

**PLUMBERS & PIPEFITTERS  
NATIONAL PENSION FUND**

**GUIDELINES FOR EMPLOYER PARTICIPATION**

Revised October 2013

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**PLUMBERS AND PIPEFITTERS NATIONAL PENSION FUND**

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**TO ALL PARTICIPATING EMPLOYERS**

The purpose of the Guidelines for Employer Participation is to help employers understand the requirements for remittance reporting to the Plumbers and Pipefitters National Pension Fund (“Fund”). Under federal law, an employer is required to make contributions to the Fund in conformity with the collective bargaining agreement and the trust documents governing the operation and administration of the Fund. These guidelines describe the contribution requirements and explain the Fund’s employer audit program and procedures for collecting delinquent contributions. The Fund’s policies on refund of erroneous contributions and employer withdrawal liability are also explained.

By law, multiemployer plans, like the Plumbers and Pipefitters National Pension Fund, must be established and administered for the sole and exclusive benefit of employees. These guidelines also set forth the Fund’s policy concerning the participation of owners, officers and management employees associated with participating employers. If your incorporated company is a new employer and you wish to be covered by the Fund as an employee, please refer to the section about rules affecting participation by non-bargaining-unit employees.

The Guidelines for Employer Participation will be updated periodically. Please check the website frequently for the most up-to-date information.

If you have any questions concerning your remittance reporting or otherwise, please send your questions in writing the Fund office, attention Contributions and Delinquency Department Manager.

Sincerely yours,

**THE BOARD OF TRUSTEES**

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## **I. COLLECTIVE BARGAINING AGREEMENT REQUIREMENT**

Employers participating in the Fund must be bound to a collective bargaining agreement requiring that contributions be remitted to the Fund on behalf of employees working in job classifications covered by the agreement. The obligation to contribute on behalf of a particular employee is not based on whether the employee is a member of the union but rather on whether the employee is performing work covered by the collective bargaining agreement. Credit is accrued for eligibility purposes in the same manner whether or not the employee is a member of the union.

Federal law requires employers to make contributions in conformity with the terms of the collective bargaining agreement and the terms of the documents governing the administration of the Fund. The Trustees have adopted certain language, which must be included in the collective bargaining agreement in order for the employer to continue participating in the Fund. This language has been incorporated into the attached Revised Standard Form of Participation Agreement, which can be found on pages 27 and 28.

The Fund requires legal documentation such as a signature page showing that the employer is signed to the collective bargaining agreement or that it is a member of a signatory employer association to whom the employer has assigned its bargaining rights.

Some of an employer's employees may be "travelers" from other local areas who normally participate in a different pension fund. Contributions must be remitted to the Fund for such individuals if such contributions are required by the collective bargaining agreement governing the work being performed. If such an employee's "home fund" has signed a reciprocal agreement with the Plumbers and Pipefitters National Pension Fund, however, his contributions will be forwarded by the Fund to his home fund. In this manner, the employee's benefits will be protected and he will obtain benefits from his home fund.

## **II. THE LEGAL STATUS OF THE FUND**

The Plumbers and Pipefitters National Pension Fund is a multiemployer pension plan governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). It is also a Taft-Hartley trust fund under the Labor Management Relations Act. The Fund is approved by the Internal Revenue Service as tax-exempt. The most recent IRS Letter of Determination can be found on pages 34 and 35.

The Fund is established under a Restated Agreement and Declaration of Trust to which each participating employer is bound. As such, the Fund is a separate and distinct legal entity from the unions and the employers. Under the Trust Agreement, each employer has agreed to accept any future Trustees who may be appointed to the Fund. The Trust Agreement begins on page 9.

## **III. REPORTING PROCEDURES**

In accordance with the terms of your collective bargaining agreement and the Trust Agreement, the Trustees have established the following uniform reporting procedures for all employers:

- A. Remittance reporting forms will be available to your company on our website, [www.ppnpf.org](http://www.ppnpf.org). The Fund requires that all participating employers use the Fund's remittance report form for reporting contributions owed or use that form as a coversheet to your company's own internally-generated payroll report. If your company uses an internally-generated report, it must meet the Fund's standards to ensure that the detail provided in the report can be accurately and quickly processed and the reported hours are credited to the appropriate employee.

- B. The Fund's online form system requires a secure login. This information will be provided to each newly-active employer. It is important that you keep this login information secure.

Your IRS-assigned Employer Identification Number (EIN) must be included on your first report. You will then be assigned an account number by the Fund, which must appear on your remittance reports and on any correspondence you submit to the Fund.

- C. Remittance reports will be available monthly on the Fund website. Your company's employee information will be pre-printed on the remittance report form provided by the Fund based on your prior month's remittance reports. You must add the names of any new employees and delete the names of terminated employees and enter any other necessary information on the remittance form.
- D. The remittance report form must include the full 9-digit Social Security Number ("SSN") for each employee being reported. If a report form is received without the full SSN no hours will be credited to the employees listed on the form. The Fund uses the SSN to ensure proper credit of hours to each employee and to report retirement income to the IRS.
- E. Hours reported must include all hours for which an employee receives pay. Please note that each overtime hour should be reported as a single hour worked, unless the collective bargaining agreement provides otherwise.
- F. Employers that do not have any hours to report for a given work month, local union and/or job classification should notify the Fund office of this fact and tell us how long they anticipate not having work in the local union or job classification.
- G. A copy of the remittance report form must be submitted with your payment to the Fund Office. Payments should be sent as indicated on the instructions at the bottom of page one of the form. All employer remittance reporting forms, along with a check covering the remittance amount, must be sent to the Fund's bank lockbox. **The lockbox address is: Plumbers and Pipefitters National Pension Fund, P.O. Box 79972, Baltimore, MD 21279-0972.**

Your payment must be submitted so that it will be received in the Fund's lockbox no later than the 20<sup>th</sup> day following the end of the work month being reported.

In some cases, the Fund has entered into agreements with local entities to collect contributions on its behalf and forward them to the Fund. If this applies in your jurisdiction, you will be notified where to submit contributions. This can only be done when pre-authorized by the Fund.

- H. If your company has an overpayment from a prior remittance report on file at the Fund, it must still submit a timely remittance report and indicate on the report that the company will be using a credit from a prior remittance towards payment of the current remittance report.

#### **IV. DELINQUENCY PROCEDURES**

The Trustees are charged by federal law with the responsibility to collect all money owed by employers to the Fund. They have a right to take all legal steps to collect delinquent contributions.

**As noted above, all Remittance Reports and payments are due at the Fund Office's lockbox within 20 days after the end of each calendar month.** If the report and payment is not received in the lockbox by the 20th of the month, you will be considered delinquent.

When an employer is delinquent in payments to the Fund, the following will occur:

- A. The Fund will send a reminder letter to the employer.
- B. The Fund will notify the Local Union of the delinquency. Please note that any participating local union may take action independent of the Fund under its collective bargaining agreement any

time an employer is delinquent in its payments. This may include removal of employees from the jobs of a delinquent employer.

- C. Liquidated damages in the amount of 10% of the contributions owed may be assessed as part of the delinquency. Interest will be assessed on the delinquent contributions at a rate of up to 18% per annum from the date the payment was due until the date of payment.
- D. Fees may be assessed for checks returned for Non-Sufficient Funds (“NSF”).
- E. Employer delinquencies will be referred to legal counsel for collection or other action if necessary such as if the delinquency remains unresolved after the Fund Office has notified the employer or if an employer is going out of business or files for bankruptcy. Legal action may include federal court lawsuits against the employer, suits on bonds, or other appropriate action.
- F. The Fund also collects contributions due on behalf of the International Training Fund. Therefore, when applicable, the International Training Fund will be included in delinquency collection efforts.

Please note that, under Sections 502(g)(2) and 515 of ERISA, the Trustees are authorized to file suit in federal court to collect delinquent contributions. If judgment is entered in favor of the Fund in such a lawsuit, ERISA requires the court to award the Fund the unpaid contributions amount plus interest, liquidated damages, costs and attorneys’ fees.

Under the Fund’s Trust Agreement, contributions owed to the Fund as required by an applicable collective bargaining agreement are assets of the Fund. Individuals who exercise discretionary control over Fund assets may be deemed fiduciaries of the Fund who may be held personally liable for the failure to transfer those assets to the Fund for the payment of pension benefits. This means that an employer’s decision not to pay contributions owed to the Fund and to use those monies for other purposes could give rise to fiduciary liability.

## **V. AUDITS OF EMPLOYER RECORDS**

Audits of employer records are performed in order to insure that proper payments are made to the Fund on behalf of all covered employees. Each year, the Trustees select local jurisdictions where the employers will be audited. If your company is selected for an audit by the Fund, please be advised that the audit will include all local union jurisdictions in which you are required to make Fund contributions.

A certified public accounting firm engaged by the Fund conducts the audits. A representative of the firm will contact companies to be audited to arrange an appointment for the auditor.

The Fund also collects contributions due on behalf of the International Training Fund. Therefore, when applicable, the International Training Fund will be included in the audits.

Under the collective bargaining agreement and Trust Agreement, the employer must provide the auditor with any payroll information and other required data which will assist him in determining that the proper fringe benefit payments were made for all employees whose wages were covered by the collective bargaining agreement.

It should be noted that most additional payments that are determined to be owed as a result of field audits occur because of a misunderstanding of the collective bargaining agreement. Oftentimes, the employer has failed to pay for non-union employees who have been performing work covered by the collective bargaining agreement. As noted above, contributions are owed on behalf of particular employees not on the basis of union membership but on the basis of whether the employees are performing work covered by the collective bargaining agreement. In the event any audit reveals a

substantial discrepancy, the employer may be billed the cost of the audit in addition to the fringe payments due.

Special audits are sometimes necessary because of an employer delinquency or failure of an employer to report all covered employees or all hours worked. In these cases, the cost of the audit and any legal fees incurred may be charged to the employer. The Fund may, at certain times, join with a local or regional auditing program sponsored by U.A. local unions or local/regional funds.

## **VI. RULES AFFECTING THE PARTICIPATION OF SOLE PROPRIETORS, PARTNERS, CORPORATE STOCKHOLDERS, EMPLOYEES OF A COMPANY OWNED BY A SPOUSE, AND OTHER NON-BARGAINING UNIT EMPLOYEES**

Note: Because of the IRS minimum coverage and non-discrimination regulations and other requirements of federal law, the Fund has special rules for participation of non-bargaining unit employees. These special rules are as follows:

### **A. Definition of Employee**

Federal law requires that the Fund be "for the sole and exclusive benefit of employees." An individual will be considered an employee and must participate in the Fund if he or she is employed by an employer for wages under a collective bargaining agreement and in a job classification for which contributions are required to the Fund. In addition, any person, who is involved in the management of an employer, will be considered an employee and may participate in the Fund if he is a bargaining unit alumnus and is working at the trade, or if his employer signs a special participation agreement.

A bargaining unit alumnus is anyone who was previously covered by the Fund as a member of the bargaining unit. Under the terms of the Participation Agreement for Employers Covering Owner Employees Working at the Trade who are Bargaining Unit Alumni (see pages 29 and 30), bargaining unit alumni must be covered if they spend the majority of their time performing work covered under the terms of the collective bargaining agreement.

Effective June 2001, the Fund revised the plan rules to allow employers to cover employees who are not bargaining unit alumni or are not working at the trade but only if the employer signs and abides by the terms of the Participation Agreement Covering Owner Employees and Other Employees Who are not Bargaining Unit Alumni or not Working at the Trade (see pages 31 through 33).

The Fund cannot cover an Owner Employee unless one of the special participation agreements is signed. If the Fund does not have a signed owner employer participation agreement on file, the owner employee's contributions will be refunded less any outstanding delinquencies or employer withdrawal liability amount owed by the company.

### **B. Sole Proprietor or Partner**

A sole proprietor or partner in a partnership is an employer by law and may not participate in the Fund. An owner of an unincorporated business is considered an employer and is ineligible to participate in the Fund even if most of his time is spent in a job category covered by the collective bargaining agreement. If the Fund determines that contributions were made on behalf of a sole proprietor or partner, the contributions will be refunded less any outstanding delinquencies or employer withdrawal liability amount owed by the company. The employees of a sole proprietor or partner who are covered by the collective bargaining agreement, other than the spouse of the owner as discussed below, must have contributions made to the Fund on their behalf.

C. Spouse of Principal Owner of an Unincorporated Business

If any employee is married to one of the principal owners of an unincorporated business and the spouses file a joint federal tax return which includes the operation of the business, then that employee may not participate in the Fund. However, as noted above, all other employees covered by the collective bargaining agreement must have contributions made to the Fund on their behalf.

D. Owner Employees

Employees of corporations who are corporate stockholders and who are performing work covered by the collective bargaining agreement for at least half of their time must be reported as required by the collective bargaining agreement. If any such employee owns 10% or more of the corporation (or if any such employee's spouse owns 10% or more of the corporation), the corporation must report and remit contributions for the number of hours each week that constitutes a full-time work week under the collective bargaining agreement. For less than full-time owner employees, contributions must be based on the number of hours actually worked provided, however, that contributions must be made on at least the number of hours resulting from dividing the hourly wage rate under the Collective Bargaining Agreement into the owner employee's total income from the Employer for each calendar year.

The Fund recognizes limited liability corporations ("LLC's") as corporations for purposes of the owners' status as employees (if the owner is in fact working for the LLC).

As indicated in section A above, companies who want their owner employees to participate in the Fund must sign a special Participation Agreement. Contact the Fund Office for a blank copy of the appropriate Owner Employee Participation Agreement if your company decides to cover its owner employees.

E. Working for Other Companies

In some cases, owner employees may work not only for their own corporation but also for other employers under the collective bargaining agreement during the same month. In such cases, the number of hours for a regular full-time work week to be reported by his own corporation in that week may be offset by the actual hours reported by the other contractor. If this situation may apply to you, please contact the Fund Office.

F. Documentation of Compliance with IRS Rules

Each participating employer must comply with the minimum coverage and non-discrimination requirements of Sections 401(a) (4) and 410(b) of the Internal Revenue Code and the regulations issued thereunder. The Fund requires that all participating employers fill out, sign and return to the Fund Office a minimum coverage questionnaire.

G. Verification of Employer Status Form

The Verification of Employer Status Form is used by the Fund to determine the legal relationship between the employee and the company. The form also helps us determine eligibility of an owner employee to participate in the Plan.

It is important that the Employer Evaluation Form be completed then forwarded to the local union office which should then return it to the Fund office. If the form is not completed and returned, any Past Service Credit and Future Service Credit resulting from employment with the employer in question may not be granted until eligibility can be verified. Please contact the Fund office if assistance is needed in completing the form.

H. Determination of Ineligibility and Appeal

If the Fund Office determines that any individual is not entitled to coverage by the Fund, the individual or the employer may appeal the decision. If the Fund Office determines that the

individual is not eligible for coverage and no appeal is received, any contributions made on the individual's behalf may be returned to the employer (less any amounts owed for outstanding delinquent contributions and/or amounts owed for employer withdrawal liability) under the Fund's refund of erroneous contributions policy.

## **VII. REFUND OF ERRONEOUS CONTRIBUTIONS**

It is most important that employers review contributions and reports to the Fund to avoid erroneous payments to the Fund. The Fund relies on the accuracy of employer reports to credit employees for pension eligibility and benefits.

Any errors in contribution payments must be reported to the Fund office promptly. Delayed requests for refund of erroneous contributions increase the likelihood that the Fund has paid pension benefits in reliance on reported contributions or has notified employees of their vested status or their accumulated pension credits. This increases the Fund's costs in correcting an employer's mistake.

Once contributions are made to the Fund, they may be returned to an employer, at the Trustees' sole discretion, only if the employer conclusively demonstrates that the contributions were made in error. Any outstanding delinquencies or employer withdrawal liability owed will be withheld from the refund. In determining whether a refund will be made, the Trustees will consider all circumstances including the period of time that has lapsed since the erroneous contributions were made. Refunds, if approved, will generally be limited to those made during the two years prior to the request for a refund.

The Trustees may require that actual costs and expenses resulting from mistaken employer contributions be deducted from any refunds. These deductions may include the administrative costs of correcting the mistake, any uncollected benefits paid in reliance on the erroneous contributions or the costs of collecting such benefits, the expenses of any litigation resulting from the adjustment of an employee's pension eligibility to reflect the refunded contributions, and all other costs and losses to the Fund attributable to the mistaken contributions. Interest will not be paid on erroneous contributions in accordance with the Internal Revenue Service and the Department of Labor regulations.

## **VIII. EMPLOYER WITHDRAWAL LIABILITY**

The Multiemployer Pension Plan Amendments Act ("MPPAA") of 1980 requires multiemployer pension plans to collect "withdrawal liability" from withdrawing employers if the plan has unfunded vested benefits. Withdrawal liability only applies if the multiemployer pension plan has unfunded vested benefits and if the employer experiences a complete or partial withdrawal. The Fund had unfunded vested benefits for the first time for the Plan Year that ended June 30, 2002. Accordingly, employers that experience a complete or partial withdrawal from the Fund on or after July 1, 2002 may be subject to withdrawal liability.

### **A. Purpose of the Law**

The purpose of the withdrawal liability requirement of MPPAA is to protect the vested benefits of plan participants. Withdrawing employers must cover their share of the cost of the plan's vested benefits that are unfunded at the time that the employer withdraws. This also protects the employers remaining in the plan from having to shoulder more than their share of the cost of the unfunded vested benefits.

## B. Definition of Withdrawal

The law imposes withdrawal liability in the event of either a “complete” or “partial” withdrawal. In the construction industry, a complete withdrawal occurs if the employer ceases to have an obligation to contribute to the plan but stays in business and continues the same type of work in the same area. This means that a construction contractor does not have liability when it goes out of business. However, such an employer will have withdrawal liability if it restarts the same business to perform the same type of construction work within five years and does not renew its obligation to contribute to the plan.

A partial withdrawal occurs for an employer in the construction industry if the employer’s obligation to contribute to the plan continues for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required. This would occur, for example, if a contractor shifted his work mix in the jurisdiction of the collective bargaining agreement such that only a small portion of the employer’s ongoing work in the area remains covered by the plan.

## C. Calculation of Withdrawal Liability

Under MPPAA, construction industry multiemployer plans are required to use the “presumptive method” for allocating unfunded vested benefits to withdrawing employers. Under this method, the first year that a plan has unfunded vested benefits, a “pool” is established which is reduced by 5% per year and, therefore, eliminated after 20 years. For subsequent years, new pools are established representing the change in unfunded vested benefits for that year relative to the sum of the unamortized portions of prior years’ pools. A share of each pool is allocated to each withdrawing employer based on the percentage of the total contributions made to the pension fund that were made by that employer during the five years preceding the year the pool was established.

An employer may obtain information regarding what its withdrawal liability would be in the event of a withdrawal as of the last day of the plan year preceding the date of the request by making a written request to the Fund Office. The Fund office can provide the employer, at no cost, with the necessary data for the employer to be able to estimate its potential withdrawal liability or, if the employer would like the Fund office to estimate the employer’s potential withdrawal liability, there will be a charge to the employer, payable in advance.

## D. Free Look Provision

In 2007 the Trustees amended the Plan to include the Free Look provision which provides that an Employer whose obligation to contribute to the Plan first commenced on or after January 1, 2007; and who withdraws from the Plan in a complete or partial withdrawal on or after that date (but prior to the fifth anniversary of the first day of the first month for which the Employer was obligated to contribute to the Plan) will not be liable to the Plan for withdrawal liability if all of the conditions outlined in Section 12.08 of the Plan are met.

If an employer experiences a complete or partial withdrawal from the Fund, the Fund is required by law to determine if withdrawal liability is owed and, if so, to assess and collect it. There is no liability however, if the amount of the employer’s withdrawal liability is \$50,000 or less.

In the event that withdrawal liability is owed by your Company, you will receive an assessment notice setting forth the amount of liability and a payment schedule. The letter will also notify your Company of its right to request review of the assessment. In the event that withdrawal liability is owed but not paid, the Fund may pursue legal action to collect.

The law imposes no liability on an employer that does not completely or partially withdraw from the multiemployer pension fund.

## **IX. HOW TO CONTACT THE FUND OFFICE WITH ANY QUESTIONS**

Do not hesitate to contact the Fund Office if you have any questions about remittance reporting, an audit, or an employee's eligibility or any other matter concerning your company's participation in the Fund. You may write to the Plumbers and Pipefitters National Pension Fund, 103 Oronoco Street, Alexandria, VA 22314, Attention: Contributions and Delinquency Department Manager. You may also send an email to [ContactUs@ppnpf.com](mailto:ContactUs@ppnpf.com) or you may call 1-800-638-7442 and follow the prompts to be connected to someone in the Contributions and Delinquency Department who will be happy to assist you.

**Nothing in these Guidelines for Employer Participation is meant to interpret, extend or change in any way the provisions expressed in the formal text of the Plan ("Plan") or the Restated Agreement and Declaration of Trust ("Trust"). In the event of any conflict between the provisions of this document and the provisions of the Plan or the Trust, the Plan or Trust, as the case may be, shall control.**

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**RESTATED AGREEMENT AND DECLARATION OF TRUST**

**THE PLUMBERS AND PIPEFITTERS  
NATIONAL PENSION FUND  
(Incorporating Amendments through March 2, 2010)**

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**WHEREAS**, there has heretofore been entered into an Agreement and Declaration of Trust, effective the 23rd day of June 1968, by and between the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (hereinafter referred to as "United Association") for and on behalf of itself and affiliated Local Unions, District Councils, State and Provincial Associations who voluntarily participate, and various Employers who employ employees represented by the United Association or affiliated bodies, and who are contractually obligated to make contributions to the Plumber and Pipefitters National Pension Fund (hereinafter referred to as the "National Pension Fund"), and certain individual Trustees, which Trust Agreement created a pension fund as therein provided; and

**WHEREAS**, the enactment of the Employee Retirement Income Security Act, hereinafter referred to as the "Act", has made it desirable that certain amendments be made; and

**WHEREAS**, Employers and the United Association and/or affiliated bodies have entered into Collective Bargaining Agreements providing for the establishment and the continuation of a Pension Fund known as the Plumbers and Pipefitters National Pension Fund and Employer contributions into the Fund; and

**WHEREAS**, the sums payable to the Fund as foresaid are for the purposes of providing retirement and related benefits as now are or may hereafter be authorized or permitted by law for eligible employees, their families and beneficiaries, as determined hereunder; and

**WHEREAS**, the Trustees have the power and authority to amend this Agreement;

**NOW, THEREFORE**, the Trustees, in consideration of the premises and mutual covenants and agreements herein contained, have adopted and executed this Restated Agreement and Declaration of Trust, which shall be a complete replacement for the prior Agreement and Declaration of trust, and this Restated Agreement and Declaration of Trust shall govern the operation of this Pension Fund, and the Trustees designated and in office as such have executed this Trust Agreement thus indicating their acceptance of the respective duties imposed upon them as Trustees under the terms of this Trust Agreement, to read as follows:

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**ARTICLE I**

**DEFINITIONS**

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Unless the context or subject matter requires otherwise, the following definitions shall govern in this Agreement and Declaration of Trust:

**Section 1. United Association.** The term "United Association" shall mean the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada.

**Section 2. Local Unions, District Councils, State or Provincial Associations.** The terms "Local Unions", "District Councils", "State Associations" or "Provincial Associations" shall mean a Local Union, District Council, State Association or Provincial Association affiliated and in good standing with the United Association in accordance with the provisions of the United Association Constitution.

**Section 3. Union.** The term "Union" shall mean the United Association and/or any Local Union, District Council, State Association or Provincial Association.

**Section 4. Collective Bargaining Agreement.** The term "Collective Bargaining Agreement" shall mean any written labor contract, Standard Form of Participation or written agreement by and between a Contributing Employer and the Union which provides for contributions to this Pension Fund in a manner acceptable to the Board of Trustees with any and all extensions or renewals thereof and successor agreements thereto.

**Section 5. Contributing Employer or Employer.** The term "Contributing Employer" or "Employer" shall mean any person, company, business organization, pension fund, welfare fund, apprentice training fund, public or quasi-public employer which is accepted by the Trustees and becomes a party to the Trust Agreement and which has agreed in a Collective Bargaining Agreement with the Union to make contributions to the Pension Fund either by virtue of having signed or by virtue of agreeing to be bound to the Collective Bargaining Agreement or by virtue of the authority delegated to an employer association which has signed the Collective Bargaining Agreement on its behalf. An employer shall be deemed a Contributing Employer only with respect to employment performed in a jurisdiction where the Local Union Collective Bargaining Agreement provides for contributions to this Fund. The Trustees may set those terms and conditions for the acceptance and/or continued participation of any employer as they deem appropriate. The term Contributing Employer shall not include an employer if the Trustees, by resolution, have terminated the Employer's status as a Contributing Employer pursuant to the Rules and Regulations of the Pension Plan. The Union (or a participating Local Union or District Council, or a Local Union's pension, welfare, or apprentice training fund, or another Union affiliated organization) may also be a Contributing Employer if it is accepted by the Trustees and if it is contractually obligated by a signed stipulation to make contributions on behalf of its paid employees to the National Pension Fund in accordance with the rules and regulations of the Pension Plan; provided, however, that any reference herein to the Union as an Employer shall not be deemed to convey upon the Union any of the rights or privileges granted by this Agreement to Employers who are bound to a Collective Bargaining Agreement. The Trustees shall have the discretion and authority to adopt additional rules for the acceptance, participation, and termination of Employers as they deem appropriate.

**Section 6. Employee**

(a) The term "Employee" means:

- (i) Any person who performs work under a Collective Bargaining Agreement between a Contributing Employer and the Union and for whom the Employer is obligated to make contributions to the Fund under the terms of the Collective Bargaining Agreement;

Any person who was previously covered by the Fund as a member of a bargaining unit and for whom the Employer is obligated to make contributions to the Fund under the terms of the Collective Bargaining Agreement or other written agreement;

- (ii) Any person employed by a public or quasi-public Employer and for whom the Employer signs a Collective Bargaining Agreement to make contributions to the Fund;
- (iii) Any person who was previously covered by the Fund as a member of a bargaining unit, who is currently employed by a participating Local Union and for whom contributions are required to the Fund under the terms of the Collective Bargaining Agreement or other written agreement;

- (iv) Any full time employee of a participating Local Union or District Council, or Local Union's pension, welfare, or apprentice training fund or of another Union affiliated organization, provided the Employer signs a written participation agreement, on the terms established by the Trustees, providing for the coverage of such employees and requiring contributions to the Fund on their behalf. Any such Employer may also elect in its written agreement that coverage will be provided to all of its employees and that contributions will be made on behalf of all of its employees.
  - (v) Any other full time employee of a Contributing Employer who is not working under a Collective Bargaining Agreement between the Contributing Employer and the Union, provided the Employer signs a written participation agreement, on the terms established by the Trustees, providing for the coverage of such employees and requiring contributions to the Fund on their behalf.
- (b) The term "Employee" shall not include any self-employed person, partner, nor sole proprietor of an unincorporated business which is a Contributing Employer whether the interest is direct or indirect. A person with an ownership interest in a corporation which is a Contributing Employer shall be considered an Employee if he otherwise meets the requirements of this Section 6; however, anyone with a 10% or greater ownership interest, or whose spouse has a 10% or greater ownership interest, can participate only if the Employer signs a participation agreement on the terms established by the Trustees.
- (c) The Trustees shall have the discretion and authority to adopt additional rules for the coverage of Employees as they deem appropriate.

**Section 7. Beneficiary.** The term "Beneficiary" as used herein, shall mean a person designated by a Pensioner or a Participant (as defined in the Plan) or by the terms of the Plan of Pension Benefits created pursuant to this Agreement and Declaration of Trust, who is or may become entitled to a benefit from this Fund.

**Section 8. Trustees.** The term "Trustees" as used herein, shall mean the Trustees designated in this Trust Agreement, together with their successors designated and appointed in accordance with the terms of this Trust Agreement.

**Section 9. Agreement and Declaration of Trust.** The term "Agreement and Declaration of Trust" as used herein, shall mean this instrument including any amendments, supplements and modifications hereto.

**Section 10. Act.** The term "Act" as used herein, shall mean the Employee Retirement Income Security Act of 1974, any amendments as may from time to time be made and any regulations promulgated pursuant to the provisions of the Act.

**Section 11. Plan of Pension Benefits.** The term "Plan of Pension Benefits" as used herein, shall mean the Rules and Regulations of the National Pension Fund established by the Board of Trustees pursuant to this Agreement and Declaration of Trust and any amendments, modifications, extensions or renewal thereof.

**Section 12. Pension Trust Fund.** The term "Pension Trust Fund" or "Fund" or "Pension Fund" as used herein, shall mean the Trust Fund provided for in Collective Bargaining Agreements between Employers and the Union which is continued by this Restated Agreement and Declaration of Trust, and shall mean generally the monies, insurance policies and other things of value which comprise the corpus, income and additions to the Trust Fund.

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## ARTICLE II

### CONTINUATION OF THE PENSION FUND

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**Section 1. Continuation of the Pension Trust Fund.** There is hereby continued a Trust Fund known as the "Plumbers and Pipefitters National Pension Fund."

**Section 2. Composition of Pension Trust Fund.** This Trust Fund consists of (1) such sums of money as have been or shall be paid to the Pension Fund by the Employers as contributions required by Collective Bargaining Agreements or signed stipulations; (2) all investments made therewith, the proceeds thereof and the income therefrom; (3) all other contributions and payments to the Trustees from any source whatsoever to the extent permitted by law; and (4) supplies, property and other assets used by the Trustees in the administration of the Pension Fund.

**Section 3. Purpose of Trust Fund.** The Trust Fund continued hereby is for the purpose of providing (1) pension benefits and such other benefits as may be permitted by law under a plan of benefits adopted by the Trustees and (2) the means for financing the expenses of the Trustees in the operation and administration of the Pension Trust Fund, in accordance with this Agreement and Declaration of Trust. It is intended that this Trust be a multi-employer plan as that term is defined in Section 3(37) of the Act.

**Section 4. Irrevocable Purpose.** The Trust continued hereby shall constitute an irrevocable trust established for the exclusive benefit of employees, in accordance with Section 302(c) of the Labor Management Relations Act of 1947, as amended by Public Law 86-257, 1959, and in accordance with the Act.

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## ARTICLE III

### BOARD OF TRUSTEES

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**Section 1. Board of Trustees.** The operation and administration of the Pension Trust Fund shall be the responsibility of a Board of Trustees, composed of six (6) Trustees, three (3) of whom shall be Employer Trustees, and three (3) Union Trustees. The person who occupies the position of General President of the United Association may, at his option, serve as a Union Trustee. If the General President does not wish to serve as a Trustee, he shall appoint someone else in his place to serve as a Union Trustee. In addition, the General President of the United Association shall appoint all other Union Trustees. The number of Trustees may be increased from time to time but in no event shall there be more than five (5) Employer Trustees and five (5) Union Trustees. There may also be four (4) Alternate Trustees, two (2) to be appointed by the General President of the United Association and two (2) to be appointed by the Employer Trustees currently serving as such. The Alternate Trustees shall serve in the place and stead of any of the Trustees who are unable to attend regular or special meetings of the Board or who are temporarily incapacitated from serving. At or before such meeting, the Employer or Union Trustees may designate one or more of the Alternate Trustees to serve in the place and stead, respectively, of any absent or temporarily incapacitated Employer or Union Trustee. Six (6) Trustees so named and designated (or any one or more of the Alternate Trustees) shall constitute the Board of Trustees and shall administer the Fund contained herein unless a greater number of Trustees is designated.

**Section 2. Acceptance of Trusteeship.** A Trustee shall execute a written acceptance in a form satisfactory to the Trustees and consistent with the Act and thereby shall be deemed to have accepted the Trust created and established by this Trust Agreement and to have consented to act as Trustee and to have agreed to administer the Pension Trust Fund as provided herein. Such written

**Section 3. Designation or Termination of Trustees.** The Employer Trustees, by majority vote among themselves, may designate or terminate the designation of an Employer Trustee or Alternate by notifying the remaining Trustees in writing of their action. The Union Trustees and Alternates shall be designated or the designation terminated by the General President of the United Association, by notifying the remaining Trustees in writing. Any such designations or terminations shall be effective on the date of the filing of such designation or termination with the remaining Trustees.

**Section 4. Name.** The Trustees shall conduct the business of the Pension Trust Fund and execute all documents and instruments in the name of the Plumbers and Pipefitters National Pension Fund.

**Section 5. Resignation and Replacement of Trustees.** A Trustee may resign and become and remain fully discharged from all further duty or responsibility hereunder upon giving thirty (30) days' notice in writing to the remaining Trustees and to the United Association if a Union Trustee, or such shorter notice as the remaining Trustees may accept as sufficient. The notice shall state the date on which 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.

In the event of the termination of the designation of any Trustee, or in the event of the resignation, death, incapacity or the unwillingness of any of the Trustee to serve, a successor Trustee shall be designated in accordance with Section 3 of this Article. The remaining Trustees shall be notified of such designation by an instrument in writing.

Any successor Trustee designated as herein provided shall affix his signature to a certificate of acceptance of this Agreement and Declaration of Trust as provided in Section 2 of this Article, and shall, without further act, become vested with all the estate rights, powers, discretions and duties of his predecessor Trustee.

Any retiring or terminated Trustee shall forthwith turn over to the remaining Trustees at the office of the Pension Fund any and all records, books, documents, monies and other property in his possession which are a part of the Pension Trust Fund and incident to the fulfillment of the Trustees' duties and responsibilities under this Agreement and Declaration of Trust.

The powers of the Trustees to act, as above provided in this Trust Agreement, shall not be impaired or limited in any way pending the designation of a successor Trustee to fill any vacancy.

**Section 6. Term of Trustees.** A Trustee shall continue to serve until his death, permanent incapacity, resignation, removal, or expiration of his term as established by the party designating the Trustee.

**Section 7. Payment of Trustees.** No Trustee shall receive compensation from the Fund for the performance of his duties as a Trustee except as may be allowed under the Act and as may be authorized by the remaining Trustees; however, each Trustee shall be reimbursed from the Fund for all reasonable and necessary expenses which he incurs in the performance of his duties as a Trustee. The Trustees shall establish the conditions for the payment of compensation (if any) and for the reimbursement of expenses.

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## ARTICLE IV

### MEETINGS AND DECISIONS OF THE TRUSTEES

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**Section 1. Officers of the Trustees.** The Trustees shall select from among their number a Chairman, and a Co-Chairman. When the Chairman has been selected from the Union Trustees, the Co-Chairman shall be selected from the Employer Trustees or vice versa.

**Section 2. Meetings of the Trustees.** Regular meetings of the Trustees shall be held at such times and places as may be agreed upon by the Chairman and Co-Chairman. Reasonable notice of the meetings shall be provided, except that meetings may be held at any time without notice if all the Trustees consent thereto in writing. Special meeting may be called by the Chairman and Co-Chairman or any four (4) Trustees upon five (5) days' written notice. The Trustees shall meet at least once each year and at such other times as they deem it necessary to transact their business.

**Section 3. Action of Trustees without Meeting.** Action by the Trustees may also be taken by them in writing, without a meeting, or by telephone conference call, or by wire, provided that in such cases, there shall be unanimous concurrence of all Trustees.

**Section 4. Quorum.** In all meetings of the Trustees, two (2) Trustees shall constitute a quorum for the transaction of business, provided there are at least one (1) Union Trustee present at such meetings and at least one (1) Employer Trustee present at such meetings. At all meetings, the Employer and the Union Trustees shall have equal voting strength.

**Section 5. Majority Vote of Trustees.** All action by Trustees shall be by majority decision of those voting. In the event an Employer Trustee(s) or a Union Trustee(s) is absent, and no alternate(s) have been appointed for a meeting, the remaining Union or Employer Trustees shall each have one and one-half (1 1/2) votes or three (3) votes, depending on the number of absent Trustees, but in no event shall either the Employer Trustees or the Union Trustees have more than three (3) votes respectively. Such majority decision shall govern not only this Article but any portion of this Agreement and Declaration of trust which refers to action by the Trustees. In the event any matter presented for decision cannot be decided because of a tie vote or the lack of a quorum at two successive meetings, the matter shall be submitted to arbitration, as set forth in Article IX hereof.

**Section 6. Minutes of Meetings.** The Trustees or their designee shall keep minutes of all meetings, but such minutes need not be verbatim. Copies of the minutes shall be sent to all the Trustees and to such other persons as the Trustees may direct. Minutes of a meeting shall be reviewed and approved by the Trustees at the next meeting.

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## ARTICLE V

### POWERS AND DUTIES OF TRUSTEES

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**Section 1. Conduct of Trust Business.** The Trustees shall have authority to control and manage the operation and administration of the Plumbers and Pipefitters National Pension Fund and shall conduct the business and activities of the Plumbers and Pipefitters National Pension Fund in accordance with this Trust Agreement and applicable law. The Trustees shall hold, manage and protect the Trust Fund and collect the income therefrom and contributions thereto. The Trustees shall be the Named Fiduciary and the Administrator of the Pension Fund as those terms are defined in the Act.

**Section 2. Use of the Trust Fund for Expenses and to Provide Benefits.**

- (a) The Trustees shall have the power and authority to use and apply the Trust Fund to pay or provide for the payment of all reasonable and necessary expenses (i) of collecting employer contributions and payments and other monies and property to which they may be entitled and (ii) of administering the affairs of this Trust, including the purchase or lease of premises, material, supplies and equipment (iii) of obtaining such legal, actuarial, investment, administrative, accounting, clerical and other assistance or employees as they may find necessary or appropriate, and (iv) of performing such other acts as the Trustees, in their sole discretion, find necessary or appropriate in the performance of their duties.
- (b) The Trustees shall have the power and authority to use and apply the Trust Fund to pay or provide for the payment of retirement and related benefits to eligible Employees and Beneficiaries in accordance with the terms, provisions and conditions of the Plan of Pension Benefits to be agreed upon by the Trustees pursuant to this Agreement and Declaration of Trust.

**Section 3. Construction and Determinations by Trustees.** Subject to the stated purposes of the Plumbers and Pipefitters National Pension Fund and the provisions of this Trust Agreement, the Trustees shall have full and exclusive authority to determine all questions of coverage and eligibility, methods of providing or arranging for benefits and all other related matters. They shall have full power to construe the provisions of this Agreement and Declaration of Trust and the Plan of Pension Benefits, and the terms used therein and any rules and regulations issued thereunder. Any such determination and any such construction adopted by the Trustees in good faith shall be binding upon the Union, the Employers, Employees and their Beneficiaries.

**Section 4. General Powers.** The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law, to:

- (a) demand, collect, receive and hold contributions and to take such steps as may be deemed necessary or desirable to collect contributions due the Trust Fund;
- (b) compromise, settle arbitrate and release claims or demands in favor of or against the Pension Trust Fund or the Trustees on such terms and conditions as the Trustees may deem advisable; commence or defend any legal, equitable or administrative proceedings brought in connection with Pension Trust Fund and represent the Pension Trust Fund in all such proceedings;
- (c) pay or provide for the payment of all reasonable and necessary expenses of collecting contributions and payments;
- (d) enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and the administration of the Plumbers and Pipefitters National Pension Fund;

- (e) enter into an investment contract or agreement with an insurance company or companies for the investment and reinvestment of assets of the Trust Fund;
- (f) enter into a group annuity contract or contracts and any agreements supplemental thereto, with an insurance company or companies for the purpose of investing all or a portion of the Fund held by them in Trust. Any such contract may provide that deposits thereunder be allocated to the insurance company's general account, or solely to one or more of its separate accounts maintained for the collective investment of the assets of qualified retirement plans, including but not limited to, a separate account, invested primarily in real property or any interest therein, or to the insurance company's general account and one or more of its separate accounts. The insurance company issuing such contract shall have the exclusive responsibility for the investment and management of any amounts held under such contract, and shall have all the powers with respect to the assets of the Fund held thereunder as the Trustees have with respect to the assets of the Fund held under this Agreement and Declaration of Trust;
- (g) invest, reinvest and have invested and reinvested all funds of this Pension Trust Fund, without distinction between principal and income, in any type of investment the Trustees deem prudent, including real estate. There shall be no limitation restricting investments in common stock to a percentage of the Pension Trust Fund or to a percentage of the total market value of the Fund. The Trustees shall have the authority, in respect to any stocks, bonds or other property, real or personal, held by them as Trustees, to exercise all such rights, powers and privileges as might be lawfully exercised by any person owning similar stocks, bonds or other property in his own right;
- (h) register securities or other Pension Trust Fund property in the name of the Pension Trust Fund or of the Trustees, or in the names of one or more nominees and to hold instruments in bearer form;
- (i) enter into and terminate agency or custody agreements with banks or trust companies chosen by them, under which said agreements the Trustees may turn over to said banks or trust companies a portion or all of the funds held by them in this Trust for safekeeping, investment or reinvestment, on such terms as the Trustees deem advisable;
- (j) enter into or terminate "Corporate Trust Agreements" with banks, on such terms as the Trustees deem advisable in their discretion, for custodian services and/or investment services, and to transfer the assets of the Fund to said banks;
- (k) commingle at their discretion, all or any portion of the assets of the Pension Trust Fund, with assets of other qualified employee benefit plans for the purpose of investment in, or through, investment trusts for employee benefit plans. Said investment may, at the Trustees' discretion, be in the equity and/or fixed income funds of such investment trust. To the extent of this Pension Trust Fund's participation in any investment trust, that investment trust shall constitute a part of this Agreement and Declaration of Trust;
- (l) sell, exchange, lease, convey, mortgage or dispose of any property, whether real or personal, at any time forming a part of the Pension Trust Fund upon such terms as they may deem proper, and to execute and deliver any and all instruments of conveyance, lease, mortgage and transfer in connection therewith;
- (m) pay or provide for the payment of 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 Pension Trust Fund or any money, property or securities forming a part thereof;
- (n) retain such portion of the monies of the Pension Trust Fund in cash balances as the Trustees may deem desirable, without any liability for interest thereon;
- (o) establish and accumulate as part of the Pension Trust Fund such reasonable reserve funds as the Trustees, in their sole discretion, deem necessary or desirable to carry out the purposes of such Pension Trust Fund;

- (p) allocate fiduciary responsibilities among the Trustees, or Committees of the Trustees, delegate fiduciary duties to persons other than Trustees and delegate Trustee responsibilities to an investment manager as provided in this Agreement and Declaration of Trust and in accordance with the requirements of the Act;
- (q) appoint an investment manager or managers, as that term is defined in the Act, and enter into an agreement with such investment manager, in accordance with the requirements of the Act, delegating to the investment manager the responsibility to control and manage, including the power to acquire and dispose of, such of the assets of the Pension Trust Fund as the Trustees may specify;
- (r) enter into an agreement or arrangement with other similar trust funds for the operation of a joint administrative office, which, shall administer the office or offices of the Pension Trust Fund, coordinate and administer the accounting, bookkeeping and clerical services, provide for the coordination of actuarial services furnished by the consulting actuary, prepare (in cooperation, where appropriate, with the consulting actuary and independent auditor) all reports and other documents to be prepared, filed or disseminated by or on behalf of the Pension Trust Fund in accordance with law, assist in the collection of contributions required to be paid to the Pension Trust Fund by Employers and perform such other duties and furnish such other services as may be assigned, delegated or directed or as may be contracted by or on behalf of the Trustees;
- (s) employ reputable and qualified investment consultants to assist the Trustees in exercising their investment powers and authority by reviewing the investment policy and types and kinds of investments made by the Trustees and/or the investment manager(s) and to contract for investment measurement services;
- (t) engage one or more independent qualified public accountants, one or more enrolled actuaries and qualified legal counsel to perform all services as may be required by applicable law and such other services as the Trustees may deem necessary;
- (u) pay or provide for the payment from the Trust Fund of all costs incurred in employing such professionals, consultants, and managers as the Trustees deem necessary and in accordance with this Trust Agreement and applicable law;
- (v) designate an agent for service of legal process for the Pension Trust Fund;
- (w) obtain and maintain policies of insurance, to the extent permitted by law, to insure themselves, the Pension Trust Fund as such, as well as employees or agents of the Trustees and of the Pension Trust Fund, while engaged in business and related activities for and on behalf of the Pension Trust Fund (i) with respect to liability to others as a result of acts, errors or omissions of such Trustee or Trustees, employees or agents, respectively, and (ii) with respect to injuries received or property damage suffered by them. The cost of the premiums for such policies of insurance shall be paid out of the Pension Trust Fund to the extent permitted by the Act;
- (x) enter into reciprocal agreements (on such terms as the Trustees deem advisable), including retroactive reciprocal agreements, with trustees of other pension funds to permit employees covered hereby to receive pension credits in this Fund when working outside the geographical jurisdiction and/or trade jurisdiction covered by the Collective Bargaining Agreements, as defined herein, and to receive from other pension funds contributions made on behalf of such employees to the other funds; to disburse to other pension funds contributions received on behalf of employees not normally covered under this Pension Fund, to permit those employees to receive pension credits in their home funds;
- (y) merge or integrate other pension funds into or with this Pension Fund or to accept the transfer of all or a portion of the assets of another pension fund in accordance with the requirements of the Act; or, to merge or integrate this Pension Fund into or with other pension funds or to transfer all or a portion of the assets of this Pension Fund to other pension funds in accordance with the Act;

- (z) to invest the assets of the Fund and/or of the Plan in any common, collective or commingled trust fund, to the extent permitted by ERISA and other applicable law, and to direct the investment of assets of the Plan or of the Fund in deposits which bear a reasonable rate of interest. To the extent monies or other assets are transferred to such a collective trust in exchange for an interest in such a collective trust, the terms and conditions of the plan of such collective trust solely shall govern the investment duties, responsibilities and powers of the Trustees of such collective trust, and to the extent required by law, such terms, responsibilities and powers shall be part of this Trust Agreement;
- (aa) establish such rules and regulations necessary to effectuate the purposes of this Agreement and Declaration of Trust and not inconsistent with the terms hereof;
- (bb) do any and all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to accomplish the general objective and purpose of enabling the Employees to obtain pension benefits.

**Section 5. Personal Liability.** No Trustee shall be liable or responsible for his own acts or for any acts or defaults of any other fiduciary or party in interest or any other person except to the extent liability is imposed by the Act.

The Trustees, to the extent permitted by the Act, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person.

**Section 6. Reliance on Written Instruments and Professional Advice.** Any Trustee, to the extent permitted by the Act, may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees or the Chairman and Co-Chairman as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument.

The Trustees may, from time to time, consult with the Trust Fund's legal counsel, actuary and any other professionals, and to the extent permitted by the Act, the Trustees shall be protected in acting upon the advice of such professionals.

**Section 7. Reliance by Others.** No party dealing with the Trustees shall be obligated to see to the application of any funds or property of the Trust Fund to the stated Trust or to see that the terms of this Trust Agreement have been complied with or to inquire into the necessity or expediency of any act of the Trustees. Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon that at the time of the execution of said instrument, the Trust was in full force and effect, that the instrument was executed in accordance with the terms and conditions of this Trust Agreement, and that the Trustees were duly authorized and empowered to execute the instrument.

**Section 8. Books of Account.** The Trustees shall cause to be kept true and accurate books of account and records of all transactions of the Pension Trust Fund which shall be open to the inspection of each of the Trustees at all times and which shall be audited annually or more often, and at such times as the Trustees deem appropriate by a certified public accountant selected by the Trustees. Such audits shall be available at all times for inspection by the Employers, the Union and the Employees or their Beneficiaries at the principal office of the Pension Trust Fund.

**Section 9. Surety Bonds.** The Trustees and any employees who are empowered and authorized to sign checks and handle monies of the Pension Trust Fund shall be bonded by a duly authorized surety company, qualified to write such bonds, in such amounts as may be determined from time to time by the Trustees. The Trustees may also bond such other employees of the Trust Fund as they deem necessary. The cost of the premiums of such bonds shall be paid out of the Pension Trust Fund. The bonds shall be in such amounts as required by applicable law.

**Section 10. Execution of Documents.** The Trustees may, in the course of conducting the business of the Pension Trust Fund, execute all instruments or documents or notices in the name of the Plumbers and Pipefitters National Pension Fund which instruments shall be signed by the Chairman and Co-Chairman, or one or more Trustees authorized by resolution. All persons shall be fully protected in reliance that such instruments or documents or notices have been duly authorized and are binding on the Trustees and the Plumbers and Pipefitters National Pension Fund.

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## ARTICLE VI

### CONTRIBUTIONS TO THE PENSION TRUST FUND

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**Section 1. Contributions Held in Trust.** The Trustees declare that they will receive and hold the contributions herein provided for or any other money, income, rebate, dividend or return of premium or property which may be entrusted to them, as Trustees hereunder, with the powers and duties and for the uses, purposes and trusts set forth in this Agreement and Declaration of Trust.

Neither the Union, the Employer, Employees, or their Beneficiaries shall have any right, title or interest in or to the Trust Fund or any part thereof except as required by law.

**Section 2. Encumbrance of Benefits.** The Plumbers and Pipefitters National Pension Fund shall constitute an irrevocable trust for the sole and exclusive benefit of Employees and their Beneficiaries entitled to benefits under the Plan of Pension Benefits. All the benefits, monies or property shall be free from the interference and control of any creditor, and no benefits shall be subject to any assignment or other anticipation, nor to seizure or to sale under any legal, equitable or any other process; and in the event that any claim of benefit shall, because of any debt incurred by or resulting from any other claim or liability against any Employee, or Beneficiary, by reason of any sale, assignment, transfer, encumbrance, anticipation or other disposition made or attempted by said Employee or Beneficiary, or by reason of any seizure or sale or attempted sale under any legal, equitable or other process, or in any suit or proceeding become payable, or be liable to become payable to any person other than the Employee or Beneficiary for whom the same is intended, as provided herein, pursuant hereto, the Trustees shall have power to withhold payment of such benefit to such Employee or Beneficiary until such assignment, transfer, encumbrance, anticipation or other disposition, writ, or legal process is canceled or withdrawn in such manner as shall be satisfactory to the Trustees. Until so canceled or withdrawn, the Trustees shall have the right to use and apply the benefits as to the Trustees may seem best, directly for the support and maintenance of such Employee or Beneficiary.

The Employers' contributions to be paid into the Pension Trust Fund shall not constitute or be deemed wages due to Employees nor shall the Pension Trust Fund be liable for or subject to the debts, contracts or liabilities of the Union, the Employers, or Employees.

No Employee shall have the right to receive any part of the contributions made to this Pension Trust Fund, except as provided by the Plan of Pension Benefits.

**Section 3. Rate of Contributions.** The Employer shall pay to the Trustees the amount of money as established and provided for in Collective Bargaining Agreements or signed stipulations between Employers and the Union.

**Section 4. Mode of Payment and Report on Contributions.** All contributions required by Collective Bargaining Agreements and signed stipulations shall be paid to the Trustees and shall be in the manner and form determined by the Trustees. The Employers shall make all reports on contributions required by the Trustees in the performance of their duties under this Agreement and Declaration of Trust. The Trustees may, at any time, designate a qualified representative to conduct an audit of the payroll and wage records of any Employer to permit the Trustees to determine

whether such Employer is making full payment to the Trustees in the amounts required by a Collective Bargaining Agreement or signed stipulation. Any data or information furnished to the Trustees by an Employer or by the Union shall be held confidential and may not be disclosed by the Trustees to any third person, unless the Trustees shall decide that such disclosure is necessary for the proper administration of the Fund.

**Section 5. Default in Payment.** Each Employer shall be responsible only for making contributions that it is obligated to make, on behalf of its Employees, pursuant to its Collective Bargaining Agreement or signed stipulation except as may be provided in this Agreement and Declaration of Trust or by the Act. Non-payment by an Employer of any contributions when due shall not relieve any other Employer of his obligation to make payments, nor shall non-payment by one Employer of any contribution when due impose upon any other Employer, Employer Association, or the Union any obligation with respect to such payments.

Insofar as payments by the individual Employer to the Fund are concerned, time is of essence. Regular and prompt payment of amounts due by individual Employers to this Fund is essential for the maintenance of the Fund, and it would be extremely difficult if not impracticable to fix the actual expense and damage to the Fund and to the pension program provided by the Fund which will result from the failure of an individual Employer to make such monthly payments in full within the time period. Therefore, payments, together with the completed reporting forms, are due on the twentieth (20th) day following the end of each calendar month, or if earlier, on the date provided for in the Collective Bargaining Agreement. An employer shall be considered delinquent if the employer has failed to pay the amounts due when such amounts become due and payable. The Trustees may assess liquidated damages against any delinquent employer in the amount of 10% of the amount due if payment is not received by the due date. Any assessed liquidated damages may be added to and become a part of the amount due. The Trustees may also require any delinquent employer to pay interest at a rate up to 18% per annum, on the amount due from the date of delinquency until the date of payment. The Trustees may adopt reasonable rules and regulations to enforce the collection of delinquent contributions, including the assessment and collection of liquidated damages and interest and including the adoption of special rules applicable to Employers who are repeatedly delinquent.

The Trustees shall have the power to take any action to enforce the payment of contributions, liquidated damages, interest and other amounts due, including, but not limited to the institution of or intervention in any legal, equitable, or administrative proceedings. All reasonable expenses incurred by the Fund in enforcing the payment of contributions, liquidated damages, interest, and other amounts due, including but not limited to reasonable attorneys' fees, accountants' fees, and court costs may be added to the obligation of the defaulting Employer in addition to the other amounts due. The employer agrees that such sums shall be included in any judgment issued by a court. The Trustees shall have authority to settle or compromise any claims, suits or legal actions for less than the full amount due when in their discretion they deem it in the best interest of the Fund.

**Section 6. Projection of Delinquency.** Where an Employer is two or more months delinquent in making the contributions required on behalf of his Employees and has failed to submit regular documents showing the Employees who worked for the Employer and the hours worked, the Trustees may project as the amount of the delinquency (a) the average of the monthly payments actually made by the Employer for the last three (3) months for which the payments were made, or (b) the average of monthly payments made by the Employers for the last twelve (12) months for which payments were made, or (c) the average of the monthly payment documented by the remittance reports submitted by the Employer without payments for the last three (3) months, or (d) the average of the monthly payment documented by remittance reports submitted by the Employer without payments for the last twelve (12) months, or (e) the average monthly contributions determined by (i) certified payroll records required under any applicable federal, state or local law or (ii) an audit of the payroll and wage records of an Employer conducted under Section 4 of this Article, or (f) the number of Employees employed by the Employer under the Collective Bargaining

Agreement as determined by the Union multiplied by the contribution rate multiplied by workweek established in the Collective Bargaining Agreement. Such projections of delinquency may be made in lieu of demand for production of payroll documents, or upon failure to furnish such documents, in lieu of an audit. The projection may be used as a determination of payments due for each delinquent month, and may be used for purposes of any lawsuit, and no other proof need be furnished by the Trustees to any court or arbitrator to compute the total payments due from the Employer for all delinquent months, exclusive of liquidated damages, interest, attorneys' fees and other costs set out in this Article. This provision shall not, however, limit the Trustees from seeking a greater amount than the projected delinquency if a greater amount is shown to be owed.

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## ARTICLE VII

### PLAN OF PENSION BENEFITS

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**Section 1. Benefits.** The Trustees shall have full discretion and authority to adopt a Plan of Pension Benefits which sets forth eligibility requirements, type, amount and duration of benefits that are to be provided equally and without discrimination to eligible Employees, based on what the Trustees determine to be within the financial limitations of the Pension Trust Fund provided, however, that no benefits, other than pension, annuity, severance and related benefits, may be provided for or paid under this Agreement.

**Section 2. Eligibility Requirements for Benefits.** The Trustees shall have full discretion and authority to determine questions of eligibility requirements for benefits and duration of benefits and to adopt rules and regulations setting forth same, which shall be binding on the Employers, Employees, their Beneficiaries and dependents and any other persons making claims.

**Section 3. Written Plan of Benefits.** The detailed basis on which payment of benefits is to be made, pursuant to this Trust Agreement shall be set forth in the Plan of Pension Benefits. Such Plan of Pension Benefits shall be subject to change or modification by the Trustees from time to time as they may, in their discretion, determine provided, however, that no such change or modification that increases the past service and/or future service benefits or involves a change in the eligibility requirements for participation in the Plan of Pension Benefits or in the eligibility requirements for any benefit under the Plan of Pension Benefits shall be adopted except by a resolution adopted by a majority vote of all members of the Board of Trustees, following advice by the actuarial consulting company to the Board of Trustees that any such change or modification is actuarially within the financial limitations of the Pension Trust Fund.

The Board of Trustees shall reduce the benefits when and to the extent that they are advised by the actuary that it is necessary to make any such reduction in order to stay within the financial limitations of the Plumbers and Pipefitters National Pension Fund.

Any change in or modification of the Plan of Pension Benefits made by the Board of Trustees shall be set forth in writing by the Trustees, with notice to the Employers and the Union.

**Section 4. Internal Revenue Service and Labor Department Approval.** The Trust and the Plan of Pension Benefits adopted by the Trustees shall be such as will qualify for approval by the Internal Revenue Service, United States Treasury Department, and will continue as a qualified Trust and Plan so as to ensure that the Employer contributions to the Plumbers and Pipefitters National Pension Fund are proper deductions for income tax purposes. In addition, the Plan of Pension Benefits adopted by the Trustees shall be such that will qualify for approval by the Department of Labor as required by applicable law. It is the intention of the Trustees to be in full compliance with all requirements of the Internal Revenue Code and the Act. The Trustees are authorized to make whatever applications are necessary with the Internal Revenue Service and Department of Labor to receive and maintain approval of the Trust and Plan of Pension Benefits.

**Section 5. Limitation of Employer's and Union's Obligations.** Neither any Employer nor the Union shall have any responsibility for the payment of any benefit under the Plan of Pension Benefits. The obligation of each Employer under the Plan shall be a several one and shall be limited, except as required by the Act, to paying into the Pension Trust Fund the contributions that it is obligated to make on behalf of its Employees under the provisions of its Collective Bargaining Agreement or signed stipulation.

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## ARTICLE VIII

### CONTROVERSIES AND DISPUTES

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**Section 1. Reliance on Records.** In any controversy, claim, demand, suit at law or other proceeding between any Employer, Beneficiary or any other person and the Trustees, the Trustees shall be entitled to rely to the extent permitted by the Act, upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Union or with the Employers, any facts certified to the Trustees by the Union or the Employers, and any facts which are of public record and any other evidence pertinent to the issue involved.

**Section 2. Submission to Trustees.** All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons in connection with the Pension Trust Fund or the operation thereof, whether as to any claim for any benefits preferred by an Employee, Beneficiary or any other person, or whether as to the construction of the language or meaning of the rules and regulations adopted by the Trustees or this Trust Agreement, or as to any writing, decision, instrument or accounts in connection with the operation of the Pension Trust Fund or otherwise, shall be submitted to the Trustees, and the decision of the Trustees shall be binding upon all persons dealing with the Pension Trust Fund or claiming benefits thereunder.

**Section 3. Settling Disputes.** The Trustees may in their sole discretion compromise or settle any claim or controversy in such manner as they think best, and any majority decision made by the Trustees in compromise or settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all parties interested in this Trust.

**Section 4. Withholding Payments.** In the event any question or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until there shall have been made an adjudication of such question or dispute which, in the Trustees' sole judgment is satisfactory to them or until the Trustees shall have been fully protected against loss by means of such indemnification agreement or bond as they, in their sole judgment determine to be adequate.

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## ARTICLE IX

### ARBITRATION

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**Section 1. Application of this Article.** In the event the Trustees cannot decide any matter, issue or dispute because of a tie vote, or the lack of a quorum at two (2) successive regular or special meetings of the Trustees, then, in either such event, the Employer Trustees and the Union Trustees will attempt to agree upon the designation of an impartial umpire to decide the dispute. If, within ten (10) days after the occurrence of either of the two events referred to above no impartial arbitrator is agreed upon, any three Trustees may petition the United States District Court for the District of

Columbia to appoint an impartial umpire. The decision of the impartial umpire so agreed upon or appointed shall be final and binding on all parties and persons concerned.

**Section 2. Expenses of Arbitration.** All reasonable and necessary costs and expenses incidental to the proceedings before the impartial umpire, including the fee, if any, of the impartial umpire and attorneys' fees incurred by any Trustee in connection with such dispute, shall be a proper charge against the Trust Fund and the Trustees are authorized and directed to pay such charges.

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## ARTICLE X

### EXECUTION OF AGREEMENT AND DECLARATION OF TRUST

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**Section 1. Counterparts.** This Agreement and Declaration of Trust may be executed in one or more counterparts. The signature of a party on any counterpart shall be sufficient evidence of his execution thereof.

**Section 2. Written Instruments.** Other Employers, as defined in Article 1, Section 5, may adopt and become a party to this Agreement and Declaration of Trust by executing a Collective Bargaining Agreement or signed stipulation, wherein the Employer agrees to participate in the Pension Trust Fund pursuant to the terms of this Agreement and Declaration of Trust.

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## ARTICLE XI

### AMENDMENT TO AGREEMENT AND DECLARATION OF TRUST

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**Section 1. Amendment by Trustees.** The provisions of this Agreement and Declaration of Trust may be amended to any extent and at any time by an instrument in writing, adopted by majority vote of the Trustees. Whenever any amendment is made a copy thereof shall be distributed to all Trustees. The Trustees shall have the power to establish the effective date of any amendment. It is expressly understood and agreed that no amendment shall direct any of the trust estate then in the hands of the Trustees from the purposes and objects of the Pension Trust Fund.

**Section 2. Retroactive Effect.** Any Amendment may have retroactive effect.

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## ARTICLE XII

### TERMINATION OF TRUST

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**Section 1. By the Trustees.** This Agreement and Declaration of Trust may be terminated by an instrument in writing, executed by the Trustees upon the happening of any one or more of the following events:

- (a) If the Trust Fund is in the opinion of the Trustees, inadequate to carry out the intent and purpose of this Trust Agreement, or is inadequate to meet the payments due or to become due under this Trust Agreement and under the Plan of Pension Benefits to Employees and Beneficiaries;
- (b) If there are no individuals living who can qualify as Employees or Beneficiaries hereunder;
- (c) When the Trustees determine in their discretion that there is no longer in force and effect a substantial number of Collective Bargaining Agreements or signed stipulations requiring contributions to the Pension Trust Fund.

**Section 2. Procedure on Termination.** In the event of the termination of this Agreement and Declaration of Trust, the Trustees shall:

- (a) make provision out of the Trust fund for the payment of expenses incurred up to the date of termination of the Trust and the expenses incidental to such termination;
- (b) arrange for a final audit and report of their transactions and accounts for the purpose of termination of their Trusteeship;
- (c) give any notice and prepare and file any reports which may be required by law; and
- (d) apply the Pension Trust Fund in accordance with the provisions of the Plan of Pension Benefits.

No part of the corpus or income of the Pension Trust Fund shall be used for or diverted to purposes other than for the exclusive benefit of the Employees and their Beneficiaries or the administration expenses of the Pension Trust Fund. Under no circumstances shall any portion of the Pension Trust Fund, either directly or indirectly, revert or accrue to the benefit of any contributing Employer, or the Union.

**Section 3. Notification of Termination.** Upon termination of the Pension Trust Fund, in accordance with this Article, the Trustees shall forthwith notify the Union, Employers, and all other interested parties. The Trustees shall continue as Trustees for the purpose of winding up the affairs of the Pension Trust Fund.

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## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

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**Section 1. Termination of Individual Employers.** An Employer shall cease to be an Employer within the meaning of this Agreement and Declaration of Trust when he is no longer contractually obligated, pursuant to a Collective Bargaining Agreement or a signed stipulation, to make contributions to this Pension Trust Fund or when the Trustees determine, in accordance with the Plan of Benefits, that his participation as a contributing Employer shall terminate.

**Section 2. Vested Rights.** No Employee or any person claiming by or through an Employee shall have any right, title or interest in or to the Pension Trust Fund, or any part thereof, except as may be specifically determined by the Trustees in conformance with the Act.

**Section 3. Situs.** This Agreement and Declaration of Trust is accepted by the Trustees in the District of Columbia and such place shall be deemed the situs of the Pension Trust Fund continued hereunder. All questions pertaining to validity, construction and administration shall be determined in accordance with the laws of the United States and of the District of Columbia.

**Section 4. Construction of Terms.** Wherever 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 gender or neuter gender, in all situations where they would so apply. Wherever any words are used in this Agreement and Declaration of Trust in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply. Wherever any words are used in this Agreement and Declaration of Trust in the plural form, they shall be construed as though they were also used in the singular form in all situations where they would so apply.

**Section 5. Certification of Trustees' Action.** The Chairman and Co-Chairman of the Trustees may execute any certificate of document jointly, on behalf of the Trustees, and such execution shall be deemed execution by all the Trustees. All persons having dealing with the Pension Trust Fund, or with the Trustees, shall be fully protected in reliance placed upon such duly executed document.

**Section 6. Notice.** Any notice required to be given to the Trustees or any one or more of them pursuant to any provision of this Trust Agreement shall be deemed to have been given if mailed to such Trustee or Trustees at the last known address of the Trustee.

**Section 7. Severability.** Should any provision in this Agreement and Declaration of Trust, Plan of Pension Benefits or rules and regulations adopted thereunder, or in any Collective Bargaining Agreement, be deemed or held to be unlawful or invalid for any reason, such facts shall not adversely affect the provisions herein and therein contained, unless such illegality should make impossible or impractical the functioning of the Pension Trust Fund and the Plan of Pension Benefits, and in such case, the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

**Section 8. Refund of Contributions.** In no event, shall any Employer, directly or indirectly, receive any refund on contributions made by them to the Trust except as provided in the Act. An employer shall not, directly or indirectly, participate in the disposition of the Pension Trust Fund or receive any benefits from the Trust.

**Section 9. Article and Section Titles.** The Article and Section titles are included solely for convenience and shall not be construed to affect or modify any part of the provisions of this Trust Agreement or be construed as part thereof.

**Section 10. Pension or Other Benefits Payable from Trust Fund Only.** Pension and other benefits provided for by this Agreement and Declaration of Trust and/or Plan of Pension Benefits shall only be payable to the extent there are assets in the Fund to pay such pension and other benefits. Neither the parties to this Trust Agreement, the Trustees, nor the Employers guarantee the payment of pension or other benefits, in the event the assets of the Fund are insufficient for such purposes except as may be otherwise required by the Act.

**Section 11. Complete Agreement.** The provisions of this Trust Agreement shall be deemed exclusively to define the powers, duties, rights and obligations of all persons who have a relation to the trust estate, except that the amount of the Employer contributions and dates for payment thereof shall be provided for in the Collective Bargaining Agreements and signed stipulations.

**RESTATED AGREEMENT AND DECLARATION OF TRUST  
UNION AND EMPLOYER RECOGNITION  
PLUMBERS AND PIPEFITTERS NATIONAL PENSION FUND**

*IN WITNESS WHEREOF*, the undersigned Employer and Union, by causing this instrument to be duly executed by their authorized representatives, hereby adopt and become a party to this restated Agreement and Declaration of Trust of the Plumbers and Pipefitters National Pension Fund and, in so adopting and becoming a party to this Agreement and Declaration of Trust, the undersigned Employer hereby ratifies, accepts and designates as its representative the Employer Trustees then serving as such, and the undersigned Union hereby ratifies, accepts and designates as its representative the Union Trustees then serving as such, and the undersigned Employer and Union authorize the designation of additional and successor Trustees in accordance with the terms and conditions of this Agreement and Declaration of Trust.

FOR LOCAL UNION NO. \_\_\_\_\_, UNITED ASSOCIATION

By \_\_\_\_\_  
Authorized Union Officer

By \_\_\_\_\_  
Authorized Union Officer

Date \_\_\_\_\_

FOR THE EMPLOYER\*

\_\_\_\_\_  
(Insert Name of Employer)

Address \_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Authorized Officer of Employer

By \_\_\_\_\_  
Authorized Officer of Employer

Date \_\_\_\_\_

Plumbers and Pipefitters National Pension Fund Employer's Account Number

\_\_\_\_\_

\*If part of an Employer Association, please note the name of the Association and the date that Collective Bargaining Agreement rights were granted to the Association.

**PLUMBERS AND PIPEFITTERS NATIONAL PENSION FUND  
REVISED STANDARD FORM OF PARTICIPATION AGREEMENT**

The undersigned Employer and Union agree that the Employer shall make pension contributions to the National Pension Fund in accordance with the terms of this agreement on behalf of those Employees who are covered by the National Pension Fund pursuant to the Collective Bargaining Agreement.

1. a) Commencing with the first day of \_\_\_\_\_, 20\_\_\_\_, and for the duration of the current Collective Bargaining Agreement between the parties, and any renewals or extensions thereof, the Employer agrees to make payments to the Plumbers and Pipefitters National Pension Fund for each Employee who is in each classification listed below in accordance with the Collective Bargaining Agreement, as follows:

<u>CLASSIFICATION</u>	<u>AMOUNT</u>	<u>EFFECTIVE DATE</u>
Journeyman	____ per hour	_____
Apprentice	____ per hour	_____
_____	____ per hour	_____
Other – specify		

Any classification of Employees who are excluded from the Plan pursuant to good faith bargaining and for whom contributions are not required shall not participate in the Plan. Persons in such excluded classifications shall not be considered "Employees" for purposes of the Plan and this Standard Form of Participation Agreement.

- b) The Employer shall make the contributions set out in subparagraph 1(a) for each hour or portion thereof, for which an Employee is paid or entitled to payment for performance of duties for the Employer. (Each overtime hour shall be counted as one regular hour for which contributions are payable).
- c) Contributions set out in subparagraph 1(a) above shall be paid starting with the Employee's first day of employment in a job classification covered by the Collective Bargaining Agreement.
- d) The Employer shall continue contributions to the Fund for any compensated Employees who were previously covered by the Fund as members of the bargaining unit and who are continuing to perform work of the type covered by the Collective Bargaining Agreement for at least half of their hours with the Employer. It is understood that the Employer may not make contributions on behalf of an Employee who owns, or whose spouse owns, 10% or more of the corporation unless it signs and abides by a participation agreement covering such owner Employees. It is also agreed that the Employer shall not make contributions to the Fund on behalf of any Employees other than those specified herein or in a separate participation agreement.
2. The payments to the Pension Fund required above shall be made to the "Plumbers and Pipefitters National Pension Fund" which was established under an Agreement and Declaration of Trust, dated July 23, 1968 and restated December 13, 1978. The Employer, by signing this Standard Form of Participation Agreement, or by signing a Collective Bargaining Agreement providing for participation in the Plumbers and Pipefitters National Pension Fund, agrees to be bound by all of the terms and conditions of the Restated Agreement and Declaration of Trust. Any Employer so adopting the Restated Agreement and Declaration of Trust thereby ratifies, accepts and designates as its representatives the Employer Trustees then serving as such and authorizes said Employer Trustees to designate additional Employer Trustees and successor Employer Trustees in accordance with the terms and conditions thereof, and authorizes the Trustees to adopt amendments to the Restated Agreement and Declaration of Trust. The Employer hereby acknowledges receipt of a copy of the Restated Agreement and Declaration of Trust in effect when this Agreement is signed.

3. It is agreed that the Pension Plan adopted by the Trustees of the said Pension Fund shall at all times conform with the requirements of the Internal Revenue Code so as to enable the Employer at all times to treat contributions to the Pension Fund as a deduction for income tax purposes.
4. It is agreed that all contributions shall be made at such time and in such manner as the Trustees require, and the Trustees shall have the authority to retain an accountant or accounting firm to perform payroll audits of the Employer to determine whether the correct amount of contributions have been made or to determine whether contributions have been made on behalf of all Employees covered by the Plan.
5. If an Employer fails to make contributions to the Pension Fund within 20 days of the end of the month during which the work was performed, the Union shall have the right to take whatever steps are necessary to secure compliance, any provision of the Collective Bargaining Agreement to the contrary notwithstanding, and the Employer shall be liable for all costs and expenses for collecting the payments due, together with attorneys' fees, interest on the unpaid contributions of 12% per annum, and liquidated damages of 10% of the unpaid contributions. The Employer's liability for payment hereunder shall not be subject to the grievance or arbitration procedure or the "no-strike" clause provided under the Collective Bargaining Agreement.
6. The parties agree that this Participation Agreement shall be considered a part of the Collective Bargaining Agreement between the undersigned parties.
7. The expiration date of the present Collective Bargaining Agreement between the undersigned parties is \_\_\_\_\_, 20\_\_\_\_. Copies of the Collective Bargaining Agreements and all renewal or extension agreements will be furnished promptly to the Pension Fund office and, if not consistent with this Participation Agreement, can be used by the Trustees as the basis for termination of participation of the Employer.

**FOR LOCAL UNION NO. \_\_\_\_\_, UNITED ASSOCIATION**

**BY \_\_\_\_\_**  
**(Authorized Union Officer)**

**FOR THE EMPLOYER\***

**BY \_\_\_\_\_**  
**(Insert Name of Employer)**

**Address \_\_\_\_\_**

**By \_\_\_\_\_**  
**(Authorized Officer of Employer)**

**Date \_\_\_\_\_, 20\_\_\_\_.**

\* If Employer Association, attach a list of the names and addresses of the Employers represented by Association.

**NOTE:** This form should be attached to the Collective Bargaining Agreement. It is not necessary to repeat the clause in the Collective Bargaining Agreement. You may refer to it in your Collective Bargaining Agreement by stating therein: "The Employer agrees to make contributions to the Plumbers and Pipefitters National Pension Fund in accordance with the Standard Form of Participation Agreement attached to and made part of this Agreement." If you want to include the language of this form in the body of a Collective Bargaining Agreement that may be done and the signature of the parties at the end of that agreement will be sufficient.

(Revised May, 2001)

**PLUMBERS AND PIPEFITTERS NATIONAL PENSION FUND  
PARTICIPATION AGREEMENT FOR EMPLOYERS COVERING OWNER EMPLOYEES  
WORKING AT THE TRADE WHO ARE BARGAINING UNIT ALUMNI**

**WHEREAS:** The undersigned Employer is bound to a Collective Bargaining Agreement requiring contributions to the Plumbers and Pipefitters National Pension Fund on behalf of its Collectively Bargained Employees, and

**WHEREAS:** Some of the Employer's Collectively Bargained Employees are Owner Employees as defined below, and

**WHEREAS:** The Employer wants to provide coverage by the Plumbers and Pipefitters National Pension Fund for these Owner Employees.

**NOW, THEREFORE,** the Employer and the Trustees agree as follows:

1. The Employer will make monthly payments to the Plumbers and Pipefitters National Pension Fund on behalf of its Owner Employees in accordance with the terms of its Collective Bargaining Agreement as modified by this Agreement.
2. For purpose of this Agreement, an Owner Employee is any Employee of the Employer
  - a) who has a 10% or greater ownership interest in the Employer or whose spouse has a 10% or greater ownership interest in the Employer, and
  - b) who is currently performing services for the Employer for compensation and at least half of his hours with the Employer are at work of the type regularly performed by employees covered by the Employer's Collective Bargaining Agreement with a Local Union participating in the Plumbers and Pipefitters National Pension Fund, and
  - c) who has been previously covered by the National Pension Plan while working for any employer under the Collective Bargaining Agreement as a member of the bargaining unit, and
  - d) who otherwise meets the definition of a Collectively Bargained Employee as set forth in Section 1.08(c) of the Plan.
3.
  - a) The rate per hour paid on behalf on the Employer's Owner Employees will always be the same as the rate then paid by the Employer to the Plumbers and Pipefitters National Pension Fund under the Collective Bargaining Agreement. The Agreement shall automatically terminate if the Employer's obligation to contribute to the National Pension Fund under the Collective Bargaining Agreement ceases.
  - b) For full-time Owner Employees, contributions shall be made on the basis of a regular full-time work week as defined in the Collective Bargaining Agreement. For less than full-time Owner Employees, contributions shall be based on the number of hours actually worked provided contributions are made on at least the number of hours resulting from dividing the hourly wage rate under the Collective Bargaining Agreement into the Owner Employee's total income from the Employer.
  - c) The payments required above shall be made to the "Plumbers and Pipefitters National Pension Fund" which was established under an Agreement and Declaration of Trust, dated July 23, 1968 and restated December 13, 1978. The Employer, by signing this Participation Agreement, and by signing its Collective Bargaining Agreement, agrees to be bound by all of the terms and conditions of the Restated Agreement and Declaration of Trust and by the Rules and Regulations of the Plumbers and Pipefitters National Pension Plan. Any Employer so adopting the Restated Agreement and Declaration of Trust thereby ratifies, accepts and designates as its representatives the Employer Trustees then serving as such

and authorizes said the Trustees to adopt amendments to the Restated Agreement and Declaration of Trust.

4. It is agreed that the Pension Plan adopted by the Trustees of the Plumbers and Pipefitters National Pension Fund shall at all times conform with the requirements of the Internal Revenue Code so as to enable the Employer at all times to treat contributions to the Pension Fund as a deduction for income tax purposes. The Employer agrees that the participation of its Owner Employees is conditioned on its compliance with the minimum coverage and nondiscrimination requirements of Sections 410(b) and 401(a) (4) of the Internal Revenue Code. The Employer agrees to provide the information or certifications required by the Pension Fund to show its compliance with these requirements and to verify that the proper amount of contributions has been made. The Employer agrees that the participation of its Owner Employees will terminate automatically as of the end of the plan year prior to a plan year for which it fails to comply with the minimum coverage and nondiscrimination requirements or for which it fails to provide the information or certifications requested by the Trustees.
5. The Employer acknowledges that the Trustees have full discretion and authority to adopt rules and regulations governing the participation of the Employer's Employees which may be included in the Plan, the Trust Agreement, or other Plan documents and the Trustees have the authority to amend and interpret these rules and regulations. Such rules and documents may be amended by the Trustees without the consent of the Employer.
6. It is agreed that all contributions shall be made at such time and in such manner as the Trustees require, and the Trustees shall have the authority to have a qualified representative audit the payroll and wage records of the Employer for the purpose of determining the accuracy of contributions to the Pension Fund.
7. If an Employer fails to make contributions to the Pension Fund within twenty days after the date required by the Trustees, the National Pension Fund shall have the right to take whatever steps are necessary to secure compliance, any provision of a Collective Bargaining Agreement to the contrary notwithstanding, and the Employer shall be liable, pursuant to the Trust Agreement, for all costs for collecting the payments due, including attorneys' fees, interest, and such other late payment fees which may be assessed by the Trustees.
8. If the Employer does not make the required contributions within 60 days after their due date, this Agreement shall automatically terminate upon the mailing of written notice by the Fund to the Employer and the coverage of the Owner Employee shall cease prospectively.
9. The Employer agrees that the participation of these Employees may be terminated if the Employer violates any provisions of this Agreement, including provisions of documents incorporated by reference.
10. This Agreement is effective \_\_\_\_\_.

For: \_\_\_\_\_

Address: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Accepted by the Plumbers and Pipefitters National Pension Fund**

By : \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(Revised Nov 2001)

**PLUMBERS AND PIPEFITTERS NATIONAL PENSION FUND  
PARTICIPATION AGREEMENT COVERING OWNER EMPLOYEES AND OTHER  
EMPLOYEES WHO ARE NOT BARGAINING UNIT ALUMNI OR NOT WORKING AT THE  
TRADE**

**WHEREAS**, the Employer is signed to the Collective Bargaining Agreement requiring contributions to the Plumbers & Pipefitters National Pension Fund on behalf of its employees in the bargaining unit; and

**WHEREAS**, the Employer wants to cover certain employees not currently in the bargaining unit who are not bargaining unit alumni or are not working at the trade;

**NOW, THEREFORE**, the Employer and the Trustees agree as follows:

1. The Employer will make monthly payments to the Plumbers and Pipefitters National Pension Fund on behalf of its non-bargaining unit employees in accordance with the terms of its Collective Bargaining Agreement as modified by this Agreement.
2. The Employer agrees to make payments to the Plumbers and Pipefitters National Pension Fund on behalf of (a) its bargaining unit alumni, including bargaining unit alumni who are not working at the trade; or (b) all of its full-time employees who are not in the bargaining unit; or (c) all of its employees who previously worked at the trade who are not highly compensated. Choose one:
  - (a) \_\_\_\_\_ All bargaining unit alumni including those not working at the trade.
  - (b) \_\_\_\_\_ All full-time non-bargaining unit employees.
  - (c) \_\_\_\_\_ All employees who previously worked at the trade who are not highly compensated.
3. (a) A bargaining unit alumni employee is an employee of the Employer who was previously covered by the Plumbers and Pipefitters National Pension Fund while in the bargaining unit.  
(b) An employee will be considered to be working at the trade if he spends the majority of his work time with the Employer performing work regularly performed under the terms of the Collective Bargaining Agreement.  
(c) The Employer must determine who is full-time on a reasonable and uniform basis. However, any Employee who completes 870 or more Hours of Work for the Employer in the 12-month period beginning on the Employee's date of hire or in any calendar year must be considered a full-time Employee as of the first day of the 12 month period (or calendar year).  
(d) A highly compensated employee is any employee with compensation in excess of \$80,000 (or such higher amount as adjusted by the IRS) or anyone who is a 5% or greater owner of the Employer and anyone else who is highly compensated under Section 414(q) of the Internal Revenue Code.  
(e) Employees who are represented by a union other than the United Association are excluded from coverage and contributions may not be made on their behalf.  
(f) For purposes of the Agreement, an Owner Employee is any Employee of the Employer who has a 10% or greater ownership interest in the Employer or whose spouse has a 10% or greater ownership interest in the Employer.
4. (a) The rate per hour paid on behalf of these Employees will always be the same as the highest rate then paid by the Employer to the Plumbers and Pipefitters National Pension Fund on behalf of a majority of the Employees covered by this Collective Bargaining Agreement (i.e. usually the journeyman contribution rate). The Agreement shall automatically terminate if the Employer's obligation to contribute to the National Pension Fund under the Collective Bargaining Agreement ceases.

- (b) Contributions shall be made for each hour for which the Employee receives pay. All full-time Employees exempt from overtime shall have contributions made for a regular full-time work week as defined in the Collective Bargaining Agreement. For Owner Employees regularly working less than a full work week, contributions shall be based on the number of hours actually worked provided contributions are made on at least the number of hours resulting from dividing the hourly wage rate under the Collective Bargaining Agreement into the Owner Employee's total income from the Employer.
  - (c) The payments required above shall be made to the "Plumbers and Pipefitters National Pension Fund" which was established under an Agreement and Declaration of Trust dated July 23, 1968 and restated December 13, 1978. The Employer, by signing this Participation Agreement, and by signing its Collective Bargaining Agreement, agrees to be bound by all of the terms and conditions of the Restated Agreement and Declaration of Trust and by the Rules and Regulations of the Plumbers and Pipefitters National Pension Plan. Any Employer so adopting the Restated Agreement and Declaration of Trust thereby ratifies, accepts and designates as its representatives the Employer Trustees then serving as such and authorizes said Trustees to adopt amendments to the Restated Agreement and Declaration of Trust.
5. It is agreed that the Pension Plan adopted by the Trustees of the Plumbers and Pipefitters National Pension Fund shall at all times conform with the requirements of the Internal Revenue Code so as to enable the Employer at all times to treat contributions to the Pension Fund as a deduction for income tax purposes. The Employer agrees that the participation of the above Employees is conditioned on its compliance with the minimum coverage and nondiscrimination requirements of Sections 410(b) and 401(a) (4) of the Internal Revenue Code. The Employer agrees to provide the information or certifications required by the Pension Fund to show its compliance with these requirements and to verify that the proper amount of contributions has been made. The Employer agrees that the participation of the above Employees will terminate automatically as of the end of the plan year prior to a plan year for which it fails to comply with the minimum coverage and nondiscrimination requirements or for which it fails to provide the information or certifications requested by the Trustees.
  6. The Employer acknowledges that the Trustees have full discretion and authority to adopt rules and regulations governing the participation of the Employer's Employees which may be included in the Plan, the Trust Agreement, or other Plan documents and the Trustees have the authority to amend and interpret these rules and regulations. Such rules and documents may be amended by the Trustees without the consent of the Employer.
  7. It is agreed that all contributions shall be made at such time and in such manner as the Trustees require, and the Trustees shall have the authority to have a qualified representative audit the payroll and wage records of the Employer for the purpose of determining the accuracy of contributions to the Pension Fund.
  8. If an Employer fails to make contributions to the Pension Fund within twenty days after the date required by the Trustees, the National Pension Fund shall have the right to take whatever steps are necessary to secure compliance, any provision of a Collective Bargaining Agreement to the contrary notwithstanding, and the Employer shall be liable, pursuant to the Trust Agreement, for all costs for collecting the payments due, including attorneys' fees, interest, and such other late payment fees which may be assessed by the Trustees.
  9. If the Employer does not make the required contributions within 60 days after their due date, this Agreement shall automatically terminate upon the mailing of written notice by the Fund to the Employer and the coverage of the above Employees shall cease prospectively.
  10. The Employer agrees that the participation of these Employees may be terminated if the Employer violates any provisions of this Agreement, including provisions of documents incorporated by reference.

11. This Agreement is effective: \_\_\_\_\_

For: \_\_\_\_\_

Address: \_\_\_\_\_

For Work in Local Union: \_\_\_\_\_

Employer Tax Identification Number: \_\_\_\_\_

National Pension Fund Employer Number: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Accepted by the Plumbers and Pipefitters National Pension Fund**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

**MAY 11 2015**

BOARD OF TRUSTEES PLUMBERS AND  
PIPEFITTERS NATIONAL PENSION FUND  
C/O ODOGNOHUE & ODOGNOHUE LLP  
DINAH S LEVENTHAL  
4748 WISCONSINC AVE NW  
WASHINGTON, DC 20016

Employer Identification Number:  
52-6152779  
DLN:  
17007342051014  
Person to Contact:  
JENNIFER M THIMMADASIAH ID# 31316  
Contact Telephone Number:  
(513) 263-4613  
Plan Name:  
PLUMBERS AND PIPEFITTERS NATIONAL  
PENSION PLAN  
Plan Number: 001

Dear Applicant:

We have made a favorable determination on the plan identified above based on the information you have supplied. Please keep this letter, the application forms submitted to request this letter and all correspondence with the Internal Revenue Service regarding your application for a determination letter in your permanent records. You must retain this information to preserve your reliance on this letter.

Continued qualification of the plan under its present form will depend on its effect in operation. See section 1.401-1(b)(3) of the Income Tax Regulations. We will review the status of the plan in operation periodically.

The enclosed Publication 794 explains the significance and the scope of this favorable determination letter based on the determination requests selected on your application forms. Publication 794 describes the information that must be retained to have reliance on this favorable determination letter. The publication also provides examples of the effect of a plan's operation on its qualified status and discusses the reporting requirements for qualified plans. Please read Publication 794.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other federal or local statutes.

This determination letter gives no reliance for any qualification change that becomes effective, any guidance published, or any statutes enacted, after the issuance of the Cumulative List (unless the item has been identified in the Cumulative List) for the cycle under which this application was submitted.

This determination letter is applicable for the amendment(s) executed on 11/5/14 & 5/20/14.

This determination letter is also applicable for the amendment(s) dated on 12/19/12 & 9/11/12.

This determination letter is also applicable for the amendment(s) dated on

Letter 2002

BOARD OF TRUSTEES PLUMBERS AND

7/12/12 & 4/3/12.

This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received. This letter expires on January 31, 2020. This letter considered the 2013 Cumulative List of Changes in Plan Qualification Requirements.

The information on the enclosed addendum is an integral part of this determination. Please be sure to read and keep it with this letter.

We have sent a copy of this letter to your representative as indicated in the Form 2848 Power of Attorney or appointee as indicated by the Form 8821 Tax Information Authorization.

If you have questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely,



Karen D. Truss  
Director, EP Rulings & Agreements

Enclosures:  
Publication 794  
Addendum