

EMPIRE STATE CARPENTERS ANNUITY PLAN

ARTICLE 1

DEFINITIONS

In this Plan, the following terms have the meanings specified below:

1.1 ACCOUNT OR INDIVIDUAL ACCOUNT. "Account" or "Individual Account" for a Participant means the individual account created and maintained for each Participant in the Plan to which are added contributions made to the Fund because of his employment, and which is augmented or diminished by its share of Fund investment results, and from which is subtracted its share of Plan and Fund operational expenses and benefit distributions.

1.2 AGREEMENT AND DECLARATION OF TRUST. "Agreement and Declaration of Trust" means the instrument, dated as of January 1, 1961, executed by the Council, and certain Employer associations, Employers and Trustees, as amended and restated thereafter.

1.3 ANNUITANT. "Annuitant" means an Employee who retires, or who is otherwise eligible to receive his Account, and who receives a benefit from the Fund, and his Beneficiary who may be eligible for benefits.

1.4 BENEFICIARY. The term "Beneficiary" or "Beneficiaries" as used herein will mean the Beneficiary or Beneficiaries designated by an Employee to receive any benefits which may become payable in accordance with the provisions herein to said Employee's Beneficiary or Beneficiaries upon his death.

1.5 COLLECTIVE BARGAINING AGREEMENT. "Collective Bargaining Agreement" means any written agreement between the Council and an Employer which requires Employer contributions to be made to the Fund.

1.6 CONTRIBUTION HOUR. "Contribution Hour" means an hour for which a contribution is required by a Collective Bargaining Agreement between an Employer and the Council, or other Agreement between the Fund and another fund, or other Agreement between the Employer and the Trustees, or other Agreement between the Fund and the Council or Local Union, to be made to the Fund on behalf of the work of an Employee.

1.7 COUNCIL. "Council" means the EMPIRE STATE REGIONAL COUNCIL OF CARPENTERS affiliated with the United Brotherhood of Carpenters & Joiners of America.

1.8 COVERED EMPLOYMENT. "Covered Employment" means employment of an Employee by an Employer in a job category covered by a Collective Bargaining Agreement requiring Employer contributions to be made to this Fund.

1.9 EFFECTIVE DATE. The "Effective Date" of this Restated Plan shall be November 1, 2004.

1.10 EMPLOYEE. "Employee" means a person in the employ of an Employer who works in a classification for which the Council acts as collective bargaining representative. The term shall also include a person for whom contributions are required to be transferred to the Fund by another retirement fund in accordance with an Agreement between the two funds. The term shall also include each person for whom contributions are required to be made to the Fund in accordance with a written Agreement between an Employer and the Trustees. The term shall also include an individual in the employ of the Council or a Local Union (including, but not limited to, the elected business representatives and financial secretaries of a Local Union or Employees of any of the Empire State Carpenters Fringe Benefit Funds). The term "Employee" also includes a leased Employee of an Employer, within the meaning of Section 414(n) of the Internal Revenue Code, who otherwise meets the conditions for participation, vesting and/or benefit accrual under the Fund.

1.11 EMPLOYER. "Employer" means any Employer who is required to pay contributions to the Fund for the purposes of this Plan as the result of an Agreement between such Employer (or an association of Employers) and the Council, or between such Employer and the Trustees. The term "Employer" shall also include the Council, Local Union, or any of the Empire State Carpenters Fringe Benefit Funds provided that each such entity agrees with the Fund to make contributions for its respective Employees at the same rate as in effect for an Employer. The term "Employer" also refers to all corporations, trades or businesses under common control with the Employer within the meaning of Section 414(m) of the Internal Revenue Code and all other businesses aggregated with the Employer under Section 414(o) of the Internal Revenue Code.

1.12 ERISA. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

1.13 FUND. "Fund" means the trust estate created by and defined in the Agreement and Declaration of Trust.

1.14 LOCAL UNION. "Local Union" means any one of the Local Unions affiliated with the Council, and any other Local Union which may become affiliated with the Council.

1.15 MONTH. "Month" means the calendar month.

1.16 PARTICIPANT. A "Participant" is an Employee for whom an Individual Account has been established pursuant to this Plan.

1.17 PLAN. "Plan" means the rules and regulations embodied herein. The Plan is a profit sharing plan.

1.18 PLAN HOUR. "Plan Hour" means:

- A. a Contribution Hour; and

- B. 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 absences, with no more than 501 hours of service being credited under this paragraph for a single period of absence. Such hours under this paragraph being calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations which are incorporated herein by this reference; and
- C. each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer; however, the same hours of service will not be credited both under paragraph A. or B. as the case may be, and under this paragraph C. These hours will be credited to the Employee for the Plan Year or Years to which the award or agreement pertains rather than the Plan Year in which the award, agreement or payment is made.

1.19 PLAN YEAR. "Plan Year" means the 12 consecutive calendar months ending on June 30.

1.20 TRUSTEES. "Trustees" mean the Trustees designated in the Agreement and Declaration of Trust, together with their successor or successors designated in the manner provided therein.

1.21 VALUATION DATE. "Valuation Date" means June 30th of each calendar year.

1.22 EMPIRE STATE CARPENTERS FRINGE BENEFIT FUNDS. The "Empire State Carpenters Fringe Benefit Funds" means the Empire State Carpenters Pension Fund, Empire State Carpenters Welfare Fund, Empire State Carpenters Annuity Fund [and the Empire State Carpenters Apprenticeship Committee].

1.23 QUALIFIED MILITARY SERVICE. "Qualified Military Service" means any service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code) by any individual if such individual is entitled to reemployment rights under such Chapter with respect to such service. Notwithstanding any other provision to the contrary, contributions, benefits and service credit with respect to Qualified Military Service will be provided in accordance with the requirements of Section 414(u) of the Internal Revenue Code.

1.24 SPOUSE. "Spouse" means a person to whom a Participant is considered married under the law of the Participant's domicile, provided such marriage occurred one or more years prior to the Participant's death or, if earlier, the commencement date of benefit payments under this Plan.

ARTICLE 2

PARTICIPATION

2.1 COMMENCEMENT OF PARTICIPATION. An Employee who earns at least one Plan Hour shall become a Participant in this Plan on the first day on which he earns such Plan Hour.

2.2 PERIODIC BENEFIT RECIPIENT A PARTICIPANT. Any person receiving a periodic benefit under this Plan shall also be a Participant hereunder.

2.3 TERMINATION OF PARTICIPATION.

A Participant's participation in this Plan shall cease on the earliest of:

- A. his death;
- B. the depletion of his Account to zero; and
- C. if receiving a periodic benefit hereunder, the date when such benefit ceases permanently.

ARTICLE 3

VESTING

3.1 VESTING. A Participant shall be vested (i.e., he has a non-forfeitable right to his Account) as soon as he becomes a Participant in the Plan.

ARTICLE 4

PARTICIPANT'S ACCOUNT

4.1 INDIVIDUAL ACCOUNT. The Trustees shall maintain an Account for each Participant hereunder. Such Participant's Account shall be credited with the Employer required contributions made to and received by the Fund because of his work as evidenced by a delivery of proper "stamps" to the Trustees by the Employee or, if payment of the required contributions for an Employee is made by a means other than "stamps", by delivery of check, money order, direct deposit or other payment to the Trustees. Benefit distributions under the Plan associated with the Participant shall be subtracted from his Account. On or about each Valuation Date, the Participant's Account shall be augmented or diminished by his fair share of the Fund investment results and his fair share of Plan and Fund operating expenses. If a Participant is eligible for and has elected self-directed investments, the Participant's Account will be credited or debited with returns and losses as provided in Article 15. On each Valuation Date or as otherwise determined

by the Trustees, there shall be an administration charge as determined by the Trustees subtracted from each Account.

4.2 INDIVIDUAL ACCOUNT VALUE. The value of a Participant's Account at any date shall be the result of adding (or subtracting) all of his fair share of Fund net investment results determined in accordance with 4.3, prior to such date to (from) the contributions received by the Trustees, for his Account, prior to such date and subtracting all benefit distributions made from his account prior to such date. Employer contributions shall be credited to a Participant's Account on the date the Trustees receive delivery of the "stamps", check, money order, direct deposit or other payment to the Trustees, evidencing the appropriate employment. However, if, during the first month of a Plan Year, a "stamp," check or money order is delivered to the Trustees on behalf of an Employee's employment for a period of time that is before such Plan Year, then the amount of contribution for such employment shall be credited to the Participant's Account as of the end of the immediately preceding Plan Year.

4.3 VALUATION DATE. The Trustees, as of each Valuation Date, shall obtain a valuation of all assets and securities held in the Fund in accordance with a method consistently followed and uniformly applied. As of each Valuation Date, the Trustees shall determine the total of all interest, investment or other income received by the Fund during the Plan Year and from this amount shall be deducted the operating expenses of the Plan and Fund. If such interest, investment or other income is insufficient to meet the total of the operating expenses so deducted by the Trustees, then any such remaining deficit shall be charged against the principal of the Fund.

4.4 ANNUAL STATEMENT. Annually, each Employee who has an Account shall receive an annual statement reflecting the balance in his Account.

ARTICLE 5

NORMAL ANNUITY BENEFIT

5.1 NORMAL ANNUITY DATE. Normal Annuity Date for a Participant retiring from the status of Employee hereunder shall be the first day of the month, coinciding with or otherwise, next following the latest of A, B and C below:

- A. his 50th birthday;
- B. thirty (30) days following the date of the Participant's proper application for the Normal Annuity (unless the value of his Account is less than \$5,000.00, in which case there shall be no thirty (30) days waiting period); and
- C. the date of his complete withdrawal from work as an Employee.

5.2 NORMAL ANNUITY. Each Participant who attains his Normal Annuity Date shall be retired and granted a Normal Form of Benefit hereunder.

5.3 NORMAL FORM OF BENEFIT. The normal form of benefit distribution to a Participant who does not have a Spouse is an annuity for the life of the Participant that is the actuarial equivalent of the Participant's Account as of the date benefits commence. The normal form of benefit distribution to a Participant with a Spouse is a Qualified Joint and Survivor Annuity. A Qualified Joint and Survivor Annuity is an annuity for the life of the Participant, with a survivor annuity for the life of the Participant's Spouse that is one-half of the amount of the annuity payable during the life of the Participant, and that is the actuarial equivalent of the Participant's Account as of the date benefits commence. The actuarial equivalent of a benefit will be calculated using a [5] percent interest rate and the life expectancy table prescribed in regulations under Section 417(e) of the Internal Revenue Code. The complete balance of a Participant's account will be used to provide the normal form of benefit. Upon the commencement of the normal form of benefit the Participant's account will be reduced to zero and no death benefit will be provided with respect to the Participant other than the survivor annuity discussed in this Section, if such survivor annuity is applicable.

5.4 WAIVER OF NORMAL FORM OF BENEFIT. The normal form of benefit may be waived in favor of another form of distribution if the Participant files a waiver in writing, in such form as the Trustees may prescribe. The Participant's Spouse must acknowledge the effect of the waiver and consent to it in writing, witnessed by a notary public, unless the Participant establishes to the satisfaction of the Trustees that the Participant is not married, the Spouse cannot be located, or the consent of the Spouse cannot be obtained because of extenuating circumstances. If the Spouse is legally incompetent, consent may be given by the Spouse's legal guardian, including the Participant if authorized to act as the Spouse's legal guardian. A Spouse's consent is effective only with respect to that Spouse, and is irrevocable unless the Participant revokes the waiver to which it relates.

The Fund will provide to each Participant a written explanation of the following:

- (1) the terms and conditions of the Qualified Joint Survivor Annuity;
- (2) the Participant's right to make, and the effect of, an election to waive the Qualified Joint and Survivor Annuity form of benefit;
- (3) the rights of the Participant's Spouse with respect to such election; and
- (4) the right to make, and the effect of, a revocation of such election.

A waiver will not be effective if given more than 90 days before the benefit commencement date. A waiver will not be effective if given less than 30 days before the benefit commencement date, unless such 30-day notice is waived; provided, however, such waiver may be revoked at any time prior to the commencement of payments and payments may not commence until 7 days after the date of such waiver.

The aforesaid written explanation may be provided after the benefit commencement date. The 90-day applicable election period to waive the qualified joint and survivor annuity described above shall not end before the 30th day after the date on which such explanation is provided. A

Participant may elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the benefit commencement date if the distribution commences more than 7 days after such explanation is provided.

5.5 PERCENTAGE ANNUITY. A Participant who attains his Normal Annuity Date and waives the normal form of benefit in accordance with Section 5.4 may elect to receive his Account as a monthly payment, at his option, equal to 1½%, 2%, 2½% or 3% of the value of his Account on his Normal Annuity Date. Such payments shall be made from his Account until the earlier of his death or the reduction of his Account to zero. Each Participant who commences receipt of a Percentage Annuity available under this Section 5.5 shall have the one-time right to change such option, to either increase or decrease the monthly payment based on the percentage of the value of his Account, at any time after payments commence, and each Participant shall additionally have a one-time right to discontinue receipt of the monthly annuity payments, and instead have his remaining Account paid in one lump sum.

5.6 LUMP SUM OPTION. A Participant who attains his Normal Annuity Date and waives the normal form of benefit in accordance with section 5.4 may elect to receive his Account in a lump sum, provided such election is made before the commencement of his Annuity Payments. Provided, however, this section shall be subject to the provisions of Section 5.5 in such case as a Participant who commences receipt of one of the Percentage Annuity Payment options, subsequent to his Normal Annuity Date, determines to elect to receive the remaining balance in his Account in a lump sum.

5.7 SMALL ACCOUNTS. In the event a Participant satisfies the requirements for a Normal Annuity Benefit hereunder and the value of his Account at his Normal Annuity Date is less than \$5,000.00, then, notwithstanding any other provision of the Plan, the Trustees shall distribute his Account to him in a lump sum even without his application therefor.

5.8 COMMENCEMENT OF BENEFIT PAYMENT. A Participant hereunder is entitled to have his benefit payments commence effective with his Normal Annuity Date set forth in Section 5.1, unless the Participant has elected in writing to the Trustees to postpone the commencement of his Benefit payments to a later date. Such election must contain a description of the benefit and a date on which the payments are to commence. Such date must be after the date on which the payments may commence, and must also be after the date on which the Trustees received the signed election. Such election may be subsequently changed, by a writing, to the Trustees, to the effect of choosing another postponed date provided such newly elected date is after the date on which the Trustees receive the new signed election. Any election shall be subject to the spousal consent provisions of this Plan. Notwithstanding the Normal Annuity Date of any Participant, payment hereunder shall commence not later than the April 1st immediately following the calendar year in which the Participant attains 70 years and 6 months. All distributions will be determined and made in accordance with Section 401(a)(9) and the regulations promulgated under that Section, including the minimum distribution incidental benefit requirements.

ARTICLE 6

TERMINATION ANNUITY

6.1 ELIGIBILITY. In the event a Participant who does not satisfy the age and cessation of work requirements for a Normal Annuity Benefit, experiences a period of six (6) consecutive months during which he earns 106 hours or less hours of Contribution Hours for said six (6) consecutive months period, he may apply for, and be entitled to, a Termination Annuity. Attainment of age 50 and having no contributions made to the Participant's Individual Account for at least three consecutive months shall also make a Participant eligible for a Termination Annuity.

6.2 FORM OF BENEFIT. Such Termination Annuity shall be a paid in the Normal Form of Benefit as described in Section 5.3 or, provided the Participant waives the normal form of benefit in accordance with Section 5.4 may elect to receive his Account as lump sum in accordance with Section 5.6. There shall be a termination fee determined by the Trustees and charged to a Participant's Account at the time of withdrawal.

ARTICLE 7

ROLLOVERS

7.1 Any provision of the Plan to the contrary notwithstanding, 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 that will accept the distributee's eligible rollover distribution as a direct rollover.

7.2 The Plan will accept Participant and direct rollover contributions of eligible rollover distributions, excluding the portion of any eligible rollover distribution that is attributable to after-tax contributions or that is not otherwise includible in the distributee's gross income.

7.3 For purposes of Sections 5.1, 5.6 and 5.8, the value of a Participant's Account shall be determined without regard to that portion of the Account that is attributable to rollover contributions within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii) and 457(e)(16) of the Internal Revenue Code and earnings allocable thereto. If the value of the Participant's Account as so determined is \$5,000.00 or less, the Plan shall immediately distribute the Participant's entire Account including the portion attributable to rollover contributions and the earnings allocated thereto.

7.4 DEFINITIONS

- A. **Eligible Rollover Distribution:** An eligible rollover distribution is any distribution from an eligible retirement plan (including the Plan), 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 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 Internal Revenue Code; and any amount that is distributed on account of hardship.

- B. **Eligible Retirement Plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a qualified trust described in Section 401(a) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Internal Revenue Code.
- C. **Distributee:** A distributee includes a participant or former participant in a eligible retirement plan. The Participant's or former Participant's surviving spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, is a distributee with regard to the interest of the spouse or former spouse in an eligible retirement plan.
- D. **Direct Rollover:** A direct rollover is a payment by an eligible retirement plan directly to another eligible retirement plan specified by the distributee.

ARTICLE 8

DEATH BENEFIT

8.1 ELIGIBILITY. Each Participant who has a balance in his Account at his death shall be covered for a Death Benefit. Upon such eligible Participant's death, his Beneficiary shall be entitled to receive such Death Benefit subject to the provision relating to the benefits of an eligible spouse contained in this Article.

8.2 FORM AND AMOUNT OF BENEFIT. A Qualified Pre-Retirement Survivor Annuity shall be paid to the surviving Spouse of a Participant who dies prior to the commencement of benefits. The Qualified Pre-Retirement Survivor Annuity is an annuity for the life of the surviving spouse that is equal to survivor annuity the Spouse would have received had the Participant commenced receiving a Qualified Joint and Survivor Annuity the day prior to the Participant's death. Payments under the Qualified Pre-Retirement Survivor Annuity will commence as soon as practicable after the Participant's death. The foregoing notwithstanding, an

the event a the value of a Participant's Account on the date of the Participant's death is less than \$5,000.00, the Trustees shall distribute his Account in a lump sum as provided in Section 8.4

8.3 WAIVER OF FORM OF BENEFIT; NOTIFICATIONS. A Participant may, during the Applicable Election Period, elect to waive the Qualified Pre-Retirement Survivor Annuity form of benefit, and elect a Beneficiary. A Participant may revoke any such election any number of times within the Applicable Election Period. Such elections shall not take effect unless (i) the Spouse of the Participant consents in writing to such election, and the Spouse's consent acknowledges the effect of such election and is witnessed by a Fund representative or a notary public, or (ii) it is established to the satisfaction of a Fund representative that such consent may not be obtained because there is no Spouse, because the Spouse cannot be located, or because of such other circumstances as are prescribed by regulations of the Secretary of Treasury. Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such Spouse and shall be limited to a specific alternate Beneficiary (or a form of benefits) unless such consent expressly permits designations by the Participant without any requirement of further consent by the Spouse. In the absence of such a provision, any new waiver or change of Beneficiary shall require a new spousal consent. "Applicable Election Period" means the period which begins on the first day of the Plan Year in which the Participating Employee attains age 35 and ends on the date of the Participating Employee's death. A surviving Spouse may also elect to waive the Qualified Pre-Retirement Survivor Annuity at any time prior to the commencement of benefit payments.

The Fund will provide to each Participant and Spouse a written explanation of the following:

- (1) the terms and conditions of the Qualified Pre-Retirement Survivor Annuity;
- (2) the Participant's right to make, and the effect of, an election to waive the Qualified Pre-Retirement Survivor Annuity form of benefit;
- (3) the rights of the Participant's Spouse with respect to such election; and
- (4) the right to make, and the effect of, a revocation of such election.

In the case of Participant's, the written explanation shall be provided within the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35. For those individuals who become Participants after age 32, the explanation shall be given upon entry into the Plan and in no event later than the end of the three-year period beginning with the first day of the first Plan Year for which the individual is a Participant. Participants who terminate employment prior to age 35 shall be given the explanation during the period beginning one year before the termination and ending one year after such termination. In the case of a surviving Spouse, the written explanation shall be provided as soon as practicable after the Participant's death.

8.4 LUMP SUM DEATH BENEFIT. A lump sum death benefit of the entire balance of a Participant's Account will be paid in the event of an effective waiver of the Qualified Pre-Retirement Survivor Annuity in accordance Section 8.3, if a Participant's benefits have

commenced in any form other than a Qualified Joint and Survivor Annuity, or to the extent that the Participant's Account balance exceeds the actuarial equivalent of the Qualified Pre-Retirement Survivor Annuity. Such benefit shall be distributed to the Participant's Spouse or designated Beneficiary as soon as practicable after the death of the Participant.

8.5 ELECTION OF BENEFICIARY. Subject to further provisions of this Article, each Participant may designate, at such time and in such manner as the Trustees may prescribe, a Beneficiary or Beneficiaries (who may be any one or more members of his family or any other persons, executor, administrator, any trust, foundation or other entity) to receive any benefits distributable hereunder after the death of the Participant. Such designation of a Beneficiary or Beneficiaries shall not be effective for any purpose if the Participant has a Spouse as of the date of the Participant's death and a waiver has not been submitted in accordance with Section 8.3. In addition, such designation of a Beneficiary or Beneficiaries shall not be effective for any purpose unless and until it has been filed by the Participant with the Trustees: provided, however, that a designation mailed by the Participant to the Trustees prior to death and received by the Trustees shall take effect upon such receipt, but prospectively only and without prejudice to the Plan on account of any payments made before receipt by the Trustees.

8.6 NO BENEFICIARY AT DEATH. If a Participant does not have a Spouse and has failed to effectively designate a Beneficiary to receive the Participant's Death Benefit, or a Beneficiary previously designated has pre-deceased the Participant and no alternative designation has become effective, such Benefit shall be distributed to the Participant's estate in the form of a single lump-sum. This provision shall be applicable to any benefit available under this Plan.

8.7 PROOF OF DEATH. The Trustees may, as a condition precedent to making payment to any Beneficiary, require that a death certificate, burial certificate or other evidence of death acceptable to them be furnished. This provision shall be applicable to any benefit available under this Plan.

8.8 DISCHARGE OF LIABILITY. If the distribution in respect to a Participant is made to a person reasonably believed by the Trustees (taking into account any document purporting to be a valid consent of the Participant's spouse, or any representation by the Participant that he is not married) to properly qualify as the Participant's Beneficiary under the foregoing provisions of this Article, the Plan shall have no further liability with respect to such Account. This provision shall be applicable to any benefit available under this Plan.

8.9 MINOR BENEFICIARIES. If a distribution is to be made to a minor, the Trustees may, in their sole discretion, direct that the distribution be paid to the minor's legal guardian, or if none, to a parent of such Beneficiary or to the custodian for such Beneficiary under the Uniform Gift to Minors Act if permitted by the laws of the state in which the Beneficiary lives. Such payment will fully discharge the Plan from further liability because of such payment. This provision shall be applicable to any benefit under this Plan.

ARTICLE 9

CLAIM DENIAL APPEAL PROCEDURE

9.1 CLAIM DENIAL. The Trustees shall make determinations regarding claims for benefits under the Plan by Participants and Beneficiaries. In the event a claim is denied, wholly or in part, the Trustees shall furnish to a claimant whose claim has been denied, within 90 days of filing of the claim, a written notice stating:

- A. the specific reason(s) for denial;
- B. the specific reference(s) to the Plan provisions on which the denial is based; and
- C. a copy of the Plan appeal procedure as stated hereinafter.

9.2 APPEAL. Any claimant whose claim for benefits has been denied has a right to an appeal to the Trustees for a review of their decision, provided that the claimant requests such appeal in writing within 60 days from the receipt of their decision.

The claimant may present his view in writing. He shall have the opportunity to review the Plan documents which relate to the claim. The Trustees shall consider such claim at a duly scheduled meeting.

Within 60 days following said meeting, the Trustees shall communicate their decision in writing to the claimant.

The Trustees shall construe the terms and provisions of the Plan and Agreement and Declaration of Trust and their decision shall be binding and final.

ARTICLE 10

AMENDMENT AND TERMINATION

10.1 AMENDMENT. The Trustees may amend this Plan at any time, except that no amendment may reduce any benefit accrued by any Participant unless such reduction is required to qualify this Plan (or continue such qualification) under the Internal Revenue Code, or is required for compliance with ERISA or, if the amendment meets the requirement 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. No amendment may cause any of the assets of the Fund to revert to any Employer or the Council.

10.2 TERMINATION. If this Plan is terminated for any reason, the assets then remaining in the Fund, after necessary administrative expenses have been provided for, shall be set aside by the Trustees for the purposes of providing the balances in all Participants' Accounts.

Any balance thereafter remaining shall be distributed among the Participants in proportion to the credit balances in all Participants Accounts at the date of termination.

Anything herein to the contrary notwithstanding, the rights of all Participants to benefits accrued to the date of any complete discontinuance of contributions, to the extent then funded, shall be nonforfeitable.

No part of the Fund shall ever revert to any Employer or the Council.

ARTICLE 11

QUALIFIED DOMESTIC RELATIONS ORDER

11.1 SUPERSEDES. In the event the Trustees are presented with a proper Qualified Domestic Relations Order, as that term is defined in the Retirement Equity Act of 1984, the Trustees shall obey such order and all other provisions of this Plan shall be subject to it.

11.2 QUALIFIED. An order shall be treated as a Qualified Domestic Relations Order if the Trustees determine that:

- A. the order is made pursuant to a state domestic relations law (including a community property law);
- B. the order creates or recognizes an alternate payee's rights to (or assigns an alternate payee the right to) receive all or a portion of the Participant's benefits. An "alternate payee is defined as any spouse, former spouse, child or other dependent of the Participant who is recognized in the Qualified Domestic Relations Order as having a right to receive all (or a portion of) the benefits payable to the Participant under the Plan;
- C. the order clearly specifies the name of the Participant and the name and mailing address of each alternate payee covered by the order;
- D. the order clearly specifies the amount or percentage of the benefits to be paid by the Plan to each such alternate payee (or in the manner in which the amount or percentage is to be determined);
- E. the order clearly specifies the number of payments or the period to which the order applies;
- F. the order clearly specifies each Plan to which the order relates;
- G. the order does not require the Plan to provide any form of benefit option not otherwise available under the Plan;
- H. the order does not require the Plan to provide actuarially increased benefits; and

- I. the order does not require the Plan to provide benefits to an alternate payee which are to be paid to another alternate payee under a separate order previously determined to be a Qualified Domestic Relations Order.

11.3 PROVISION EXCEPTION. An order shall be treated as a Qualified Domestic Relations Order if it meets the requirements of Section 11.2 even if it requires the payment of benefits to an alternate payee at any time prior to the Participant's separation from service, provided that:

- A. the Participant attained (or would have attained) the earliest annuity age under the Plan or upon the election of the Alternate Payee, the Alternate Payee may receive a lump sum benefit prior to the Participant attaining the earliest annuity age under the Plan;
- B. benefit payments are computed as if the Participant had retired on the date on which payments are to begin (based on the present value of benefits actually accrued); and
- C. such payments are in a form in which benefits may be paid under the Plan to the Participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

11.4 COOPERATION. To receive benefits from the Plan pursuant to a Qualified Domestic Relations Order, the alternate payee must furnish the Trustees with a copy of the order, certified by the Clerk of the Court issuing the order.

11.5 TRUSTEES' DUTIES. Upon receipt of a certified copy of a Qualified Domestic Relations Order, the Trustees shall:

- A. promptly notify the Participant and any other alternate payee of the receipt of the order and provide said persons with a copy of this Plan section;
- B. promptly determine whether the order is a Qualified Domestic Relations Order; and
- C. promptly notify the Participant and all alternate payees of such determination.

If the determination is that the order is a Qualified Domestic Relations Order, the notification in C. shall set forth the date on which payments are scheduled to begin. If the determination date is that the order is not a Qualified Domestic Relations Order, the notification in C. as above, shall set forth the specific reasons for the conclusion. The Participant and the alternate payee(s) may appeal any determination made in accordance with the Plan's appeal procedure, a copy of which shall be included with the determination letter.

11.6 TRUSTEES UNABLE TO DECIDE. In the event the Trustees are unable to make a determination whether an order is or is not a Qualified Domestic Relations Order prior to the next scheduled distribution of benefits to the Participant whose benefits are subject to the order, the Trustees shall segregate, in a separate account, the amount that would have been payable to the alternate payee(s) had the order been determined to be a Qualified Domestic Relations Order and shall continue to segregate such amounts until the earlier of the date a determination is made or the expiration of 18 months.

If, within such 18 months, the Trustees determine the order to be a Qualified Domestic Relations Order, the Trustees shall pay the segregated amounts (plus any interest earned thereon) to the person or persons entitled to receive them. If, within the 18 months, the order is determined not to be a Qualified Domestic Relations Order or, after the 18 month period has expired, no determination is made, the segregated amounts (plus any interest) shall be paid to the person who would have received the amounts if there had been no order. Thereafter any determination that any order is a Qualified Domestic Relations Order shall apply prospectively (i.e., the Plan shall not be liable for payments to an alternate payee(s) for the Domestic Relations Order). The Plan shall be discharged from any obligation or liability to any Participant or alternate payee(s) to the extent of any payment made pursuant to these procedures, provided the Trustees have acted in accordance with their fiduciary responsibility.

The Trustees may require any Participant and any alternate payee(s) to furnish to the Trustees, such releases, documents or information as the Trustees require for the administration of the Plan and this Article.

ARTICLE 12

MISCELLANEOUS

12.1 NAMED FIDUCIARY. The "Named Fiduciary" of the Plan, who shall have authority to control and manage the operation and administration of the Plan, is collectively, the Trustees of the Fund.

12.2 LIMIT ON TYPES OF BENEFIT. No Participant or Beneficiary shall be entitled to more than one type of benefit from this Plan at any one time, except that a Participant may receive a benefit earned by his employment as an Employee as well as a benefit in his status as a Beneficiary.

12.3 MAXIMUM CONTRIBUTIONS. In no event shall a Participant's Account be credited with a total addition, for any Plan Year, in an amount that exceeds the lesser of:

- A. \$40,000, as adjusted for increases in the cost-of-living under Section 415(d) of the Internal Revenue Code, or
- B. 100 percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Internal Revenue Code.

Total addition means the sum of the Employers' contribution to all defined contribution Plans maintained for the Participant by the Employers for the Plan Year, the Participant's share of forfeitures for the Plan Year, and the amount of the Participant's contributions for the Plan Year, but excludes rollover contributions under Section 7.2.

Compensation means a Participant'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 an Employer, and including any elective deferral as defined in Section 402(g)(3) of the Internal Revenue Code, and any amount which is contributed or deferred by the Employer at the election of the Employee and that is not includible in the gross income of the Employee by reason of Sections 125, 132(f)(4) or 457 of the Internal Revenue Code.

Compensation for a Plan Year is the compensation actually paid or includible in gross income during such Plan Year. The annual compensation of each Participant shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to compensation for the Plan Year that begins within such calendar year.

The compensation limit referred to above shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Internal Revenue Code) which is otherwise treated as a total addition.

If a contribution that would otherwise be contributed or allocated to the Participant's Account would cause the total addition for the Plan Year to exceed the maximum permissible amount, the amount contributed or allocated will be reduced so that the total addition for the Plan Year will equal the maximum permissible amount.

If there is any inconsistency between the provisions of this Section and the provisions of Section 415 of the Internal Revenue Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Internal Revenue Code and the regulations thereunder.

12.4 SAVINGS PROVISION. Should any provision contained in the Plan be held unlawful, such provision shall be of no force and effect, and this Plan shall be treated as if such portion had not been contained herein.

12.5 NO LIABILITY TO TRUSTEES OR COUNCIL. There shall be no liability upon the Trustees individually, or collectively, or the Council to provide the benefits established by this Plan if the Fund does not have assets to make benefit payments.

12.6 INCOMPETENCE OF PARTICIPANT. In the event it is determined that a Participant is unable to care for his affairs, because of illness, accident, or incapacity, either mental or physical, any payments due, unless claim has been made therefor by a duly appointed guardian, committee, or other legal representative, may be paid to the spouse or such person

having care and custody of the Participant, as the Trustees shall determine in their sole discretion.

12.7 PROTECTION AGAINST CREDITORS. To the end of making it impossible for Participants covered by this Plan improvidently to imperil the provisions made for their support and welfare by directly or indirectly anticipating, pledging, or disposing of their benefit payments hereunder, it is hereby expressly stipulated that no Participant hereunder shall have the right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute, or anticipate any benefit payments and that such payments shall not in any way be subject to any legal process to levy execution upon or attachment or garnishment proceedings against the same for the payments of any claim against any Participant nor shall such payments be subject to the jurisdiction of any bankruptcy court of insolvency proceedings by operation of law or otherwise.

12.8 REPORTS AND PROOF. Each Employee, Annuitant, and Beneficiary shall furnish to the Trustees all information in writing as may be reasonably requested by them for the purpose of establishing, maintaining and administering the Plan. The failure on the part of the person to comply with such requests promptly and in good faith shall be sufficient grounds for delaying commencement of benefits hereunder.

12.9 NUMBER AND GENDER. Wherever appropriate, words used in this Plan in the singular may mean the plural, the masculine the feminine, and the feminine the masculine.

12.10 MISSING PARTICIPANTS OR BENEFICIARIES. Each Participant and each designated Beneficiary must file with the Trustees from time to time in writing his post office address, or if no address is filed with the Trustees then, his last post office address as shown on the Fund's records, will be binding on the Participant and his Beneficiary for the purposes of the Plan.

12.11 UNCLAIMED ACCOUNTS. Should the whereabouts of any Participant or any person entitled to benefits hereunder be unknown or unascertainable after reasonable inquiry, for a period of 60 months following the termination of a Participant's employment calling for contributions to the Fund, or the death of a Participant, the credit balance of the Account of such Participant shall be forfeited and allocated to and applied to Plan and Fund operating expenses. However, should a proper claim be made for such forfeited Account after the forfeiture, the Account shall be reinstated and payment shall be made in accordance with the pertinent Plan benefit provision. No adjustments (positive or negative) shall be made to such Account, as the result of investment yield or administration charges, as the case may be, described in section 4.1, for the period between the forfeiture and the reinstatement.

12.12 MERGER OR CONSOLIDATION OF PLAN OR TRANSFER OF ASSETS. A merger or consolidation of the Plan with another Plan, or a transfer of assets of the Fund to another Plan's fund, shall not take place unless the benefit that would be received by each Participant, hereunder from the Plan, if it were terminated immediately after such merger, consolidation, or transfer, shall be at least equal to the benefit he would have received if the Plan terminated immediately before such merger, consolidation, or transfer.

12.13 GRANDFATHER PROVISIONS. Only those Participants who presently have loans pursuant to section 3.6 of the Suffolk County Carpenters Restated Annuity Plan, or pursuant to the former Local 323 Annuity Plan and/or under Section 7 of the Suffolk Plan, who had the Trustees of said Fund, upon their written application, purchase a life insurance policy on the life of said Participant, shall have said benefits remain in effect. Otherwise, said loan and life insurance benefits shall be terminated. The present practice for disability benefit eligibility and forms of distribution shall remain in effect for former Local 19 participants.

ARTICLE 13

SUSPENSION OF ANNUITY BENEFIT

13.1 GENERAL. In the event an Annuitant of at least age 62 works in excess of 40 hours in Prohibited Employment in the Plan Area in a month for which he is entitled to a monthly Annuity payment hereunder as the result of his successful application for such payment, his payment hereunder for such month shall be withheld and forfeited provided the proper notice is provided to him by the Trustees.

In the event an Annuitant who is not yet age 62 works any amount of time, in the United States, in employment (or supervising it) of the type represented by any local of the United Brotherhood of Carpenters and Joiners of America, his monthly annuity payment hereunder shall be withheld and forfeited provided the proper notice is provided to him by the Trustees.

13.2 PROHIBITED EMPLOYMENT. For the purposes of this Article, Prohibited Employment means an hour of employment (whether Union or non-Union, whether in self-employment or employed, whether actually working or supervising such work, whether contributions are required to be made to the Fund on account of such hour or not) for which the Annuitant is compensated by an Employer:

- A. in the industry in which an Employee covered by the Plan worked at the effective date of the affected Employee's Annuity; and
- B. in the same profession, trade, or craft in which the affected Employee worked at the time that was classified as a Plan Hour for him.

13.3 PLAN AREA. For the purposes of this Article, Plan Area means New York State.

13.4 NOTIFICATION. No benefit payments may be withheld from an Annuitant in any month unless, and until, during the first such month the Trustees' notify the Annuitant of the suspension. Such notification shall be delivered personally or by first class mail and shall contain:

- A. a description of the reasons benefit payments are being suspended;
- B. a general description of this Article;

- C. a copy of this Article;
- D. a statement that an appeal of the Trustees' decision in this matter may be accomplished using the Plan's claim denial appeal procedure; and
- E. a statement that the Department of Labor regulations dealing with suspension of benefits may be found in Department of Labor Regulations Section 2530.203-3.

13.5 PRESUMPTION. Subject to correction by actual evidence, the Trustees may presume that an Annuitant who works at least some time in Prohibited Employment in a month has or will work at least 40 hours in such Prohibited Employment in that month unless, within 5 days of the start of such employment, the Annuitant notifies the Trustees of such commencement and has not refused to cooperate with reasonable requests by the Trustees to assist them in administering the provisions of this Article.

13.6 RESUMPTION OF ANNUITY PAYMENTS. In order that the payment of monthly benefits be resumed under this Plan once a suspension described in the first section of this Article has taken place, the Annuitant must notify the Trustees in writing that he has ceased working at Prohibited Employment or such other disqualifying employment. The Trustees shall resume the payments to the Annuitant, in the same monthly amount that he had been receiving prior to suspension, with the first day of the third calendar month following the calendar month in which the Trustees receive the Annuitant's notice called for in the prior sentence. Subject to the following sections, should the Annuitant be due any payments that were withheld for months prior to the resumption of payments in which the Annuitant did not work the prescribed duration of Prohibited Employment or such other disqualifying employment, such withheld payments shall be paid upon recommencement of payments.

13.7 RECOVERY. In the event an Annuitant receives a monthly payment for a month for which the Trustees have the right to withhold and forfeit such payment, the Trustees shall recover such payment by reducing the payment otherwise payable to the Annuitant for the month immediately following his cessation of work in Prohibited Employment or such other disqualifying employment for which payment is not due until the third month following the Annuitant's notification to the Trustees called for in the preceding section. If the reductions described in the prior sentence are not sufficient to permit recovery of payments that should not have been made, the Trustees shall recover such unrecovered monthly payment by deduction of no more than 25% from each payment until such recovery is complete.

13.8 STATUS DETERMINATION. An Annuitant or Employee may write to the Trustees to determine if an actual or contemplated employment is Prohibited Employment or other disqualifying employment and the Trustees shall reply to such request for information after securing enough details to make a judgment.

ARTICLE 14

IN-SERVICE DISTRIBUTIONS

14.1 A Participant who has had an Individual Account for one (1) year or more may apply to the Trustees for a hardship distribution from his Individual Account upon the occurrence of one or more of the following:

- A. Expenses for medical bills of \$1,000.00 or more incurred because of sickness or injury of the Participant, spouse or dependent children which have not been reimbursed by benefits payable from the Empire State Carpenters Welfare Fund.
- B. Expense incurred by the Participant with respect to payment of tuition and/or room and board for twelve (12) months to maintain a dependent child at an educational institution beyond high school level, or a school/institution for physically or mentally handicapped or emotionally disturbed children.
- C. Purchase of a home, cooperative or condominium apartment (excluding mortgage payments) by the Participant for his or her principal residence for which there has been incurred therefor downpayment, contract and title insurance expenses.
- D. Payment of amounts necessary to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence.

In addition, the above list of expenses that may be deemed to be made on account of immediate and heavy financial needs of the Participant shall be extended to include any such additional expenses as permitted by the Internal Revenue Service.

A hardship distribution cannot be made if the Participant has other resources available to meet the financial need (even if the need is deemed to be an immediate and heavy financial need). A distribution will be deemed necessary to satisfy the financial need of a Participant if all of the following requirements are satisfied:

- (i) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant; and
- (ii) The Participant has obtained all distributions other than hardship distributions and all non-taxable loans currently available from this Fund.

14.2 No more than one hardship benefit may be paid in any twelve (12) consecutive months.

14.3 Spousal Consent is required for a distribution.

14.4 The Trustees shall be the sole and absolute judge of the following: whether or not the above contingencies have occurred; the standards of proof required; and their judgment in this connection shall be final and binding on all parties.

ARTICLE 15

SELF DIRECTED INVESTMENTS

15.1 APPLICATION. The provisions of this Article 15 will apply to participants employed in District 2 of the Empire State Carpenters Regional Council of Carpenters as of July 1, 2002 and who elected at that time to participate in self direction.

15.2 INVESTMENT OF CONTRIBUTIONS. It is intended that the Plan be operated in accordance with ERISA Section 404(c). Each Participant's Individual Account shall be allocated for investment among the Investment Funds in accordance with the investment election made by the Participant pursuant to Section 15.3. A Participant may elect to invest the entire Individual Account in a single Investment Fund or may elect to allocate the Individual Account among two or more Investment Funds; provided, however, that any such allocation shall be in amounts that are multiples of one percent of the value of such Account. A Participant, including a terminated Participant who defers receipt of a distribution from the Plan, may change his investment election (in multiples of one percent of the value of such Account) with respect to the investment of previously contributed or future contributions or may transfer previously contributed amounts among the Investment Funds by telephonic notice to the Trustees, or the Trustees' designee. However, such elections must be in multiples of one percent of the total value of a Participant's Individual Account. In the event that a Participant does not make an investment election, the Trustees shall invest such Individual Account pursuant to the investment policy adopted by the Trustees.

15.3 ELECTION OF INVESTMENT FUNDS. Each Participant shall provide the Trustees with a written election indicating how his Individual Account shall be invested among the available Investment Funds.

15.4 RESPONSIBILITY FOR INVESTMENTS. Each Participant is solely responsible for the investment of his Individual Account. Neither the Trustees, the investment advisor, if any, the Plan Administrator, an Employer, or any officer or other Employee of an Employer is empowered to advise a Participant as to the manner in which such Individual Account shall be invested. The fact that a particular Investment Fund is available to Participants for investment under the Plan shall not be construed as a recommendation for investment in such Investment Fund.

15.5 AVAILABLE INVESTMENT FUNDS. The Trustees, or such investment advisor as appointed by the Trustees pursuant to the Trust Agreement, shall establish "Investment Funds" from time to time to implement and carry out investment objectives and policies established by the Trustees.

ARTICLE 16

FORMER LOCAL 66 PLAN PARTICIPANTS

16.1 RESTRICTED ACCOUNT. "Restricted Account" for a Participant means an account created and maintained for each Participant who was a participant in the Carpenters Local #66 of Olean and Vicinity Money Purchase Pension Plan on the date such plan was merged into the Fund.

16.2 COMMENCEMENT OF PARTICIPATION. An Employee who was a participant in the Carpenters Local #66 of Olean and Vicinity Money Purchase Pension Plan on the date such plan was merged into the Fund will become a Participant on the date of such merger.

16.3 RESTRICTED ACCOUNTS. The Trustees shall maintain a Restricted Account for each Participant who was a participant in the Carpenters Local #66 of Olean and Vicinity Money Purchase Pension Plan on the date such plan was merged into the Plan. A Restricted Account is a sub-account of the Participant's Individual Account. The balance of a Participant's Restricted Account is included in the balance of the Participant's Individual Account. The initial balance of a Participant's Restricted Account will be the final balance of the Participant's account under the Carpenters Local #66 of Olean and Vicinity Money Purchase Pension Plan just prior to the merger of such plan with the Plan. No Employer contributions will be credited to a Participant's Restricted Account. A Participant's Restricted Account will be credited or debited with a prorated share of the Fund's investment returns and losses or, if the Participant has elected self-directed investments, credited or debited with returns and losses as provided in Article 15. All Plan benefit distributions, operating charges and administrative charges associated with a Participant shall be subtracted from the Participant's Restricted Account.

16.4 FORM OF BENEFIT. The provisions of the Carpenters Local #66 of Olean and Vicinity Money Purchase Pension Plan concerning disability pensions and optional benefit forms shall remain in effect with respect to the Restricted Accounts of Participant who were participants in the Carpenters Local #66 of Olean and Vicinity Money Purchase Pension Plan on the date such plan was merged into the Plan.

16.5 HARDSHIP DISTRIBUTIONS. Hardship distributions under Article 14 for a former participant of the Carpenters Local #66 of Olean and Vicinity Money Purchase Pension Plan are limited to the balance of the Participant's Account after subtracting the balance of the Participant's Restricted Account.

16.6 SELF-DIRECTED INVESTMENTS. The provisions of Article 15 relating to Participant self-directed investments will apply to former participants of the Carpenters Local #66 of Olean and Vicinity Money Purchase Pension Plan who elected to participate in self-direction as of the date such plan was merged into the Fund.

IN WITNESS WHEREOF, the following Trustees of the Plan certify that this Restatement was duly adopted by the Trustees, at a meeting held on the ____ day of _____, 2004.

Dated: _____

UNION TRUSTEE

Print _____
Name _____

Dated: _____

EMPLOYER TRUSTEE

Print _____
Name _____

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