or Secretary of the Chapter.

**Section 7.** If any Union Trustee shall die, become incapable of acting, resign or be removed, a successor Union Trustee shall be immediately designated by the Union. Such designation shall be effective and binding in all respects as soon as a Certificate in writing, signed by the President or Secretary of the Union has been filed with the remaining Trustees.

**Section 8.** Any Union Trustee may be removed at any time by the Union. Such removal shall be effective upon the filing with the remaining Trustees of a Certificate in writing to such effect executed by the President or Secretary-Business Manager of the Union.

**Section 9.** If, for any reason, any Trustee desires a judicial settlement of his account or the accounts of the Apprenticeship and Journeymen Training Trust, such action or proceeding shall be conducted entirely at the expense of the petitioner or plaintiff, and the costs and expense of any such action or proceeding shall not become a charge or expense against or payable out of the Training Fund.

**Section 10.** The parties intend that the Apprenticeship and Journeymen Training Trust shall, at all times, be administered by an equal number of Chapter and Union Trustees. To assure equal Chapter and Union representation at all times, it is agreed that whenever a vacancy exists on the Board of Trustees, or whenever a member of the Board of Trustees is absent from a meeting and not voting by absentee ballot as provided in Article IV, Section 13, if such vacancy or absence results from a lack of Union Trustees, the vote represented by each absence or vacancy shall be divided equally among the remaining Union Trustees, each of whom shall be entitled to vote the whole or fractional vote, or votes allocated to him as the result of such division, in addition to his own vote until the vacancy is filled or the absence terminates provided that at all times a quorum is present as provided in Article IV, Section 13, of this Declaration. If such vacancy, or absence, results from a lack of a Chapter Trustee, the vote represented by each

vacancy, or absence shall be divided equally among the remaining Chapter Trustees each of whom shall be entitled to vote the whole or fractional vote, or votes, allocated to him as the result of such division, in addition to his own vote until such vacancy is filled or such absence terminates .

**Section 11.** Any successor Trustee shall, immediately upon his designation as successor Trustee and his acceptance of the Trusteeship in writing, filed with the Trustees, become vested with all the property rights, powers and duties of a Trustee and all the Trustees when in office and all necessary parties shall immediately be notified of the designation of any such successor Trustee.

#### **ARTICLE IV**

##### **ADMINISTRATION OF THE TRUST**

##### **GENERAL POWERS AND DUTIES OF THE TRUSTEES**

**Section 1.** The Trustees shall use and apply the property and assets of the Apprentice and Journeymen Training Trust for the following purposes:

To pay or provide for the payment of all reasonable and necessary expenses of the Training Program formulated and adopted by them and the collection of Employer contributions and administration of the affairs of the Training Trust and carrying out and effectuating the purposes of the Trust, including but without limitation, all expenses which may be incurred in connection with the establishment and maintenance of the Training Trust, and the carrying out and implementation of its purposes, the employment of such administrative, legal, accounting, clerical and teacher personnel as may be required for the appropriate conduct of the Training Program; also, the leasing or purchase or construction of such premises and such materials, space and equipment as the Trustees, in their discretion, find necessary or appropriate in the performance of their duties and the administration and successful conduct of the Training Program.

**Section 2.** The Trustees shall have power to construe the provisions of this Agreement and Declaration of Trust and the terms used herein and any construction adopted by the Trustees in good faith shall be binding upon the Union, the Employers, the Employees, and all other persons and parties dealing with or affected by the Trust.

**Section 3.** The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law.

- (a) To invest and re-invest such part of the Trust Fund as in their sole judgement it is advisable to invest and is not required for current expenditures.
- (b) To sell, exchange, lease, convey or dispose of any property whether real or personal, at any time forming a part of the Trust Fund upon such terms as they may deem proper and to execute and deliver any and all instruments of conveyance and transfer in connection therewith.
- (c) To enter into any and all contracts and agreements to carry out the terms of this Agreement and Declaration of Trust for the administration and implementation of the Training Program Trust and to do all acts which they, in their discretion, deem necessary or advisable and such contracts, agreements and acts shall be binding and conclusive on the parties thereto and on the employees involved.
- (d) To comprise, settle, arbitrate and release claims or demands in favor or against the Trust Fund on such terms and conditions as the Trustees may deem advisable.
- (e) To keep property and securities registered in the name of the Trustees or in the name of a bank nominee.
- (f) To keep property or securities in the custody of a bank or trust company.
- (g) To establish and accumulate as a part of the Training Program Trust if they, in their discretion, deem such action necessary a reserve adequate in the opinion of the Trustees to insure the continuous operation of the Training Program Trust.
- (h) To hold part or all of the funds of the Training Program Trust uninvested.
- (i) To pay out of the funds of the Training Program Trust all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Training Program Trust, or any money, property or securities forming a part thereof, subject to their authority and right to contest such imposition or changes.
- (j) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

**Section 4.** The Trustees shall not receive compensation for the performance of their duties.

**Section 5.** The Trustees shall formulate and promulgate such rules and regulations as may, in their discretion, be deemed proper and necessary for the sound and efficient administration of the Training Program Trust, provided such rules and regulations are not inconsistent with the terms hereof, or with the terms and conditions contained in the Collective Bargaining Agreement between the parties hereto.

**Section 6.** Neither the Trustees, nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Training Program Trust contracted by them, as such Trustees, or for the nonfulfillment of contracts, but the same shall be paid out of the Training Program Trust chargeable therefore, and the Training Program Trust is hereby charged with a first lien in favor of such Trustees for his or their security and indemnification for any amounts paid out by any such Trustee for any such liability and for his and their security and indemnification against any liability of any kind which the Trustees or any of them may incur hereunder; provided, however, that nothing herein shall exempt any Trustee from liability arising out of his own willful misconduct, bad faith or gross negligence, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof.

**Section 7.** The Trustees and each individual Trustee shall not be liable for any error of judgement or for any loss arising out of any act or omission in execution of the Trust including any loss resulting from the investment and reinvestment of the corpus of his Trust, so long as they act in good faith and without gross negligence, nor shall any Trustee, in the absence of his own willful misconduct, bad faith, or gross negligence, be personally liable for the acts or omissions (whether performed at the request of the Trustees or not) of any other Trustee, or of any agent or attorney selected or appointed by or acting for the Trustees.

**Section 8.** The Trustees shall be fully protected in acting upon any instrument, certificates or paper believe by them to be genuine and to signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained .

**Section 9.** The Trustees shall not be liable for the proper application of any part of the Training Program Trust, or for any other liabilities arising in connection with the administration or existence of the training program trust in this Agreement and Declaration of Trust except as herein provided.

**Section 10.** The Trustees, collectively, may from time to time consult the Trust's legal counsel and shall be fully protected in acting upon such advice of counsel to the Training Program Trust as respects legal questions.

**Section 11.** The Trustees shall keep true and accurate books of account and records of all their transactions which shall be open to the inspection of each of the Trustees at all times and which shall be audited annually or more often by a Certified Public Accountant selected by the Trustees. Such audits shall be available at all times for inspection by the Union and the Employers at the principal office of the Training Program Trust. A free copy of each certified audit or statement shall be furnished by the Accountant to each of the Trustees and to the Secretary -Business Manager of the Union and the Secretary of the Chapter.

**Section 12.** Questions concerning any action to be taken by the Trustees pursuant to this Agreement and Declaration of Trust shall be decided by a majority of the votes cast by the Trustees present at a meeting.

**Section 13.** There must be present at any meeting at which any action is taken at least two (2) Union Trustees and at least two (2) Employer Trustees. Any and all action taken at such a meeting in the manner above provided shall have the same effect and force as if taken by all of the Trustees. The Chairman, or any two Trustees, may call a meeting of the Trustees at any time by giving at least three (3) days written notice of the time and place thereof to each Trustee. Such notice may be delivered in person, by mail or by telegram. A meeting so called shall be adjourned for a reasonable period upon the request of any Trustee showing justifiable cause therefore to the purpose thereof. Meetings of the Trustees may also be held at any time without notice if all the Trustees consent thereto. In the event that all the Trustees shall concur in writing upon any proposition, no meeting thereon need be held by the Trustees. The vote of the Trustees may be cast by them in person at a meeting or may be evidenced by written instruments signed by them or telegrams from them.

**Section 14.** In the event of a deadlock resulting from the failure of the majority of the Trustees present at a meeting to agree on a matter relating to the administration of the Training Program Trust, then and in that event the entire contents of the matter shall be submitted to a representative of the Federal Mediation and Conciliation Service, who after reviewing same shall have the final decision which shall be final and binding upon the Trustees.

**Section 15.** The Trustees may authorize any Employer Trustee and a Union Trustee, or any joint group equally composed of Employer and Union Trustees, to jointly execute any notice or other instrument in writing and all persons, partnerships, corporations, or associations may rely thereupon that such notice of instrument has been duly authorized and is binding on the Training Program Trust and the Trustees.

**Section 16.** All monies received by the Trustees hereunder shall be deposited by them in such bank, or banks, as the Trustees may designate for that purpose and all withdrawals of monies from such account or accounts, shall be made only by checks signed by the Trustees authorized in writing by the Trustees to sign such checks. Except as hereinafter provided, no check shall be valid unless signed by two persons of whom one shall be a Union Trustee and one an Employer Trustee.

**Section 17.** The Employer Trustee shall designate in writing the names of the particular Employer Trustees who may sign checks in the above manner, and the Union Trustees shall, likewise, designate, in writing, the names of the particular Union Trustees who may sign checks in the above manner.

**Section 18.** The Trustees may, in their discretion, designate and authorize an employee of the Training Program to sign checks upon such separate and specific bank account, or bank accounts, as the Trustees may designate and establish for such purposes.

**Section 19.** The Trustees and Employees who are empowered and authorized to sign checks as aforesaid shall each be bonded by a duly authorized surety company in such amounts as may be determined from time to time by the Trustees. Each employee employed by the Trustees who may be engaged in handling monies of the Training Program Trust shall also be bonded by a duly authorized surety company in the same manner. The cost of the premiums on such bond shall be paid out of the Training Program Trust. The covering bond shall be a blanket bond of possible and in no event shall be less than the amount of the funds and assets handled by those covered.

**Section 20.** Officers of the Board of Trustees shall consist of a Chairman and a Secretary-Treasurer, each of whom shall be selected for a 5 year term. The Chairman, who shall be a representative of the Employers. The main function of the Chairman shall be to preside at all meetings keeping the purpose of said called meeting meaningful, and deciding the question of order in the enforcement of this herein Trust. Also there shall be a Secretary-Treasurer, who shall be a representative of the Union. The Secretary-Treasurer's main function besides the designated duties assigned to him by the Board of Trustees, shall be to keep all minutes of meetings, and to present a report to the Board of his actions between quarterly meetings. He shall have full power to transact the business of the Trust in the employment of personnel, co-ordination of programs, purchase any and all material necessary to execute this Trust.

## **ARTICLE V**

### **COLLECTION OF CONTRIBUTIONS**

**Section 1.** Each and every Employer shall pay to the Trustee at the time and in the manner and in the amount specified and set forth in the Collective Bargaining Agreement between the parties hereto and that same may be amended from time to time in future Agreements by the parties hereto.

**Section 2.** The Trustees shall have the power to demand, collect and receive contributions and to bring suit for such collection and shall hold such monies for the purpose specified in this Agreement and Declaration of Trust. Delinquent employers shall be responsible for interest on all monies owed to the Fund, as well as reasonable attorneys fees incurred by the Trustees in the collective process.

**Section 3 .** The failure of an Employer to pay the contributions required hereunder promptly when due shall be a violation of the Collective Bargaining Agreement between the Employer and the Union, as well as violation of the Employer's obligations hereunder. Non-payment by an Employer of any monies due shall not relieve any other Employer from his obligation to make payment.

**Section 4.** The Board of Trustees, or any authorized agent or representative of the Trustees, shall have the right, at all reasonable times during business hours, to enter upon the premises of any Employer obligated to contribute to the fund and to examine and copy such of the books, records, paper, and reports of said Employer as may be necessary to determine the hours of work done and places where done by any employees and to permit the Trustees to determine whether said Employer is making payment to the Trust of the amount required by the Collective Bargaining Agreement with said Employer.

**Section 5.** Nothing herein contained shall preclude or prevent any Employer or his representative or the Union or its representative from the right to inspect records regarding the failure or delinquency of any Employer in his obligations to make contributions to the Fund herein established or maintained.

**Section 6.** The Trustees are hereby given the power to impose a sum in their discretion as liquidated damages, to be fixed by the rules and regulations promulgated by them, or any amendment hereinafter adopted as hereinafter provided, for failure to make prompt payment to the Fund as provided for herein and in the Collective Bargaining Agreement and hereby given the power to collect such liquidated damages, when assessed, in the same manner as they are given power to collect the contributions.

**Section 7.** The Trustees are hereby given the power and authority, in their discretion, to require any Employer to deposit funds or a bond with the Trustees, in advance, as a guarantee for the payment of the regular periodic contribution of such Employer, as estimated by the Trustees, as a condition to such Employer's participation herein, and are given the right to require that said guarantee be continuously maintained by such Employer as a condition to continue participation herein .

## **ARTICLE VI TERMINATION OF THE TRUST**

**Section 1.** The Training Program Trust may be terminated when there is no longer in force or expected to be in force an agreement between the Chapter and the Union requiring Employer contributions to such Training Program Trust for the purposes hereinabove provided. It is not the intention of the parties hereto, however, to permit termination of the Trust in any situation where a collective agreement between the parties may have expired and the parties have been unable to reach agreement on new terms or a renewal thereof. It is the intention of the parties that the training program trust may be terminated only when there exists no reasonable possibility that any agreement between the parties will be reached and that all relationships between the parties will cease or have ceased.

**Section 2.** The Training Program Trust may be terminated at any time by the unanimous vote of all Trustees with the consent of the Employer and the Union.

**Section 3.** If the Training Program Trust is terminated, the Trustees shall apply the Trust Fund in payment of any and all obligations of the Trust and shall distribute and apply any remaining surplus in such manner as will, in their opinion, best effectuate the purpose of this Trust including contribution of such surplus to any then existing trade school, either public or private, engaged in giving training analogous to the training furnished by the Training program Trust prior to its termination. No part of the corpus or income of the Trust shall be used for or diverted to any purpose other than maintenance of a Training Program of the character contemplated by this agreement.

**Section 4.** Upon termination of the Training Program Trust, the Trustees shall forthwith notify the Union, the Employer and all other interested parties, and shall continue as Trustees for the purpose of winding up the affairs of the Trust.

## **ARTICLE VII MISCELLANEOUS PROVISIONS**

**Section 1.** No part of the net earnings of the Fund shall inure to the benefit of, or be distributable to, its members, directors, officers, or other private persons, except that the Fund shall be authorized and empowered to pay reasonable compensation for services rendered.

**Section 2.** No substantial part of the activities of the Fund shall be the carrying on of propaganda, or otherwise attempting to influence legislation and the Fund shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

**Section 3.** In the event of dissolution, any remaining assets shall be distributed to organizations organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as exempt organizations under Section 501 (c) (3) of the Internal Revenue Code of 1954.

**Section 4.** Each Employer shall promptly furnish to the Trustees on demand any and all records of his employees concerning the classification of such employees, their names, Social Security numbers, the amount of wages paid and hours worked, and such other payroll records and information that the Trustees may require in connection with the administration of the Trust and for no other purpose. Each employer shall also submit, in writing, to the Trustees at such regular periodic intervals and in such form as the Trustees may establish, such of the above data and information as may be requested by the Trustees. The Trustees, or the authorized representative, may examine and/or audit or cause to be audited the pertinent payroll books and records of each Employer whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust.

**Section 5.** No employer, no employee, or any person claiming by or through such employers, or employees, shall have any right, title or interest in or to the funds or other property of the Training Program Trust or any part thereof.

**Section 6.** No person, partnership, corporation or association dealing with the Trustees shall be obligated to see to the application of any funds or property of the Trust, or to see that the terms of the Trust have been complied with, or be obligated to inquire into the necessity or expediency of any act of the Trustees and every instrument effected by the Trustees shall be conclusive in favor of any person, partnership, corporation or association relying thereon that:

- (a) At the time of the delivery of said instrument the Trust was in full force and effect;
- (b) Said instrument was effected in accordance with the terms and conditions of said Agreement and Declaration of Trust; and
- (c) The Trustees were duly authorized and empowered to execute the agreement.

**Section 7.** The Trustees may have and maintain an office at the "Painters Building" 2501 59th. Street, St. Louis, Missouri 63110.

**Section 8.** Notices, documents or other statements given hereunder to the Trustees, the Union, the Chapter or any individual concerned, shall (unless herein otherwise specified) be sufficient if in writing, and delivered or sent by prepaid first class mail or telegram to their respective addresses.

**Section 9.** Trustees are authorized to make such applications and representations to the United States Treasury Department as may be necessary to secure and retain rulings that the Apprenticeship and Journeymen Training Trust is qualified under the pertinent provisions of the Internal Revenue Code.

**Section 10.** Each signatory to this agreement shall deposit with the Trustees a written designation of address to which all notices required or permitted hereby may be mailed.

## **ARTICLE VIII AMENDMENTS**

This Agreement and Declaration of Trust may be amended at any time, or from time to time, by a majority vote of the Trustees, except that no amendment shall divert the Fund as then constituted, or any part thereof, to a purpose other than set forth herein, nor shall there be any amendment as a result of which there would not be an equal number of Employer and Employee Trustees, or which will change the method of voting as set forth herein, or which will be in contravention of or inconsistent with the existing collective bargaining agreement, between the parties hereto, nor shall there be any amendment which will, in any manner, contravene the terms and provisions of any State or Federal law, or result in the disallowance of contributions to the Fund as a deduction for tax purposes.

## **ARTICLE IX EXECUTION OF AGREEMENT SITUS OF TRUST**

**Section 1.** This Agreement and Declaration of Trust may be executed in one or more counterparts. The signature of a party or any counterpart shall be sufficient evidence of his execution thereof.

**Section 2.** This Agreement and Declaration of Trust shall be deemed to have been executed and delivered in, and with reference to the laws of the state of Missouri, and it and the Trust established and created hereunder shall be governed by said laws. The Trustees shall be accountable only in the State of Missouri.

IN WITNESS WHEREOF, the Union and the Chapter named herein have caused this instrument to be duly executed on their behalf by their proper officers, thereunto duly authorized, and the Trustees named herein have hereunto set their respective hands and seals the day and year first above written.

**SIGNATURE OF PARTIES**

**EMPLOYER TRUSTEES**

**UNION TRUSTEES**

Signed:

Signed:

## **AMENDMENTS TO THE PAINTERS DISTRICT COUNCIL NO. 2 APPRENTICESHIP AND TRAINING AGREEMENT AND DECLARATION OF TRUST**

On this 22nd day of August, 1984, the Trustees of the Painters Apprenticeship and Journeymen Training Fund hereby adopt the following amendments to the Painters District Council No. 2 Apprenticeship and Training Agreement and Declaration of Trust (hereafter referred to as the "Trust Agreement"):

1. The introductory section of the Trust Agreement is hereby amended to provide that the following individuals are the Trustees of the Apprenticeship and Journeymen Training Fund:

**EMPLOYER TRUSTEES:**

**ROBERT LATTA  
JOSEPH WARD  
FRANK WOJEHOWSKI**

**UNION TRUSTEES:**

**JOSEPH SHATRO  
MARTIN BERGERON  
JAMES ENGEL**

2. The current Article III, Section 6, of the Trust Agreement is hereby deleted and replaced with the following provision:

"Any Employer Trustee may be removed at any time by the Chapter by providing the Trustees thirty (30) days advance written notice of such removal to be signed by the President or Secretary of the Chapter."

3. Article III, Section 7, is hereby amended to correct and change the term "Secretary" to "Secretary-Business Manager".

4. The current Article III, Section 8, is hereby deleted in its entirety and replaced with the provision:

"Any Union Trustee may be removed at any time by the Union by providing the Trustees with thirty (30) days advance written notice of such removal to be signed by the President or Secretary -Business Manager of the Union."

5. Article III, Section 9, is hereby deleted.

6. Article IV, Section 9, is hereby deleted.

7. The current Article IV, Section 10, is hereby deleted and replaced with the following provision:

"The Trustees may from time to time consult the Trust's legal counsel."

8. The current Article IV, Section 20, is hereby deleted and replaced by the following provision:

"Officers of the Board of Trustees shall consist of a Chairman and a Secretary-Treasurer each of whom shall be selected for a two-year term. The Chairman shall be selected from the Employer Trustees. The main function of the Chairman shall be to preside at all meetings. The Secretary-Treasurer shall be selected from the Union Trustees. The Secretary-Treasurer shall keep or cause to be kept minutes of all meetings and to report to the Board concerning his actions between meetings. The Secretary-Treasurer shall have the authority to pay for utility expenses, salaries of personnel and payroll taxes and to purchase office supplies, training supplies, materials and equipment necessary to the operation of the Training Program operated pursuant to this Trust Agreement, subject to any terms, conditions or limitations established by the Board of Trustees. Any out-of-town expenses must be approved by the Board of Trustees prior to reimbursement. The Board of Trustees shall authorize the hiring of personnel and determine the compensation and expenses associated with each position. The Board of Trustees shall have final authority on all matters concerning the operation of the Trust. The Trustees are authorized to retain the services of such professionals deemed necessary to the operation of the Trusts. The Trustees may from time to time

authorize one or more of their members to attend conferences, meetings and seminars where the subject matter is relevant to the operation of the Trust. A Trustee who has been authorized by the Board to attend such a meeting or seminar shall be entitled to reimbursement for reasonable expenses actually incurred in connection with his attendance and participation.

9. Article IV, Section 11, is hereby amended to add the words "and certified" after the words "audited" and before the word "annually" so as to provide:

"... shall be audited and certified annually. ..."

JOSEPH WARD

FRANK WOJEHOWSKI

JOSEPH SHATRO

MARTIN BERGERON

JAMES ENGEL

**AMENDMENT TO PAINTERS DISTRICT COUNCIL NO. 2  
APPRENTICESHIP AND TRAINING AGREEMENT  
AND DECLARATION OF TRUST**

The Trustees of the Apprenticeship and Journeyman Training Fund hereby adopt the following amendment to the Painters District Council No. 2 Apprenticeship and Training Agreement and Declaration of Trust:

The introductory paragraph of the Trust Agreement is hereby amended to provide that the following individuals are the Trustees of the Apprenticeship and Journeyman Training Fund:

**UNION TRUSTEES**

**JOSEPH SHATRO  
MARTIN BERGERON  
JAMES ENGEL**

**EMPLOYER TRUSTEES**

**JOSEPH WARD  
FRANK WOJEHOWSKI  
MICHAEL SLATTERY**

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
<b>JOSEPH SHATRO</b>	<b>8/6/86</b>	<b>JOSEPH WARD</b>	<b>8/6/86</b>
<b>MARTIN BERGERON</b>	<b>8/6/86</b>	<b>FRANK WOJEHOWSKI</b>	<b>8/6/86</b>
<b>JAMES ENGEL</b>	<b>8/6/86</b>	<b>MICHAEL SLATTERY</b>	<b>8/6/86</b>

# AMENDMENT TO PAINTERS DISTRICT COUNCIL NO. 2 APPRENTICESHIP AND TRAINING DECLARATION OF TRUST

Effective January 1, 1994, the Trustees of the Painters District Council No. 2 Apprenticeship and Journeymen Training Trust hereby amend the introductory paragraph of the Apprenticeship and Training Declaration of Trust to provide the Trustees are as follows:

**Union Trustees**

Joseph Shatro  
Martin Bergeron  
James Engel

**Employer Trustees**

Frank Wojehowski  
Michael Slattery  
Harold Wies

<b>UNION TRUSTEES:</b>	<b>DATE</b>	<b>MANAGEMENT TRUSTEES:</b>	<b>DATE</b>
Joseph Shatro	11/1/94	Frank Wojehowski	11/7/94
Martin Bergeron	11/1/94	Michael Slattery	11/7/94
James Engel	11/1/94	Harold Wies	11/7/94

## AMENDMENT TO THE PAINTERS DISTRICT COUNCIL NO. 2 APPRENTICESHIP AND TRAINING DECLARATION OF TRUST

The Trustees of the Painters District Council No. 2 Apprenticeship and Journeyman Training Trust hereby amend the introductory paragraph of the Apprenticeship and Training Declaration of Trust to provide the Trustees are as follows:

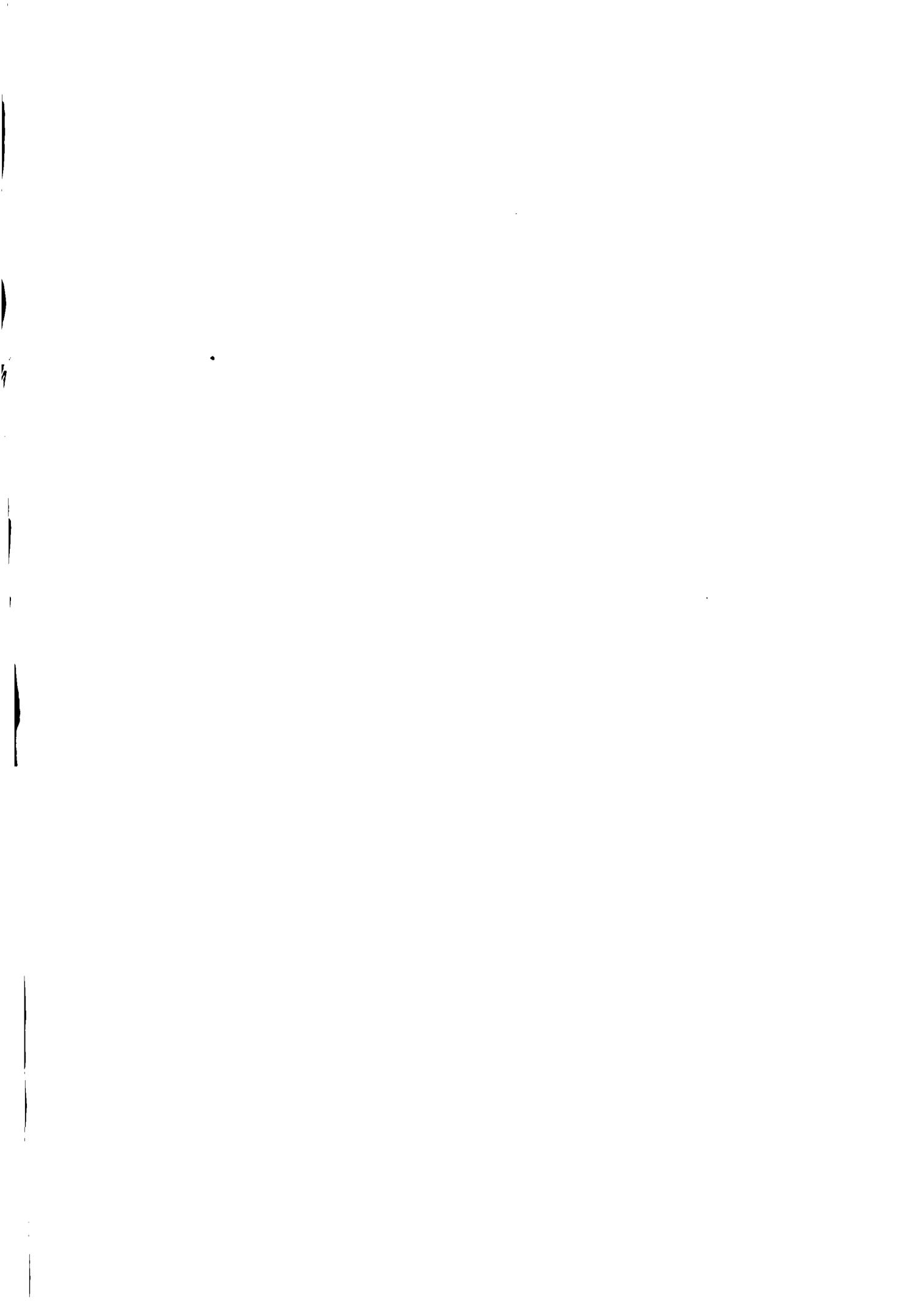
**Employer Trustees**

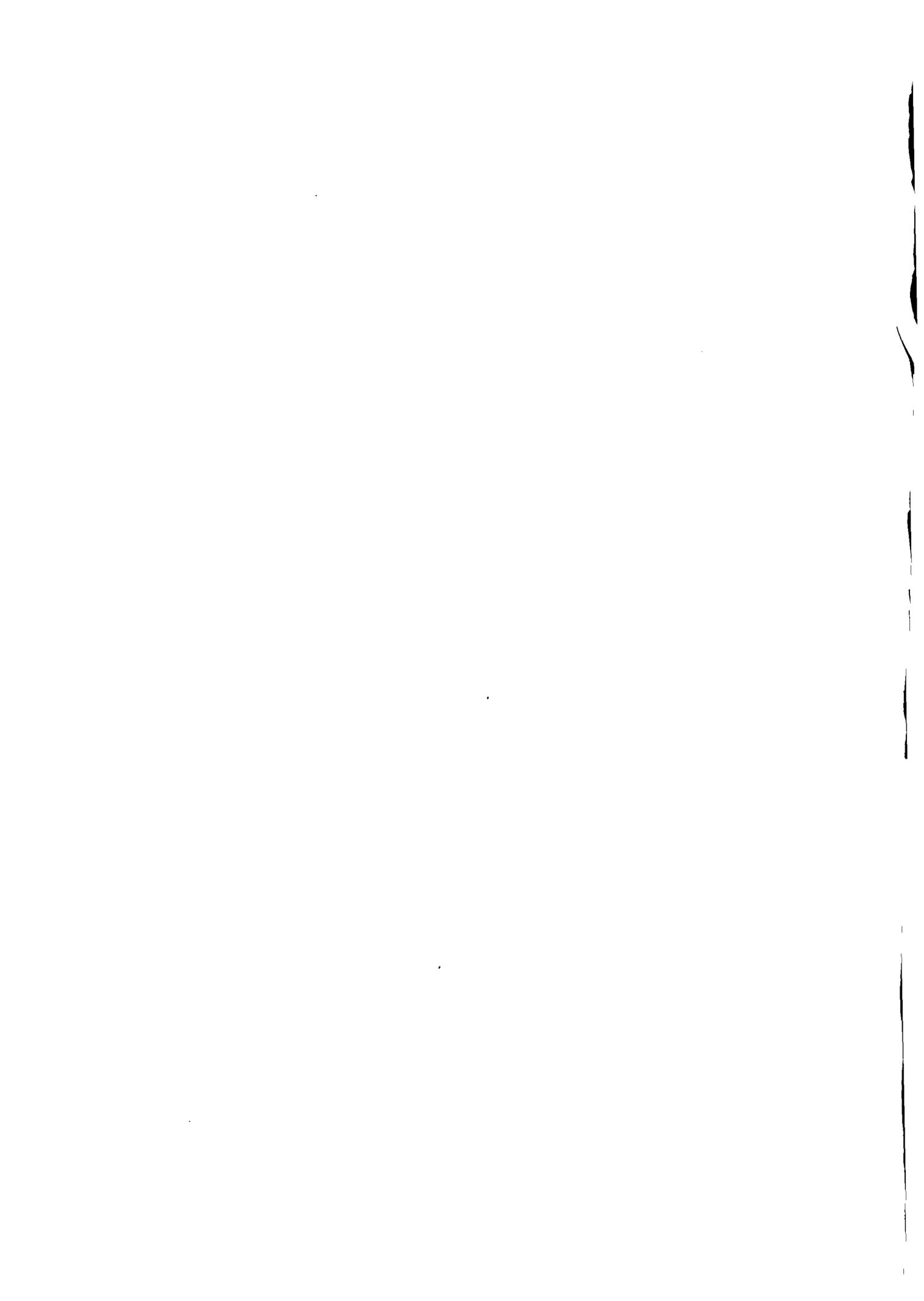
Frank Wojehowski  
Michael Slattery  
Harold Wies

**Union Trustees**

Richard Bryan  
Richard Broeker  
Robert A. Lucks

<b>UNION TRUSTEES</b>	<b>DATE</b>	<b>EMPLOYER TRUSTEES</b>	<b>DATE</b>
RICHARD BRYAN	12-15-97	FRANK WOJEHOWSKI	12-15-97
RICHARD BROEKER	12-15-97	MICHAEL SLATTERY	12-15-97
ROBERT A. LUCKS	12-15-97	HAROLD WIES	12-15-97





# **TRUST AGREEMENT**

## **AGREEMENT AND DECLARATION OF TRUST ESTABLISHING ST. LOUIS CONTRACTING PAINTERS AND DECORATORS FOUNDATION**

THIS AGREEMENT AND DECLARATION OF TRUST, made this 30th day of July, 1974 between The Contractors Painting and Decorators Association, Inc., St. Louis Chapter No. 2, a Missouri corporation. hereinafter sometimes referred to as the "Association" and Robert A. Latta, Martin P. Walsh, John H. Hinrichs, Bernard Slattery, William I. Knopf, and R. Koslow hereinafter sometimes referred to as the "Trustees".

WITNESSETH:

WHEREAS, Employers, under various construction labor contracts negotiated by the Association and District Council No. 2 of the Brotherhood of Painters and Allied Trades, AFL-CIO for and on behalf of said Association's members and other like Employers who agree to and become signatory thereto, have voluntarily agreed to pay into an Industry Advancement Fund.

WHEREAS, to effectuate the foregoing, the parties hereto desire to establish by this instrument this Foundation and to provide for the terms and provisions under which said Foundation and the funds paid to said Foundation to be handled and administered.

NOW, THEREFORE, in consideration of the premises and the agreements herein contained, the undersigned Trustees hereby declare that they will receive, hold and administer all contributions and other money or property whatsoever that may come into their hands as Trustees hereunder, all as herein provided, with the powers, duties, uses, purposes and trusts as hereinafter set forth, to-wit:

### **ARTICLE I**

#### **Name**

This Trust shall be known as the "St. Louis Contracting Painters and Decorators Foundation."

### **ARTICLE II**

#### **Definitions**

As used herein the following terms shall mean:

**Section 1.** "TRUST" or "FOUNDATION". This instrument, including any amendments hereto and all modifications hereof.

**Section 2.** "ASSOCIATION". The Contractors Painting and Decorators Association, Inc., St. Louis Chapter No. 2.

**Section 3.** "TRUSTEE". The undersigned original Trustees hereof and their respective successors named and appointed as hereinafter provided.

### **ARTICLE III**

#### **Establishment of Foundation**

There is hereby established the St. Louis Contracting Painters and Decorators Foundation, contributions to which shall be received, held and administered in accordance with the terms and provisions hereof for the purposes and objectives set forth in Article IV hereof, and all purposes incidental, complimentary and supplemental thereto as determined by the Trustees hereof.

## ARTICLE IV

### Purposes

The FOUNDATION is created for the purposes of receiving, holding, administering and disbursing funds to be used in promoting and advancing the painting contracting business and industry in the City and County of St. Louis and Vicinity, and more particularly, but not limited to employment of professional counsel for advice for contractors in the painting industry within the jurisdiction of Painters District Council No. 2 and for the disbursement of funds to the St. Louis Contractors, Painters and Decorators Industry Advancement Fund for the purpose of employee apprenticeship training, advanced skill training, supervisory training, technical education, safety education and promotion, accident prevention; and plans and means for improving public and personnel relations, market development, standardization of contracts and specifications; job coordination, cooperation and coordination between architects, engineers, contractors, subcontractors and construction owners, collection and distribution of information useful and beneficial to the painting industry, and promotion of modernizing building codes, standardization of codes and otherwise promoting and advancing the interest and common good of the painting contracting industry in the City and County of St. Louis and vicinity.

And the Trustees shall have the power to approve and finance from the FUND means, plans and programs established to carry out the foregoing purpose.

## ARTICLE V

### Use and Application of the Foundation Funds

**Section 1. USE OF THE FOUNDATION FUNDS.** The Trustees shall use and apply the funds of the Foundation for the following purposes:

- (a) To pay and provide for the payment of all reasonable and necessary expenses of handling and administering the Foundation, including, but not limited to, all expenses incurred in connection with the establishment of the Foundation, the employment of administrative, accounting, actuarial, legal, clerical and other expert assistance, the renting or leasing of such premises and the purchasing or leasing of all such materials, supplies and equipment (all of which foregoing acts and things the Trustees shall have power to do) as the Trustees, in their discretion, find necessary or appropriate in the performance of their duties and the administration of the Foundation.
- (b) To pay or provide for payment of all cost and expenses of such means, plans and programs as shall be approved by the Trustees, established for purposes set forth herein for which the Foundation is created, based on budgeted requests from the sponsors of such means, plans and programs, in such amounts as shall be approved by the Trustees.
- (c) To establish and accumulate reserves to be used for the purposes of the Foundation.
- (d) To invest and reinvest monies or other properties of the Foundation until needed for purposes of the Foundation.

**Section 2. DEPOSITORY.** All contributions and other funds received by the Trustees hereunder shall be deposited by them in such bank or banks as the Trustees may designate for that purpose and all withdrawal of Funds from such bank or banks (except hereinafter provided) shall be made only by check signed jointly by two (2) of the Trustees as shall be designated and authorized by action of the Board of Trustees. The Trustees in their discretion by resolution may designate and authorize an agent or employee of the Trust to sign checks upon a separate and specific bank account established for such purpose in such amounts as limited by such resolution.

**Section 3. INVESTMENTS.** The Trustees may hold and invest and reinvest such monies as said Trustees, in their sole discretion, determine are not required for current expenditures, in obligations of the United States of America, any State or Municipality thereof, Savings Accounts or time deposits in Banks and Savings Accounts in Savings and Loan Associations, not to exceed \$10,000.00 in any one bank or Association, and in such stocks, bonds mutual or common funds, secured real estate loans and other investments as said Trustees in their sole discretion, deem safe and appropriate for investments for prudent men.

**Section 4. BONDING.** The Trustees who are empowered and authorized to sign checks, as aforesaid, and each Trustee and Employee or Agent of the Foundation who may be engaged in handling monies may be bonded against fraud and dishonesty, at the expense of the Foundation, in such amount as the Trustees shall determine to be necessary and desirable.

**Section 5. RECEIPT OF CONTRIBUTIONS.** In order to carry out and effectuate the purposes hereof, the Trustees shall have power to specify the place and manner in which payment of contributions to the Foundation shall be made.

**Section 6. MINISTERIAL POWERS.** The Trustees may delegate any of their ministerial powers and duties to any of their employees or agents or one (1) or more of the Trustees.

**Section 7. GENERAL POWERS.** In addition to all powers expressly set forth herein, the Trustees shall have power and authority to do all things and acts incidental thereto and all things and acts deemed necessary or desirable by them for the proper and necessary administration and operation of the Foundation and its objectives as well as all implied powers accorded Trustees.

## ARTICLE VI

### Concerning the Trustees

**Section 1. ADMINISTRATION.** The Foundation shall be administered by a Board of Trustees consisting of six (6) natural persons appointed by the Board of Directors of the Association.

**Section 2. COMPOSITION OF BOARD OF TRUSTEES.** The original Board of Trustees hereof shall consist of the undersigned Trustees and their successors hereunder who have been duly appointed by the Board of Directors of the Association.

**Section 3. OFFICERS.** The Board of Trustees shall at an annual meeting elect or appoint from among its members the following officers of said Board and Foundation to hold office until the next annual meeting of said Board and until their respective successors have been duly appointed and qualified.

A Chairman of the Board who shall preside at all meetings of the Trustees, who shall perform such other duties as the Trustees may from time to time delegate to him.

A Secretary of the Board who shall keep a complete and accurate record of all meetings and proceedings of the Trustees.

**Section 4. MEETINGS OF TRUSTEES.** An annual meeting of the Board of Trustees shall be held on such day of each year as designated by the Trustees, and the Trustees shall hold such other meetings from time to time on call of the Chairman of the Board or on the call of any two members as may be required, provided, that meetings shall be held at least quarterly each year.

**Section 5. BOARD CERTIFICATION.** Certification by the Chairman and Secretary of the Board of Trustees at any particular time as to the number and personnel of the Trustees, as to the officers of the Board of Trustees, or Executive Committee may be relied upon by all persons dealing with the Trustees or the Foundation.

**Section 6. RESIGNATION OF THE TRUSTEES.** A Trustee may resign and be and remain fully discharged from all further duty or responsibility hereunder upon giving thirty (30) days notice in writing thereof to the Secretary of the Board of Trustees, or such shorter notice as the Board of Trustees may accept as sufficient, in which notice there shall be stated a date when such resignation shall take effect; and such resignation shall take effect on the date specified in the notice, unless a successor Trustee shall have been appointed at an earlier date, in which event such resignation shall take effect immediately upon the appointment of such successor Trustee.

**Section 7. REMOVAL OF TRUSTEES.** Any Trustee may be removed from office at any time for any reason by action of the Board of Directors of the Association.

**Section 8. APPOINTMENT OF SUCCESSOR TRUSTEES.** In the event of the death, disqualification, disability, inability, refusal to act, removal, resignation, forfeiture of office or other termination of office of any Trustee hereunder, a successor to fill such vacancy shall be named and appointed forthwith by action of the Board of Directors of the Association. Written certification of such appointment shall be furnished to the Secretary of the Board of Trustees by the Board of Directors of the Association. Any successor Trustee upon his appointment as such and his acceptance in writing filed with the Secretary of the Board of Trustees shall become vested with all title, rights, powers, and duties of a Trustee hereunder with like effect as if originally named as a Trustee.

**Section 9. QUORUM AND VOTING.** All action by the Board of Trustees hereunder shall be by majority vote of the Trustees attending a meeting of the Trustees at which a quorum is present, such quorum to consist of at least a majority of the whole Board of Trustees, and any action so taken shall have the same effect and force as if taken by all of the Trustees, provided, that action by the Trustees may also be taken by them in writing without a meeting, provided, that in such case there shall be unanimous concurrence in such action, evidenced in writing by all of said Trustees then in office.

**Section 10. NOTICE OF MEETINGS.** The Chairman or the Vice-Chairman of the Board of Trustees may call a meeting of the Trustees at any time by giving at least five (5) days written notice by registered mail of the time and place thereof to the remaining Trustees. Any two (2) Trustees may call a meeting of the Trustees at any time by giving like notice. Meetings of the Trustees may also be held at any time without notice if all of the Trustees are present or consent thereto in writing.

**Section 11. TERM OF TRUSTEES.** Each Trustee or Successor Trustee hereunder shall serve for a term of three (3) years or until his death, incapacity, resignation, forfeiture or other termination of office, provided, however, that two (2) of the original Trustees, as designated by the Board of Directors of the Association shall serve for a term of two (2) years only, and two of the original Trustees designated by the Board of Directors of the Association shall serve for a term of one (1) year only. The Association shall record in its minutes the names of those Trustees serving abbreviated terms and the respective length of their terms.

**Section 12. BOOKS AND RECORDS.** The Board of Trustees shall keep true and accurate books of account and records of all their transactions, which shall be audited annually, or more often as may be required by action of the Trustees by a certified public accountant. A duly signed and certified copy thereof shall be delivered to the Association and copies thereof made available to any contributing Employer.

**Section 13. EMOLUMENTS AND EXPENSES OF TRUSTEES.** No Trustee shall receive or accept any compensation or other emolument from the Foundation or other source, for any service rendered in connection with the Trust, except that Trustees shall be entitled to be reimbursed by the the Fund for all reasonable and necessary expenses which they may incur in attendance at meetings of Trustees or the performance of their duties as such, including, among other things, all expenses they may incur to defend or prosecute any action or actions brought against or by them, individually or collectively, by virtue of serving or having served as a Trustee hereof.

**Section 14. EXONERATION OF TRUSTEES.** No Trustee hereof shall be liable for any act of omission or commission by or of any other Trustee or Trustees or of any agent, employee, attorney, auditor, accountant or administrator selected by the Trustees with reasonable care, nor shall any Trustee be individually or personally liable for any obligation of the Trustees acting as such, or for any obligation of the Foundation or for his own acts or failure to act, unless said acts or failure to act shall have been with intent to defraud the Foundation. In the event any Trustee hereunder shall become personally liable in damages arising out of any civil action brought against him by virtue of any action of the Trustees, hereunder, he shall be saved harmless by and reimbursed by the Foundation for all costs, expenses and/or the amount of any judgement rendered against him.

Said Trustees shall not be liable for acting upon any papers, documents, data or information believed by them to be genuine and accurate and to be made, executed and delivered by proper parties, nor shall they be liable for any act concerning which they relied upon the opinion of legal, accounting or other professional council.

**Section 15. MANNER OF VOTING.** Each Trustee shall have one (1) vote upon all matters.

**Section 16. RULES AND REGULATIONS.** The Board of Trustees may establish such rules and regulations governing procedures of the Board, including designation of necessary committees and procedures for the administration of the Foundation.

## **ARTICLE VII**

### **Amendments**

**Section 1. METHOD OF AMENDMENT.** This Agreement and Declaration of Trust may be amended at any time and from time to time by a majority vote of all of the Trustees constituting the then Board of Trustees provided that no amendment shall divert the Foundation funds, or any part thereof, to purposes other than those herein provided, unless consented to and ratified by action of the Board of Directors of the Association.

**Section 2. NOTICE REQUIRED.** Any action by the Trustees to amend this Agreement and Declaration of Trust pursuant to the foregoing provision shall be taken at a meeting called in accordance with the provisions of Section 10 of Article VI hereof.

## **ARTICLE VIII**

### **Termination of Foundation**

**Section 1. METHOD OF TERMINATION.** This Trust may also be terminated by a duly adopted resolution of the Board of Directors of the Association, ratified by a majority of its members.

**Section 2. APPLICATION OF FUND ON TERMINATION.** In the event of termination of this Trust for any reason, the Trustees, after payment of all expenses, shall pay over any assets remaining, if any, to a charitable fund selected by the Board of Directors of the Association.

## **ARTICLE IX**

### **Contributions**

**Section 1.** Contributions to this Foundation may be accepted from contractors obligated under the collective bargaining agreement and others. Further, the Trustees shall have the power to set the rules and regulations and determine which such remittances shall be made to it.

## **ARTICLE X**

### **Miscellaneous Provisions**

**Section 1. LIMITATION ON BENEFICIAL INTEREST.** No employee, employer or beneficiary of any plan approved hereunder for payment of funds hereof, or any person claiming by or through any of the same, or otherwise or any person, corporation or Association shall have any vested right, title or interest in or to the Foundation funds or any part thereof.

**Section 2. DECISIONS OF TRUSTEES.** All decisions of the Trustees hereunder upon any matter within the scope of their authority shall be final and binding upon all persons.

**Section 3. DEALING WITH TRUSTEES.** No person, partnership, corporation or Association dealing with the Trustees shall be obliged to see to the application of any funds or property of the Foundation or to see that the terms of this Trust have been complied with, or be obliged to inquire into the necessity or expediency of any act of the Trustees, and every instrument executed by the Trustees shall be conclusive in favor of any person, partnership, corporation or Association relying thereon that at the time of the delivery of such instrument the Trust was in full force and effect; that said instrument was executed in accordance with the terms and conditions of the Trust; and that the Trustees were duly authorized and empowered to execute such instrument.

**Section 4. MISSOURI LAW TO GOVERN.** This Trust is accepted by the Trustees in the State of Missouri, and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of that State.

**Section 5. USE OF WORDS HEREIN.** Whenever any words are used in this Agreement and Declaration of Trust in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations applicable, and whenever used in the singular form they shall be so construed as though they were also in plural form in all situations applicable, and vice versa.

**IN WITNESS WHEREOF,** the undersigned, the Contractors Painting and Decorators Association, Inc. St. Louis Chapter No. 2 and the undersigned trustees have signed this Agreement and Declaration of Trust, the undersigned Trustees thereby evidencing their acceptance of their respective trusteeships hereunder and their agreement to act hereunder, all the day and year first above written.

**THE CONTRACTORS PAINTING AND DECORATORS  
ASSOCIATION, INC., ST. LOUIS CHAPTER NO. 2**

Donald J. Herbster  
R. Koslow  
"Association"

Robert A. Latta  
Martin P. Walsh  
John H. Hinrichs

Bernard Slattery  
William I. Knopf  
R. Koslow  
"Trustees"

**AMENDMENT TO  
ST. LOUIS CONTRACTING PAINTERS AND DECORATORS  
FOUNDATION TRUST AGREEMENT**

Come now the Trustees of the ST LOUIS CONTRACTING PAINTERS AND DECORATORS FOUNDATION and amend the Trust Agreement as follows:

Article V, Section 3, Investments, is deleted in whole and replaced as follows:

**"Section 3. INVESTMENTS.** The Trustees may hold and invest and reinvest such monies as said Trustees, in their sole discretion, determine are not required for current expenditures, in obligations of the United States of America in any amount; in savings accounts or time deposits in banks and savings accounts and savings and loan associations up to the limit of insurance of the institution; and up to 25% of such money in a noninsured account, and in such stock, bonds, mutual or common funds, secured real estate loans and other investments as said Trustees, in their sole discretion, deem safe and appropriate for investments for prudent men."

IN WITNESS WHEREOF, the undersigned Trustees of the ST. LOUIS CONTRACTING PAINTERS AND DECORATORS FOUNDATION have by their signatures accepted this amendment to the St. Louis Contracting Painters and Decorators Foundation Trust Agreement.

WALTER BAZAN  
H. FRED PHILIPP, JR.  
ROBERT A. LATTA  
FRANCIS R. WOJEHOWSKI  
ROBERT M. HEROLD  
RANDAL FREESE

TRUSTEES

**AMENDMENT TO  
ST. LOUIS CONTRACTING PAINTERS AND DECORATORS  
FOUNDATION TRUST AGREEMENT**

Come now the Trustees of the ST. LOUIS CONTRACTING PAINTERS AND DECORATORS FOUNDATION and amend the Trust Agreement as follows:

Article IX - Contributions is deleted and the following is submitted in its place:

Section 1. Contributions to this Foundation may be accepted from contractors obligated under the collective bargaining agreement and others. Further, the Trustees shall have the power to set the rules and regulations and determine which such remittances shall be made to it.

IN WITNESS WHEREOF, the undersigned Trustees of the ST. LOUIS CONTRACTING PAINTERS AND DECORATORS FOUNDATION have by their signatures accepted this amendment to the St. Louis Contracting Painters and Decorators Foundation Trust Agreement.

ROBERT A. LATTA  
MARTIN P. WALSH  
WILLIAM I. KNOPF  
BERNARD SLATTERY  
R. KOSLOW  
JOHN H. HINRICHS

“TRUSTEES”

**THIRD AMENDMENT TO TRUST AGREEMENT  
AGREEMENT AND DECLARATION OF TRUST ESTABLISHING ST.  
LOUIS CONTRACTING PAINTERS AND DECORATORS FOUNDATION**

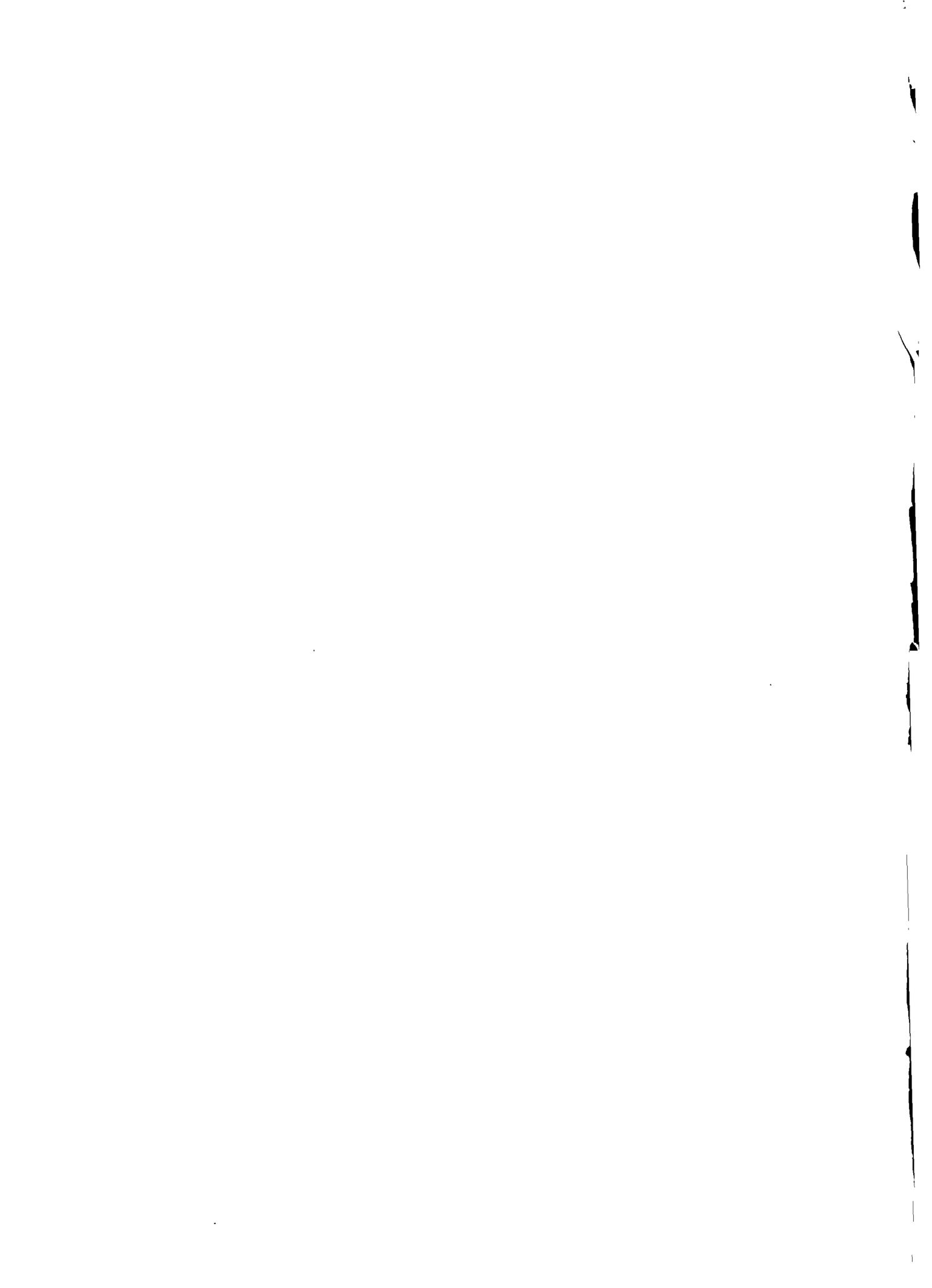
This Third Amendment dated February 23, 1988, to the Trust Agreement; Agreement and Declaration of Trust Establishing St. Louis Contracting Painters and Decorators Foundation dated July 30, 1974, as amended through the date hereof (said Agreement, as amended, hereinafter referred to as the "Trust Agreement") is made by the Trustees (the "Trustees") of the St. Louis Contracting Painters and Decorators Foundation (the "Foundation").

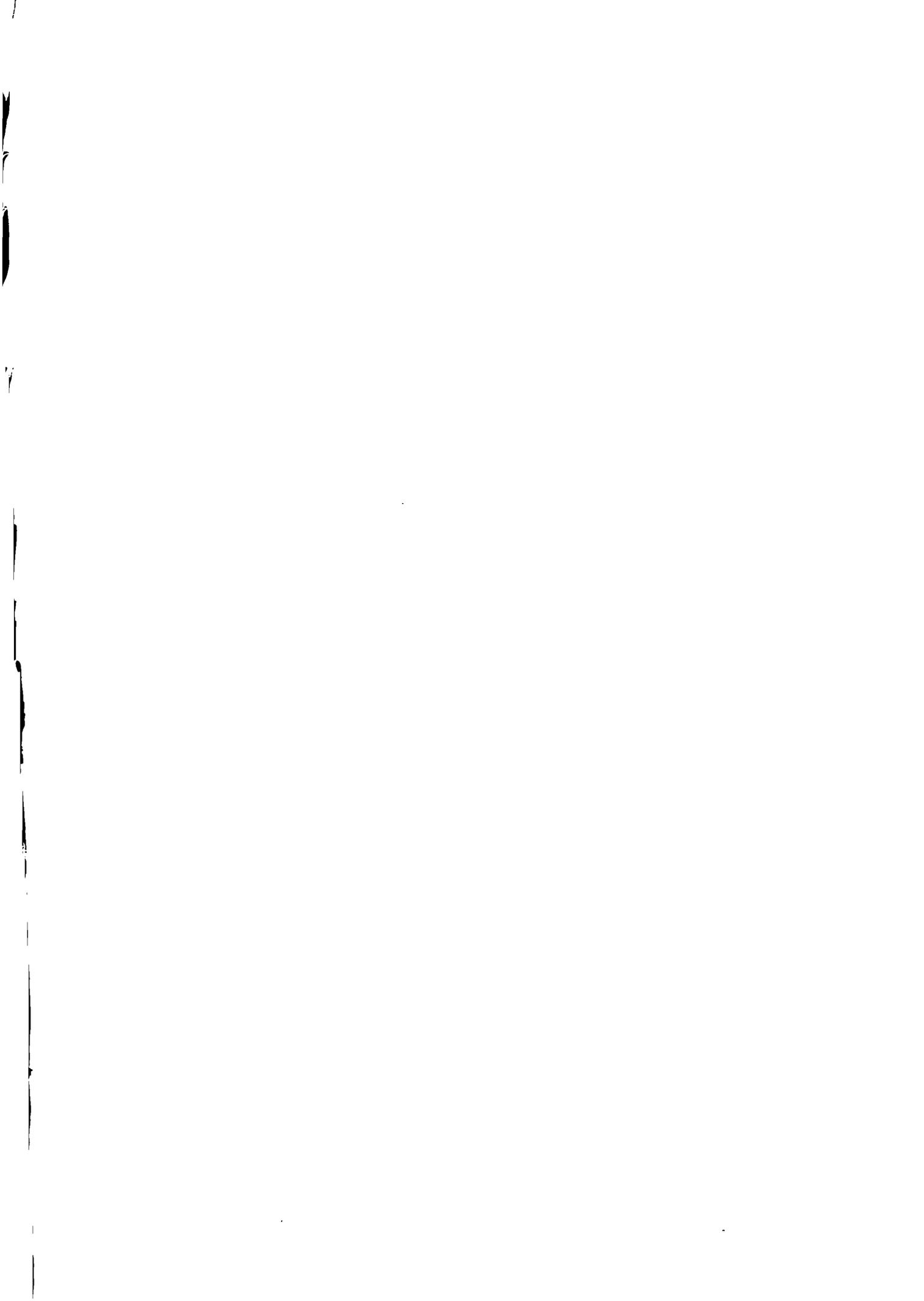
Pursuant to Section 1 of Article VII of the Trust Agreement, the Trustees hereby amend Paragraph (a) of Section 1 of Article V of the Trust Agreement (said Article V entitled "Use and Application of Foundation") to read as follows:

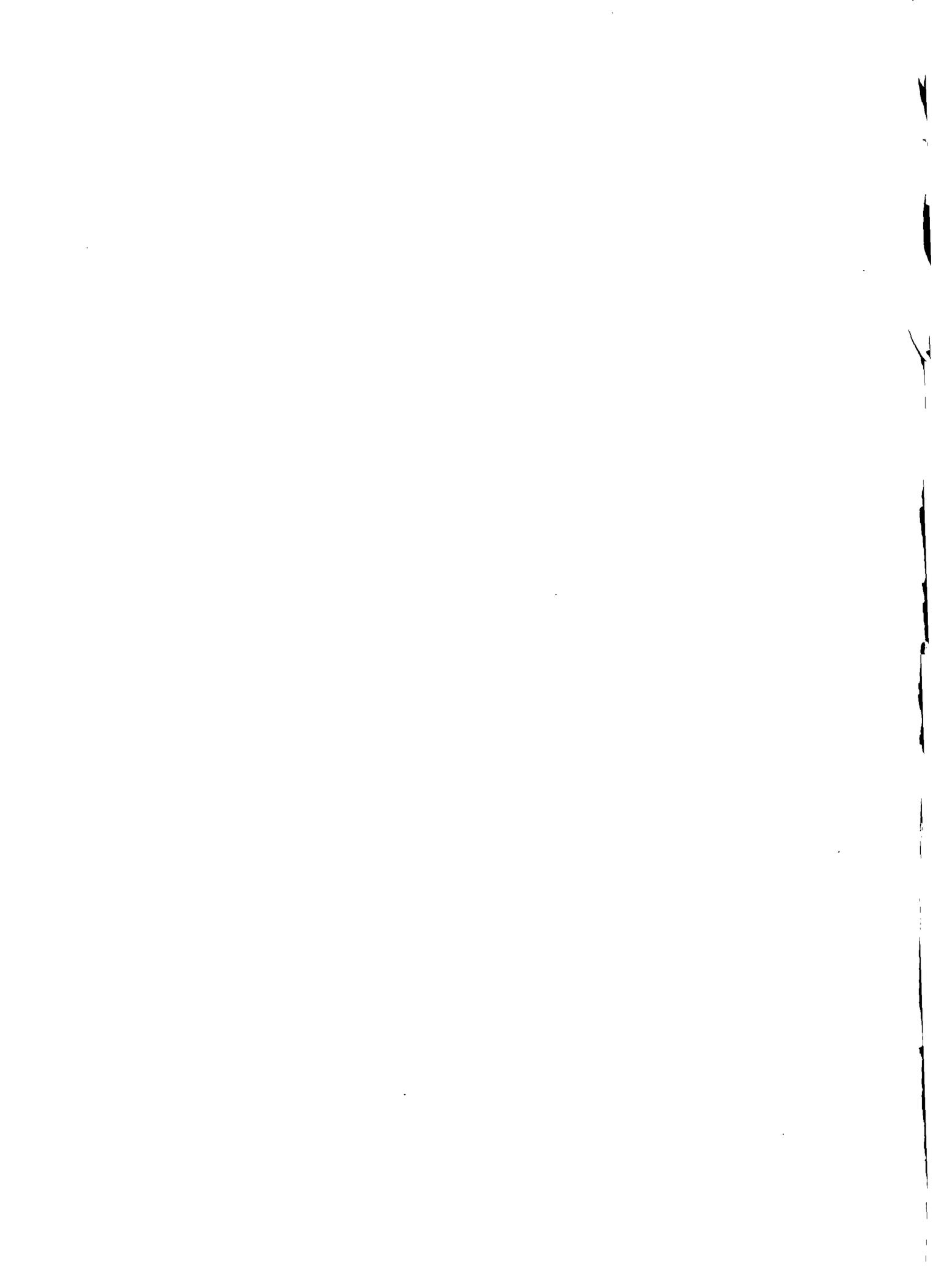
(a) To pay and provide for the payment of all reasonable and necessary expenses of handing and administering the Foundation, including, but not limited to, all expenses incurred in connection with the establishment of the Foundation, the employment of administrative, accounting, actuarial, legal, clerical and other expert assistance, the purchase, renting or leasing of such premises and the purchasing or leasing of all such materials, supplies and equipment (all of which foregoing acts and things the Trustee shall have power to do) as the Trustees, in their discretion, find necessary or appropriate in the performance of their duties and the administration of the Foundation.

In WITNESS WHEREOF, the undersigned Trustees of the Foundation have by their signature accepted this amendment to the Trust Agreement as of the date first written above.

WALTER BAZAN, SR.  
RUSSELL COLBY  
ROBERT HEROLD  
JOSEPH WARD  
JOHN BENDER  
FRANK WOJEHOWSKI







# **BYLAWS OF THE ST. LOUIS PAINTERS AND DECORATORS JOINT BOARD, INC.**

## **I**

### **ST. LOUIS PAINTERS AND DECORATORS JOINT BOARD, INC.**

The St. Louis Painters and Decorators Joint Board, Inc. (hereinafter the "Joint Board") is a pro forma decree corporation originally established on January 17, 1951. These Bylaws shall govern the operation and administration of the Joint Board.

## **II**

### **BOARD OF DIRECTORS**

The Board of Directors shall have the control, direction and management of the affairs and finances of the Joint Board. The Board of Directors shall consist of eight Directors. There shall be two classes of Directors. Four Directors shall be selected by the Contracting Painters and Decorators Association, Chapter No. 2 (hereinafter "the Association") and four Directors shall be selected by Painters District Council No. 2 (hereinafter "the Union"). The Association and the Union shall each select two Alternate Directors. Each Director shall hold office for a one-year term and may thereafter be selected to serve for successive one-year terms. The Association may remove a Director selected by it, and the Union may remove a Director selected by it during his term of service by providing 30 days' advance written notice to the Joint Board. The Director subject of such notification shall be deemed removed from office on the thirtieth day following receipt of the notification at the office of the Joint Board. The Association or the Union, as the case may be, shall select a successor Director within 30 days after the effective date of the removal of a Director. The removal of a Director and/or the failure of the Association or Union to replace a removed Director shall not prohibit the remaining Directors from transacting business in accordance with these Bylaws.

## **III**

### **OFFICERS**

The Board of Directors shall elect from their members a President, Vice-President, Secretary and Treasurer. The President and Treasurer shall be selected from the class of Directors elected by the Association, and the Vice-President and Secretary shall be elected from the class of Directors selected by the Union. Officers shall serve for terms of one year and may be elected to successive one-year terms.

The President shall preside as chairman at all meetings of the Board of Directors. The Vice-President shall serve as the chairman of a meeting of the Board of Directors in the absence of the President. The Secretary shall keep the minutes of all meetings of the Board of Directors and shall provide notice of meetings of the Board of Directors as provided in Article IV of these Bylaws. The Secretary shall be the custodian of the records of the Joint Board. The Secretary shall co-sign all checks along with the Treasurer. The Treasurer shall keep, or cause to be kept, full and accurate accounts of receipts and disbursements of the Joint Board. He shall co-sign checks along with the Secretary for all disbursements approved by the Board of Directors. He shall make a report of receipts and disbursements to the Board of Directors at any time requested.

The officers may exercise such other powers and perform such other duties as are delegated to them by the Board of Directors.

## IV MEETINGS

Regular meetings of the Board of Directors shall be on the second Tuesday of each month. The President, the Secretary or any three Directors may call a special meeting of the Board of Directors. Notice of the time and place of each regular meeting shall be mailed, telegraphed or personally delivered to each Director and Alternate at his home or place of business. Notice of a special meeting of the Board of Directors stating the date, time, place and purpose or purposes of the special meeting shall be mailed, telegraphed or hand-delivered to each Director and Alternate Director at his home or place of business by the party or parties calling the special meeting at least five days prior to the date designated for the special meeting. The Directors may by unanimous written consent waive the notice requirements of this Article as to any regular or special meeting.

A quorum for the transaction of business shall exist when at least six Directors or Alternates are present at a regular or special meeting, provided that at least three Directors or Alternates selected by the Association and three Directors or Alternates selected by the Union are present.

Alternate Directors shall be entitled to attend all meetings of the Board of Directors and shall be entitled to cast a vote on any question before the Joint Board only in the absence of a Director of the same class. When voting on any question before the Joint Board, the class of Directors appointed by the Association and the class of Directors appointed by the Union shall at all times have equal voting strength irrespective of the number of Directors present and voting. Subject to the provisions of this paragraph, decisions of the Joint Board shall be by majority vote.

## V POWERS OF THE BOARD; HEARINGS

The Joint Board shall have the authority to decide, adjust and remedy disputes between the Union and any Employer party to a collective bargaining agreement incorporating these Bylaws and to make final and binding interpretations of the collective bargaining agreement in connection therewith. The Joint Board shall have the power to summon before it and to question and examine any Employer or the Union.

The Joint Board shall have the power to require of any Employer or the Union the production of any records deemed by the Board to be relevant to any case where an alleged violation of the collective bargaining agreement is involved. In addition, but not by way of limitation, where it is alleged that an Employer has not paid wages and/or fringe benefits required by the collective bargaining agreement or has failed to file timely reports concerning the employees in its employ, the Joint Board has the authority to require such Employer to produce its cash disbursement records, payroll tax returns, payroll time cards and related records, reports to labor organizations or trust funds, bank statements including cancelled checks and general ledgers.

The Joint Board shall conduct a hearing with respect to any grievance referred to it pursuant to a collective bargaining agreement between an Employer and the Union. The Joint Board shall summon the charged party to appear before it by providing the charged party with written notification of the date, time and place of the hearing on such grievance. Notice of hearing shall be sent to the charged party at least 15 days prior to the date set for the hearing. The charging party shall receive a copy of the notice of hearing.

The failure of a charged party who has been notified of a grievance in accordance with the preceding paragraph to appear at the hearing shall constitute a waiver of that party's right to be present, and notwithstanding the failure of the charged party to appear, the Board shall have full power to decide and remedy the grievance.

A majority decision of the Joint Board shall be final and binding on the parties to the grievance. Where it is decided by the Board that the collective bargaining agreement has been violated, the Board is empowered to provide an appropriate remedy including, but not limited to, the assessment of damages and/or the assessment of liquidated damages.

Except in the case of a grievance involving disciplinary action against an employee, the charging party shall first present its evidence. Thereafter, the charged party shall submit its evidence. In the case of a grievance involving disciplinary action against an employee, the employer shall first present its evidence.

Formal rules of evidence shall not apply to grievance hearings before the Joint Board. The Joint Board, however, shall have the authority to exclude evidence as it deems appropriate.

Both the charged party and the charging party shall receive written notice of any grievance decision of the Joint Board.

The Joint Board shall have authority to prescribe rules and regulations with respect to the conduct of grievance hearings.

## **VI FUNDING**

The Joint Board shall be funded by contributions from employers as provided by the collective bargaining agreement. Additionally, amounts assessed as liquidated damages shall be utilized to defray the costs of the operation of the Joint Board.

The Joint Board shall have the authority to make such expenditures as it deems necessary to the performance of its obligations and duties.

## **VII NO INDIVIDUAL LIABILITY**

No Director or Alternate Director of the Joint Board shall be held liable by any party for any conduct within the scope of his duties as a Director or Alternate Director of the Joint Board.

## **VIII AMENDMENTS**

The Board of Directors shall have the sole right to adopt amendments to these Bylaws.

## **IX CONSTRUCTION AND SEVERABILITY**

It is intended that these Bylaws be construed and applied consistent with the National Labor Relations Act, as amended, the Labor Management Relations Act, as amended, and other provisions of the law.

If any provision or application of these Bylaws should be declared illegal or invalid, such declaration of illegality or invalidity shall not affect the other provisions of these Bylaws unless the continued operation of the other provisions of these Bylaws would be impossible. These Bylaws are adopted effective February 8, 1983.

### **ASSOCIATION DIRECTORS**

**PRESIDENT RICHARD KOSLOW  
WALTER BAZAN  
RANDALL F. FREESE  
JOSEPH WARD**

### **UNION DIRECTORS**

**SECRETARY HERB FISHER  
JOSEPH SHATRO  
JAMES B. COX**

# AMENDMENT TO THE BYLAWS OF THE ST. LOUIS PAINTERS AND DECORATORS JOINT TRADE BOARD

The Board of Directors of the St. Louis Painters and Decorators Joint Trade Board hereby adopts the following amendment to the Bylaws of the St. Louis Painters and Decorators Joint Board, Inc.:

The first sentence of Article IV of the Bylaws is hereby deleted and replaced by the following provision:

“Regular meetings of the Board of Directors shall be on the second Tuesday of January, April, July and October of each year.”

This amendment shall become effective April 9, 1985.

	DATE		DATE
RANDALL FREESE	4/11/85	RICHARD BRYAN	4/11/85
ROBERT HEROLD	4/11/85	IRVIN KEY	4/11/85
WILLIAM B. VOORHEES	4/11/85	JAMES E. ENGEL	4/11/85
FRANCIS R. WOJEHOWSKI	4/11/85	MARTIN BERGERON	4/11/85

## AMENDMENT TO THE BYLAWS OF THE ST. LOUIS PAINTERS AND DECORATORS JOINT BOARD, INC.

Pursuant to Article VIII of the Bylaws of the St. Louis Painters and Decorators Joint Board, Inc., the Directors hereby adopt the following amendment to said Bylaws to be effective July 12, 1988:

Article V is hereby amended by adding the following language at the conclusion of the first paragraph of Article V:

The Joint Board shall also have the authority to sponsor, conduct and/or assist in meetings or negotiations between Painters District Council No. 2 and employers having a collective bargaining relationship with said Union for the purpose of discussing matters of mutual interest to the Union and the employers including but not limited to grievances or disputes arising under the collective bargaining agreement, negotiations for a new collective bargaining agreement and amendments to an existing collective bargaining agreement. Expenditures for sponsoring, conducting or assisting in any of the aforesaid meetings and negotiations shall be made at the discretion of the Directors of the Joint Trade Board.

ASSOCIATION DIRECTORS	DATE	UNION DIRECTORS	DATE
RANDY FREESE	7/12/88	JIM SMITH	7/12/88
WALTER BAZAN, JR.	7/12/88	RICHARD BRYAN	7/12/88
WALTER BAZAN, SR.	7/12/88	IRVIN KEY	7/12/88
ROY HAGEMEYER	7/12/88	MARTIN BERGERON	7/12/88

