

**ACRA-LOCAL 725**  
**DEFINED CONTRIBUTION RETIREMENT PLAN**  
**RULES AND REGULATIONS**

*Amended and Restated Effective January 1, 2015*

January 16, 2015

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**INTRODUCTION**

The purpose of this Fourth Amended and Restated Defined Contribution Retirement Plan is to set forth the rules and regulations concerning eligibility and the amount of benefits that will be payable to eligible Employees, their families and dependents from the Trust. This Plan shall be known as ACRA-LOCAL 725 DEFINED CONTRIBUTION RETIREMENT PLAN. This Plan is a continuation of the Plan adopted effective the first day of July, 1999, and subsequently amended. The Plan is hereby amended and restated effective January 1, 2015, except to the extent an earlier effective date is expressly provided with respect to a particular provision hereof. The provisions of this Plan, as so amended and restated, shall apply only to an Employee in Covered Employment on or after the applicable effective date. Any retired Employee receiving benefits before January 1, 2015, or any former Employee who terminated Covered Employment before January 1, 2015, shall have his rights to benefits determined under the Plan in effect when his Covered Employment terminated, and shall not be entitled to any additional benefits under the amended and restated Plan as set forth herein unless the Trustees specifically provide otherwise.

**ARTICLE 1**  
**DEFINITIONS**

- 1.1 The term "Accrued Benefit", as used herein, shall mean the account balance of a Participant as of the Participant's Retirement Date.
- 1.2 The term "ACRA", as used herein, shall mean the Air Conditioning, Refrigeration, Heating and Piping Association, Inc. and its association.
- 1.3 The term "Account Balance" shall mean the amount contained in a Participant's Separate Accounts pursuant to Subsection 10.1 (c) hereof.
- 1.4 The term "Act" or "ERISA", 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 rules or regulations promulgated pursuant to the provisions of said Act.
- 1.5 The term "Annual Compensation" or "Compensation", as used herein, (unless otherwise specifically modified by other provisions of this Plan), shall have the meaning described in Code Section 415(c). For purposes of testing the annual limitations and performing the annual 401(k) testing, Compensation shall not include any amounts in excess of the limits of Code Section 401(a)(17).
- 1.6 The term "Bargaining Unit Employees", as used herein, shall mean any employee who is a member of the Union and/or for whom the Union is the bargaining representative.
- 1.7 The term "Beneficiary", as used herein, shall mean a person designated by a Participant or by terms of the Plan in accordance with Section 14.4 of the Plan, who is or may become entitled to a benefit.
- 1.8 The terms "Break in Service", "One Year Break in Service" or "Forfeiture", shall be defined in Article 5 of the Plan.
- 1.9 The term "Code", as used herein, shall mean the Internal Revenue Code of 1986, and any amendments as may from time to time be made, and any rules or regulations promulgated pursuant to the provisions of said Code.
- 1.10 The term "Collective Bargaining Agreement", as used herein, shall mean any written contract for Labor between an Employer and the Union or a Participating Union which provides for Contributions to the Trust Fund for this Plan together with any renewal, modification, amendment or continuation thereof or successor agreement thereto, as approved by the Trustees as a basis for participating in the Trust Fund and this Plan. The term shall also include any written contract for labor between the Union and an Employer covering a period of time prior to the date the Employer became a Contributing Employer, and shall also include any written agreement for Labor or

otherwise by which an Employer becomes obligated to make Contributions to the Plan, and/or Trust Fund, including without limitation by virtue of any Reciprocal Agreement with any other Retirement Trust or Plan or other agreement executed by and/or approved by the Trustees.

**1.11** The term "Contributions" shall, unless otherwise provided hereunder include both Employer Contributions and Elective Contributions as defined below. With respect to corporate officers, superintendents, supervisors, or Non-Bargaining Unit Employees of an Employer, the same Contribution amount shall apply except that Contributions shall be made based on forty (40) hours per week, fifty-two (52) weeks per year including vacation, holidays, sick leave, or such higher number of hours as such person may be entitled to have paid in accordance with U.S. Department of Labor regulations. No Contributions shall be made on behalf of sole proprietors, partners or principals of non-incorporated Employers.

(a) "Employer Contributions", as used herein, shall mean the payment required to be paid by an Employer to the Trust Fund, in amounts and in a manner set forth in the Collective Bargaining Agreement or other written agreement in effect from time to time, but shall not include "Elective Contributions"; and

(b) "Elective Contributions", shall mean the payments to be contributed to the Plan, by a Contributing Employer on behalf of an Eligible Participant, pursuant to an Election filed by such Eligible Participant as required hereunder. Elective Contributions made pursuant to this Subsection 1.11(b) shall be governed by the following additional provisions:

(i) amounts credited to a Participant's Elective Contribution Account shall be one hundred (100%) percent vested and nonforfeitable at all times.

(ii) Except as otherwise specifically provided in this Plan, Elective Contributions shall be considered as a contribution made by the Employer for all purposes of this Plan.

(iii) An Election may be made only once per Plan Year commencing with the Plan Year beginning January 1, 2002 and for any Plan Year thereafter by filing a written Election Form with the Plan and the Union within the Election Period applicable to the next following Plan Year for which the Election is to be effective. Any such Election shall be effective and applicable to all payroll periods commencing in Plan Years which begin after the timely filing of the Election Form. An Election may not:

(A) be made retroactively or with respect to any compensation already received by an Eligible Participant;

(B) be altered, amended, revoked or changed in any manner, except as set forth in Paragraph 1.11(b)(iv) below.

(iv) An Election may be cancelled or amended by a Participant only by giving advance written notice to the Plan and the Union, within an Election Period, which shall be effective only for the Plan Year commencing after the Election Period, and for each Plan Year thereafter (subject to the right of an Eligible Participant to file an Election or amendment thereto for Plan Years following the Plan Year for which a cancellation or amendment is filed). In the event of cancellation or amendment, an Eligible Participant may not file a new Election until the following Election Period effective only for the Plan Year following the expiration of the Plan Year for which such cancellation or amendment is filed.



(v) The Plan may amend or terminate the Elective Contribution Election of an Eligible Participant, at any time necessary to insure that a Participant's annual additions for any Plan Year will not exceed the limitations, if any, of Subparagraph (b)(vii) below or of Code Section 401(k), or to insure that the Deferral Percentage Test described in Code Section 401(k)(3)(A)(iii) is satisfied for such Plan Year. If a Participant's Election is amended or terminated by the Plan set forth in this Subparagraph (b)(v) satisfy the requirements, for any Plan Year, the Elective Contribution Election of such Participant shall be deemed as timely re-filed in its original form effective for the following Plan Year unless the Participant files a timely Election to amend or terminate said Election Elective Contribution Account.

(vi) The same reporting, payment, time and other collection procedures and remedies of the Plan shall be imposed upon Employers with respect to Elective Contributions as are applicable and available with respect to all other contributions to the Plan (including, without limitation, Employer Contributions).

(vii) The Collective Bargaining Agreement may terminate or amend the right to elect Elective Contributions with respect to any class or category of Participants; provided that such termination or amendment shall not effect any then existing Elective Contribution Account or earnings thereon; provided however that, commencing January 1, 2006 the maximum contributions which may be accepted by the Plan (to a Participant's Elective Contribution Account) shall be Fifteen Thousand and 00/100 (\$15,000.00) Dollars in any calendar year (or such higher amount as may be established from time to time by the Secretary of the Treasury to reflect increases in the cost of living, pursuant to Code Section 402(g)(5)) subject to the following limitations.

(A) The maximum hours for which Elective Contributions may be made for any Plan Year shall be 2,500 Hours of Service regardless of the Elective Contribution Rate elected by the Employee.

(B) No "catch up" contributions, as described in Code Section 414(v) shall be permitted; provided however, that the Plan may, in the sole and absolute discretion of the Trustees, (but shall not be required to), apply the provisions of Code Section 414(v) to any Elective Contribution received in excess of the maximum amounts set forth herein ("Excess Annual Contributions") to cure any violations of the maximum amounts of annual contributions permitted under the Code on behalf of an Employee, if the Plan determines in the sole discretion of the Trustees it is impractical, undesirable or would otherwise be adverse to the best interests of the Plan to return or refund such Excess Annual Contributions to the Employer.

(C) The Employer must agree in a written instrument, with the Plan (or in a written instrument of which the Plan is a third party beneficiary) that,

(aa) the Employer shall comply with all directions from the Plan regarding elective contributions from any Employee; and,

(bb) if the Employer maintains another qualified retirement plan, the employer shall not make any contributions on behalf of any individual who has filed an Election and is having Elective Contributions made pursuant to the Collective Bargaining Agreement to the Plan.

(viii) For purpose of this Subsection 1.11(b) the following terms shall have the meanings hereafter set forth.

- (A) Eligible Participant – shall mean any Participant eligible to elect wage reduction for contributions to the Plan under the Collective Bargaining Agreement.
- (B) Election – shall mean the timely filing within the applicable Election Period, of a properly executed and completed Election Form by an Eligible Participant, exercising the right of such Eligible Participant to cause additional contributions to be made to this Plan on behalf of said Eligible Participant, solely and strictly in accordance with, and pursuant to, the terms of the Collective Bargaining Agreement.
- (C) Election Form – shall mean a written document, in form and substance satisfactory to the Trustees in their sole and absolute discretion, filed with the Plan and the Union within the time set forth in Paragraph (iii) above, pursuant to which an Eligible Participant elects to have Elective Contributions paid to the Plan pursuant to the Collective Bargaining Agreement. The terms of any such Election Form shall provide that the Participant agrees to accept a reduction in wages from the Employer equal to the amount provided in the Collective Bargaining Agreement which is to be contributed to the Plan by contributing Employer. In consideration of such agreement, the Election Form will contain an acknowledgement by the Eligible Participant that Employers shall make Elective Contributions to the Participant’s Elective Contribution Account on behalf of the Participant for which the Participant’s compensation from the Plan shall be reduced during the Plan Year in accordance with the Collective Bargaining Agreement. Said Election Form shall include an election by the Employee of the Elective Contribution Rate for the period of time to which the Election Form is applicable.
- (D) Electing Participant – shall mean an Eligible Participant who files an Election as required hereunder.
- (E) Election Period – shall mean the period commencing on October 1 and terminating November 30 immediately preceding the Plan Year for which any Election, termination or amendment of an Election is to be effective. No Election, termination or amendment may be revoked, amended or altered in any manner after the termination date (November 30) of any Election Period.
- (F) Elective Contribution Rate – shall mean the amount per Hour of Service of Elective Contribution elected by the Employee for any Plan Year for which an Election is filed by an Eligible Participant. The Elective Contribution Rate may not be any amount other than one of the following:

- (aa)** \$1.00 per Hour of Service.
- (bb)** \$2.00 per Hour of Service.
- (cc)** \$3.50 per Hour of Service.
- (dd)** \$5.00 per Hour of Service.

Effective as of January 1, 2015, the Elective Contribution Rate may not be any amount other than one of the following:

- (aa)** \$1.00 per Hour of Service.
- (bb)** \$2.00 per Hour of Service.
- (cc)** \$3.00 per Hour of Service.
- (dd)** \$4.00 per Hour of Service.
- (ee)** \$5.00 per Hour of Service.
- (ff)** \$6.00 per Hour of Service.
- (gg)** \$7.00 per Hour of Service.

**(c)** The term “Rollover Contribution” shall mean a direct rollover from the Trustee of another retirement plan qualified under Code Section 401, (in which the Participant had participated), which was made directly by the Trustee of said retirement plan to this Plan and provided that:

- (i)** the Participant has made written application to this Plan, in form and substance satisfactory to the Plan, in which the Participant agrees that the sum contributed to this Plan pursuant to said application is subject to the limitations on the withdrawal as set forth in Subsection 15.5(c) of this Plan; and,
- (ii)** such application has been accepted by the Board of Trustees of the Plan.

**1.12** The term “Contributing Employer”, as used herein, shall mean any Employer (including employer associations) who:

- (a)** now or hereafter enter into a Collective Bargaining Agreement with the Union or other written agreement requiring periodic Contributions to the Trust Fund created by the Trust Agreement;
- (b)** is accepted as a Contributing Employer in the Trust Fund and/or Plan by the Trustees;
- (c)** then makes Contributions to the Trust Fund as required by the Trustees.
- (d)** The term “Contributing Employer”, shall include the Union, and the ACRA Local 725 Education Trust Fund, for those persons defined herein as covered employees of the Union or of the ACRA-Local 725 Education Trust Fund.

**1.13** The term "Covered Employee", as used herein, shall mean:

- (a)** Any person employed in a collective bargaining unit represented by the Union for the purpose of collective bargaining who is employed by a Contributing Employer and/or on whose behalf contributions are required to be paid to the Trust Fund for this Plan pursuant to a Collective Bargaining Agreement and/or Reciprocal Agreement;
- (b)** Any full-time, salaried Employee of the Union, for whom the Union makes contributions to the Trust Fund for this Plan on the same basis as other Contributing Employers for their Covered Employees;
- (c)** The Director of Training and full-time Employees employed by the ACRA-Local 725 Education Trust Fund for whom contributions are made to the Trust Fund for this Plan by the ACRA-Local 725 Education Trust Fund, on the same basis as other Contributing Employers for their Covered Employees; and/or
- (d)** Any person who is eligible for participating in this Plan by virtue of a duly adopted Resolution of the Board of Trustees upon such conditions of eligibility as set forth in such Resolution and who are not prohibited from such participation by any applicable law including without limitation the Code, Section 302(c)(5) of the Labor-Management Relations Act of 1974, 29 USC Section 186(E) as amended and the ERISA, for whom the Employer of the said individual make contributions to the Fund on the same basis as other Contributing Employers for their Covered Employees.
- (e)** Owner employees of an Employer who intermittently perform work covered by the Collective Bargaining Agreement who elect to and who are accepted by the Board of Trustees may participate in the Plan only on conditions determined by the Trustees which shall include the following requirements:
  - (1)** Such persons must participate in such other Fringe Benefits Funds sponsored by the Union as the Trustees may require;
  - (2)** Contributions must be made by the Employer of such person to all Fringe Benefit Funds timely and on the basis of forty (40) hours per week, fifty-two (52) weeks per year including holidays, vacations, sick leave, or such higher numbers of hours as such person may be entitled to have been paid in accordance with U.S. Department of Labor regulation;
  - (3)** The Employer must execute a Participation Agreement in form and substance as prescribed by the Board of Trustees acknowledging that such Employees participation in the Plan is a privilege conditioned upon the requirements set forth herein and in said Participation Agreement;

- (4) Sole proprietors, partners or principals of non-incorporated Employers may not participate;
- (5) Failure to satisfy the requirements set forth herein shall result in automatic and immediate termination of such Employees' participation in the Plan.

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

**1.15** The term "Effective Date", as used herein, shall mean July 1, 1999, the date on which the provisions of this Plan first became effective.

**1.16** The term "Employee", whether singular or plural, as used herein shall mean:

- (a) Any person who performs work covered by a Collective Bargaining Agreement to which an Employer is a party;
- (b) The full-time, salaried Employees of the Union; who works One Thousand (1,000) hours or more hours during any Plan Year.
- (c) The corporate officers, superintendents, supervisors or other non-bargaining unit employees of an Employer except those covered by other retirement plans to which the Employer contributes on their behalf;
- (d) The Director of Training and all full time employees, any person who works one thousand (1,000) or more hours during any plan year, employed by the ACRA-Local 725 Education Trust Fund;
- (e) Any person who is eligible for participation in the Plan by virtue of a duly adopted Resolution of the Board of Trustees upon such conditions of eligibility as set forth in such Resolution and who are not prohibited from such participation by any applicable law including without limitation the Code, Section 302(c)(5) of the Labor Management Relations Act of 1947, 29 USC Section 186(E)(5) as amended and the Employee Retirement Income Security of 1974, Public Law 93-406, as amended or, Code Section 416; and
- (f) The term Employee shall not include any partner or proprietor or principal of any non-incorporated employer.

**1.17** The term "Employer" as used herein, shall mean:

- (a) Any corporation, individual, partnership, or business association which has presently in force or hereafter executes, or who individually, or through an association (which

association shall include, but not be limited to ACRA) or industry wide bargaining, enters into a Collective Bargaining Agreement with the Union, or is otherwise bound to or becomes bound to a Collective Bargaining Agreement with the Union, or any of the foregoing who performs work in Dade County, Broward County, or Monroe County, Florida, or any other jurisdictional area of the Union for whose Employees the Union is the recognized collective bargaining agent or any of the foregoing obligated to make Contributions on behalf of Employees to the Trust contemplated by the Trust Agreement by virtue of any Reciprocal Agreement or other written agreement executed by Trustees;

- (b) The Union;
- (c) The ACRA-Local 725 Education Trust Fund; and
- (d) Any Employer of an Employee described in Subsection 1.16(e).

**1.18** The term "Employment Commencement Date", as used herein, shall mean the date on which an Employee first commences an Hour of Service for an Employer.

**1.19** The term "Fiduciary", as used herein, shall mean a person who:

- (a) Exercises any discretionary authority or discretionary control respecting management of this Plan or exercises any authority or control respecting management or disposition of its assets; or
- (b) Renders investment service for a fee or other compensation, directly or indirectly, with respect to any monies or other property of this Plan, or has any authority or discretionary responsibilities in the administration of this Plan.

**1.20** The term "Hour of Service", as used herein, shall mean any hour of covered employment for which a person is paid, or entitled to payment, by an Employer:

- (a) (1) For the performance of duties; or
- (2) For reasons other than the performance of duties, including vacations, holidays, illness, jury duty, military duty, or leave of absence, subject to a maximum of five hundred and one (501) hours per Plan Year on account of any single, continuous period during which no duties are performed; or
- (3) As the result of backpay being awarded, or agreed to, by an Employer (irrespective of mitigation of damages), subject to a maximum of five hundred and one (501) hours per Plan Year on account of any single backpay award or agreement, resulting from the application of Paragraph 1.20(a)(2) above.

- (b) Exclusions - The term "Hour of Service" shall not include hours for which the person is paid, or entitled to payment, if no duties are performed and if such payment is made or due solely for the purpose of complying with workers compensation, unemployment compensation, or disability insurance laws, or if such payment solely reimburses the person for medical or medically related expenses incurred by the person.
- (c) Contiguous Non-Covered Employment - A person who is paid, or entitled to payment, by an Employer (including a company which is a member of a controlled group of corporation, and including a trade or business which is under common control, all in accordance with Department of Labor Regulations, 29 CFR Section 2530.210(d) and (e) shall also be credited with Hours of Service (subject to the maximum permitted by Paragraph 1.20(a)(2) above) for purposes of participation, vesting, and breaks in service (but not for benefit purposes), based upon the hours of service in non-covered employment for such Employer, provided that the person worked for the same Employer in covered employment immediately before or immediately after the non-covered employment, and further provided that no quit, discharge or retirement occurred between the covered employment and the non-covered employment unless the Employer or Participant notifies the Board of Trustees of entry of the Hours of Service of the Participant in non-covered Employment within sixty (60) days after the earlier of:
- (1) the Employee became a Participant, or
  - (2) the end of the Plan Year in which the Employee becomes a Participant.
- (d) Other Federal Law - Nothing in this section shall be construed as denying a person credit for an Hour of Service if credit is otherwise required by law. Furthermore, the nature and extent of such credit shall be determined under the law.
- (e) Determination of Hours of Service - Hours of Service shall be ascertained from the most accurate records available, including records of hours, work shifts, days or weeks for which payment is made or owing, as reported to the Board of Trustees. If records are not available which reflect services performed on an hourly basis, then the number of work shifts, days or weeks of service shall be converted to an hourly basis in accordance with Department of Labor Regulations 29 CFR Section 2530.200b-2(b) and (c), which are incorporated herein by reference.
- (f) Crediting Period - Hours of Service shall be credited during the Plan Year for which the duties were performed, or if no duties were performed, then during the Plan Year for which the payment relates, provided that hours of service credited as the result of a backpay award or agreement shall not be credited as additional Hours of Service under Paragraphs (a)(1) or (a)(2).

**1.21** "Highly Compensated Employee" – For Plan Years beginning on or after December 31, 1996, shall mean any Employee who during any Plan Year or the preceding Plan Year:

- (a) was at any time a five percent (5%) owner of the Employer (an Employee shall be treated as a five percent (5%) owner for any year if at any time during the determination year or the look-back year (the preceding twelve (12) month period) the Employer was a five percent (5%) owner as defined in Code Section 416(i)(1) with respect to said Employer and as set forth in Paragraph 16.2(c)(3) hereof);
- (b) for the look-back year had Compensation from the Employer in excess of Eighty Thousand and 00/100 (\$80,000.00) Dollars; and,
  - (1) the Employee was in the group consisting of the top twenty percent (20%) of Employees when ranked on the basis of compensation paid during such year;
  - (2) the Employee has completed more than six (6) months of service;
  - (3) the Employee normally works seventeen and one-half (17½) or more hours per week;
  - (4) the Employee normally completes six (6) months of service or more in any year;
  - (5) the Employee has attained the age of twenty-one (21) years; and,
  - (6) the Employee is not covered by a Collective Bargaining Agreement.
- (c) A former Employee shall be treated as a Highly Compensated Employee, if:
  - (1) such Employee was a Highly Compensated Employee when such Employee separated from service; or
  - (2) such Employee was a Highly Compensated Employee at any time after attaining age fifty-five (55).
- (d) Employees who are non-resident aliens and who received no earned income (within the meaning of Code Section 911(d)(2) from the Employer constituting United States source income within the meaning of Code Section 861(a)(3) shall not be treated as Employees.
- (e) In determining whether an Employee is a Highly Compensated Employee for a Plan Year beginning in 1997, the amendments to Code Section 414(q) stated above are treated as having been in effect for years beginning in 1996.

**1.22** The term "Hours of Work", as used herein, shall mean each hour for which an Employee is paid or entitled to payment for the performance of duties for an Employer in accordance with the Collective Bargaining Agreement in effect or other written agreement in effect from time to time, including those hours defined in Section 1.20 and in Section 3.3. Those hours reflected on the records of the Board of Trustees, reported annually to the Participant shall be conclusively deemed correct if no objection is filed in writing by the Participant within one hundred and eighty (180) days of mailing of said report to the Participants.

**1.23** The term "Jurisdiction of this Fund", as used herein, shall mean the industry, trade or craft in the geographical area over which the Union has jurisdiction. For the purpose of this Section:



- (a) Industry refers to the construction and/or service industry in which the Employee accrued benefits under this Plan as a result of such employment;
- (b) Trade or craft refers to all work normally performed by a member of Local Union 725 of the United Association of Journeymen and Apprentices of the Pipefitting Industry, of the United States and Canada as described and covered in the Collective Bargaining Agreement between the Union and the Employers herein or described in the Union's constitution or any other work to which a trade employee of the Contributing Employer has been assigned, referred or is capable of performing by virtue of his skills and training as a tradesman in the trade governed by the ACRA Local 725 Collective Bargaining Agreement.
- (c) Geographic area generally refers to those areas described in Section 6.1(c) hereof.
- (d) The term "Industry, Trade or Craft", includes only work performed for Employers which offer the services, described in Subsection (b) above, to persons other than itself, including the general public.

**1.24** The term "Married", as used herein, shall mean:

- (a) A Participant who is married throughout the one (1) year period ending on the date of the receipt of retirement or disability benefits.
- (b) A Participant shall also be considered married:
  - (1) if the Participant dies before receipt of such benefits, but the Participant has been married throughout the one (1) year period ending on the date of the Participant's death; or
  - (2) if the Participant marries less than one (1) year before receipt of such benefits but had been married for at least a one (1) year period ending on or before the date of the Participant's death; or
  - (3) to the extent provided under a "qualified" domestic relations order; provided however, that the term "married" for purposes of determining survivor benefits shall be construed, for purposes of determining survivor benefits, in a manner consistent with the definition of "Spouse" in Section 1.38 hereof.

**1.25** The term "Married Participant", as used herein, shall mean a married employee (as defined under the laws of any state, commonwealth or territory of the United States) who has been married to the same spouse throughout the one (1) year period immediately preceding the Participant's date of death or retirement.

**1.26** The term "Maternity or Paternity Leave", as used herein, shall mean:

- (a) A Participants absence from work by reason of:
  - (1) the pregnancy of the Participant; or
  - (2) the birth of a child of the Participant; or

- (3) the placement of a child with the Participant in connection with the adoption of such child by the Participant; or
  - (4) the caring for such child by the Participant for a period beginning immediately following such birth or placement.
- (b) Crediting Hours of Leave - Solely for purposes of determining whether a Break in Service has occurred as provided in Section 5.1 (Breaks in Service), and not for purposes of vesting or benefit accrual, a Participant who is absent from work in covered employment due to maternity or paternity leave shall be credited with the Hours of Service which otherwise would normally have been credited to the Participant, but for such absence, not to exceed two hundred (200) hours per Plan Year. In any case in which such hours cannot be determined, eight (8) Hours of Service shall be credited per day of such absence.
- (c) Crediting Period - The Hours of Service absent from work due to maternity or paternity leave shall be credited, solely for purposes of excusing a Break in Service:
  - (1) during the Plan Year in which the absence began if the crediting of those hours is necessary to prevent a Break in Service in that Plan Year, or, in all other cases.
  - (2) in the next following Plan Year.

**1.27** The term "Non Vested Employee", as used herein, shall mean a Participant who has less than the number of Years of Service required under Subsection 3.1(b) hereof to be one hundred percent (100%) vested, or whose benefits are otherwise subject to forfeiture pursuant to Section 5.2 hereof.

**1.28** The term "Participant" as used herein, shall mean any individual on whose behalf an employer is obligated to make contributions to the Trust Fund for this Plan pursuant to the terms of the Collective Bargaining Agreement and/or those persons included in the definition of "Covered Employee" hereunder. The term also includes any retired individual who is otherwise separated from or covered by the Plan who is currently receiving benefits from the Plan or any retired individual or one who is vested to a benefit which may be received in the future.

- (a) Participant includes any individual who is receiving or has a non-forfeitable right to receive in the future any benefit from the Plan or any individual on whose behalf contributions are made to the Trust Fund for this Plan or who is otherwise earning, or retaining credited service under the Plan for periods and for which actual work is not performed which is covered under the Collective Bargaining Agreement including without limitation, leave of absence for maternity or paternity, military purposes, and any period of disability for which credit is either earned or for which time periods are not counted for Break in Service.
- (b) The term "Participant" does not include the following:
  - (1) Any individual for whom contributions are paid to the Plan, which the Plan in turn pays to another Plan under the terms of a Reciprocal Agreement. (Note: this will include travelers into this Local jurisdiction, but those who

are members of this Local who travel to other jurisdictions will be considered Participants.);

- (2) Any individual who has earned credit, which credit has been forfeited or lost pursuant to the terms of this Plan;
- (3) Any person to whom an insurance company has made irrevocable commitment to pay all the benefits to, which the individual is entitled under the Plan;
- (4) Any survivor, dependent or other party entitled to benefits under the Plan but whose right is derivative, such as a survivor or dependent rather than having been an Employee employed by an Employer on whose behalf contributions were made. In such cases, the Employee through whom the claim is made shall be considered the Participant rather than the survivors or other party deserving the benefit by, through, or under the Employee;
- (5) Any alternate Payee under a Qualified Domestic Relations Order; or
- (6) Any person who has incurred a Break in Service for one (1) Plan Year.

**1.29** The term "Participating Union" or "Union", as used herein, shall mean the United Association Local 725 of Miami, Florida, or any other Union which is accepted by the Trustees in writing for participation in the Trust Fund for this Plan for the purpose of providing participation in this Plan for Employees represented by the Participating Union for the purpose of Collective Bargaining, including by Reciprocal Agreement, where both the Union and the Employer become a party to the Trust Agreement.

**1.30** The term "Plan", as used herein, shall mean the Plan program, method, rules and procedures for the payment of benefits from the Trust Fund as herein set forth and described in this Plan document, and the same as may be amended from time to time by the Trustees.

**1.31** The term "Plan Year", as used herein, shall mean:

- (a) for all Plan Years beginning after June 30, 1999 and ending before January 1, 2000, the six (6) month period beginning with July 1 and ending the following December 31; and,
- (b) for all Plan Years beginning after December 31, 1999, the twelve (12) month period beginning on January 1st and ending the following December 31.

**1.32** Present Value. For all Plan Years commencing after December 31, 2007, the term "present value" for all purposes with respect to any distribution, consent, waiver, election or other matter for which a present value or "actuarial equivalent" must be computed, shall be the value computed in

accordance with the requirements of Code Section 417(e) and Treasury Regulations Section 1.417(e)-(d)(1). In addition, such present value:

- (a) shall be calculated and computed in a manner utilizing the “Applicable Mortality Table” and the “applicable interest rate”, which are hereby defined as:
  - (1) the Applicable Mortality Table defined in Code Section 417(e) as further defined in Revenue Ruling 2007-67 and/or subsequent guidance issued by the Internal Revenue Service; and,
  - (2) the “applicable interest rate” defined in Code Section 417(e) calculated in the manner described in Revenue Ruling 2007-67 and any subsequent guidance issued by the Internal Revenue Service, calculated in a manner to avoid violation of Code Section 411(d)(6), including, without limitation, not changing the time for determining the interest rate and not substituting the modified segment rates, described therein, for a rate that is not the thirty (30) year Treasury Rate.
- (b) For Plan Year commencing after December 31, 2007, notwithstanding any other provision in this Plan, in no event may any calculation of any “present value” or “actuarial equivalent” including a “modified segment rate” utilize an interest rate other than the interest rate otherwise required by this Section 1.32 (or, with respect to a Lump Sum Benefit, if any, is ever provided to a Participant hereunder, the thirty (30) year Treasury Rate).

**1.33** The term "Domestic Relations Order" as used herein, shall mean any judgment, decree or order (including approval of a property settlement agreement) which relates to child support, alimony payments or marital property rights to a spouse (or former spouse), child, or other dependent of a Participant, made pursuant to a state domestic relations law.

**1.34** The term "Reciprocal Agreement", as used herein, shall mean any written agreement between the Trustees of this Plan and another Retirement Plan providing a basis for portability and/or transfer and/or allocation of credits and/or Contributions as defined in the Plan and/or the plan of the Board of Trustees with whom the agreement is entered on behalf of Employees for the purpose or providing benefits hereunder or thereunder.

**1.35** The term "Retirement", as used herein, shall mean that a Participant has completely withdrawn from work in the same industry, in the same trade or craft, and in the same geographical area covered by the Collective Bargaining Agreement between the Union and the Employers as of the date of withdrawal.

- (a) The term "Industry, Trade, or Craft" shall be determined in accordance with Subsection 1.23(b) hereof, and Section 2503.203-3 or ERISA, or as the same may be amended from time to time.
- (b) The term "Geographic Area" shall mean the areas described in Subsection 6.1(c) hereof.

- (c) A Participant contemplating retirement, or a retiree contemplating return to work may request a ruling from the Trustees as to whether a particular type of work will be considered as employment under the foregoing provisions.
- (d) The term “Industry, Trade or Craft” includes only work performed for Employers which offer the services described in (a) and (b) above to persons other than itself, including the general public.
- (e) Notwithstanding the foregoing, an individual who performs work described in Subsection 1.23(b) for a Contributing Employer as described in Section 1.11 hereof, may be considered to have satisfied the definition of “retirement” provided such Participant does not perform any work or services on behalf of such Contributing Employer for which contributions are required to be made to the Plan by such Contributing Employer pursuant to the Collective Bargaining Agreement.

**1.36** The term "Retirement Benefit" or "Benefits" as used herein, shall mean those classes of benefits provided by the Plan as set forth in Article 6 of this Plan.

**1.37** The term "Service", as used herein, shall mean for purposes of determining Participation, Vesting and Eligibility shall have the meaning set forth in Article 3 of this Plan.

**1.38** The term "Spouse", as used herein, shall mean the person who is Married to the Participant at the time a Pre-Retirement Death Benefit first becomes payable or at any time the Participant commences receiving Retirement Benefits; provided further that to the extent provided in any Qualified Domestic Relations Order, the former spouse of the Participant shall be treated as a surviving spouse of such Participant and the spouse of such Participant shall not be treated as a spouse of the Participant for such purposes.

Further, the term “Spouse” shall include any person whose marriage to the Participant is recognized under the Laws of the State of Florida, or any person who is otherwise lawfully married to a Participant provided that their marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex, even if the Spouse and Participant are domiciled in a state that does not recognize the validity of same-sex marriages. Relationships which are not denominated as marriages, such as registered domestic partnerships, civil unions, or other similar formal relationships recognized under the laws of the state where and when formalized, shall not constitute a marriage herein, and the status of the non-Participant shall not rise to the status of Spouse as defined herein. Persons shall cease being a Spouse upon entering into a legal separation or upon the entry of a formal decree of dissolution of marriage.

**1.39** The term "Trustees" or "Board of Trustees", as used herein, shall mean the person acting as Employer Trustees and Union Trustees under the terms of the Trustee Agreement from time to time.

- 1.40** The term "Trust Agreement", as used herein, shall refer to the instrument entitled DEFINED CONTRIBUTION RETIREMENT TRUST AGREEMENT of July 1, 1999 adopted simultaneously with this Plan, together with any amendments or modifications thereof as the Trustees may have in the past and from time to time in the future adopt and promulgate.
- 1.41** The term "Trust Fund", as used herein, shall mean the ACRA-LOCAL 725 DEFINED CONTRIBUTION RETIREMENT TRUST FUND, and the entire assets thereof including all funds received in the forms of Employer contributions, together with all contracts, any contributions received from any other retirement trust fund, all investments made and held by the Trustees, all income, increments, earnings and profits therefrom and all other property or funds received and held by the Trustees by reason of their acceptance of the Trust Agreement.
- 1.42** Reserved
- 1.43** The term "Vested Participants", as used herein, shall mean a Participant who has the number of Years of Service required pursuant to Subsection 3.1(b) hereof and be one hundred percent (100%) vested, or whose benefit is otherwise not subject to forfeiture in accordance with Article 3 hereof. The term does not include any Participant eligible for and/or receiving disability payments unless such Participant has otherwise satisfied the provision of Article 3 hereof.
- 1.44** The terms "Vesting" and "Benefit Accrual Computation Period", as used herein, shall mean that the vesting and benefit accrual periods for this Plan shall be a Plan Year.
- 1.45** The term "Vested", as used herein, shall mean a non-forfeitable right to a retirement benefit under this Plan.
- 1.46** Pronouns of one gender used in the Plan shall also refer to similar pronouns of the other gender unless otherwise qualified by the context. Words in the singular or plural form used in the Plan shall be construed as though they were also used in the other form unless otherwise qualified by the context. The terms "herein" and "hereunder" and similar terms refer to this document, unless otherwise qualified by the context.
- 1.47** Other Definitions: Other definitions as required may appear in the text of other sections of the Plan document.

**ARTICLE 2**  
**PARTICIPATION IN THE PLAN**

**2.1 Participation**

- (a) A person shall become a Participant at the start of the Plan Year during which the person completes one thousand (1,000) Hours of Service for Contributing Employers. However, provided that:
- (i) in any event this requirement shall be satisfied by any Employee who has accumulated one thousand (1,000) Hours within a twelve (12) consecutive month period as follows: If beginning on the date an Employee first receives credit for performing an Hour of Service, (Employment Commencement Date) an Employee receives credit for five hundred (500) Hours of Service, completes five hundred (500) Hours of Service in the initial Plan Year of employment, but does not complete one thousand (1,000) Hours of Service within a twelve (12) consecutive month period measured from the Employee's Employment Commencement Date, or any anniversary thereof, he will be deemed to have fulfilled the service requirement for eligibility and will commence participation in the plan no later than the earlier of the first day of the Plan Year beginning after the date he satisfies the minimum service requirements; provided further, that for the Plan Year July 1, 1999 through December 31, 1999 the words "1,000 Hours of Service" shall be read as "500 Hours of Service" and the words "500 Hours of Service" shall be read as "250 Hours of Service".
  - (ii) Sole proprietors and partners shall not be eligible to be Participants in this Plan, nor shall any person be eligible to earn Vesting Credits or Benefit Credits during the time the person is a sole proprietor or partner.
- (b) A person shall remain a Participant until the earlier of:
- (1) incurring consecutive Breaks in Service (as defined in Section 5.1) set forth in Section 5.2 hereof prior to becoming Vested;
  - (2) all benefits have been paid to the Participant; or
  - (3) the person dies.
- (c) In the event that any Participant shall fail, in any Plan Year after becoming a Participant in this Plan, to accumulate One Thousand (1,000) Hours of Service (One Year), his Employer Contribution Account shall be placed on inactive status. In such case, the Participant shall not share in the Employer's contribution to the Plan or in any forfeiture allocations for such Plan Year; provided, however, that he shall continue to receive:

- (i) income and loss allocations as provided in Section 10.5 hereof; and,
  - (ii) appreciation and depreciation as provided in Section 10.6 hereof. In the event such Participant accumulates One Thousand (1,000) Hours of Service in a subsequent Plan Year, his Employer Contribution Account shall revert to active status with full rights and privileges under this Plan.
- (d) A former Participant who again becomes an Employee without having incurred a Break-in-Service shall again become a Participant on the date he returns to service as an Employee. A former Participant who again becomes an Employee after having incurred a Break-in-Service shall become a Participant as of date he returns to Covered Employment and again satisfies the requirements of becoming a Participant in accordance with, Subsection 2.1(a) hereof.

## **2.2 Eligibility Computation Period**

The eligibility computation period for determining when a person becomes a Participant in the Plan shall be the Plan Year beginning with the date the person first performs an Hour of Service for an Employer. If a person fails to become a Participant at the end of such period, then the eligibility computation period shall be determined in accordance with Paragraph 2.1(a)(i) hereof.



**ARTICLE 3**  
**VESTING CREDITS**

**3.1 Vesting Schedules**

- (a) Early Retirement Benefit. - A Participant shall have an One Hundred Percent (100%) vested right to an early retirement benefit upon earning two (2) Vesting Credits.
  
- (b) Normal Retirement Benefit and Late Retirement Benefit. A Participant shall have One Hundred Percent (100%) vested right to a normal retirement benefit and a late retirement benefit upon:
  - (1) earning two (2) Vesting Credits; or
  - (2) reaching normal retirement age (age sixty-five (65) plus the first anniversary of the time a Participant commenced participation in this Plan); or
  - (3) the termination or partial termination of this Plan (to the extent funded).
  
- (c) Elective Contribution Accounts. A Participant shall be immediately One Hundred (100%) Percent vested on all amounts credited to such Participant's Elective Contribution Account.

**3.2 Vesting Credits**

A Participant shall earn Vesting Credits, as set forth in Section 3.3 hereof. A Participant may lose Vesting Credits as provided in Article 5 (Loss of Credits). The total number of Vesting Credits earned and retained shall determine whether a Participant has a vested right to a benefit.

**3.3 Computation of Vesting Credits**

- (a) A Participant may earn Vesting Credits, which are defined as Vesting Credits earned for the period of time since the effective date of the Plan.
  
- (b) Vesting Credits for all Plan Years except the Plan Year July 1, 1999 through December 31, 1999 shall be computed on the basis of hours of work as follows:

<b><u>Hours of Work in A Plan Year</u></b>	<b><u>Vesting Service</u></b>
Less than 500	.000
500 but less than 1,000	.500
1,000 or more	1.000

- (c) Vesting Credits for Plan Year July 1, 1999 through December 31, 1999.

<b>Hours of Work in Plan Year</b>	<b>Vesting Credits</b>
Less than 250	.000
250 but less than 500	.500
500 or more	1.000

- (d) Prior Vesting Service. Any Participant who was One Hundred (100%) Percent vested to Retirement Benefit from the ACRA-Local 725 Pension Plan as of December 31, 1998, shall, upon having any Hours of Work reported to this Plan on or before December 31, 2000, be One Hundred (100%) Percent vested in this Plan.

### **3.4 Changes in Vesting Schedule**

- (a) (1) Right to Election - Any future changes or amendments in the vesting schedule for a normal retirement benefit shall apply to Participants who had not vested under the vesting schedule in effect prior to such amendment and who:
- (i) have not accumulated sufficient Vesting Credits by the end of the election period provided in Paragraph (a)(3) below to vest under the vesting schedule in effect prior to such amendment; and
  - (ii) have not made a timely election to have their vested right to a normal retirement benefit determined without regard to the change in the vesting schedule.
- (2) Manner of Election - The election must be in writing, signed by the Participant on a duly prescribed form timely submitted to the Board of Trustees, and must clearly indicate that the Participant is making the election provided herein.
- (3) Election Period - The election must be made before the latest of the following dates:
- (i) Sixty (60) days after the date the Plan Amendment is adopted; or
  - (ii) Sixty (60) days after the day the Plan Amendment becomes effective; or
  - (iii) Sixty (60) days after the day the Participant is given written notice of the Plan Amendment.
- (b) Notice of Plan Amendment - Promptly after the adoption of an amendment to the Plan changing the vesting schedule for a normal retirement benefit, all Participants entitled to an election under Subsection (a) shall receive written notice of the amendment and of the availability of an election to have their vested right to a normal retirement benefit determined on the basis of the vesting schedule then in effect. The notice shall state that

there is a time period during which the election must be made and shall include an election form.

- (c) Limitation on Changes in Vesting Schedules - No amendment shall reduce a Participant's vested right to a normal retirement benefit at the time such amendment is adopted, or, if later, at the time such amendment is effective.

**3.5 Vesting of Benefits**

No Participant, beneficiary or other person shall have any vested right to a retirement benefit unless the Participant has met the requirements for vesting as provided in this Article.

**3.6 Vesting Computation Period**

The computation period for computing Vesting Credits shall be each Plan Year during which a person is a Participant.

**ARTICLE 4**  
**ALLOCATION OF CONTRIBUTIONS**

**4.1 Allocations to Participant's Separate Account**

Contributions on behalf of a Participant shall be allocated to that Participant's Separate Account as defined in Subsection 10.1(c) hereof, subject to the limitations set forth in Article 10 hereof.

**4.2 Allocation to Suspense Account**

All Contributions of a Participant which have been made the subject of a forfeiture as defined in Section 5.2 hereof, shall be allocated as set forth in Section 5.3 hereof.

**4.3 Reserved**

**4.4 Limitation on Benefits**

Notwithstanding any provisions of this Plan to the contrary, benefits payable under this Plan shall not exceed the limits of Code Section 415 and the final Treasury Regulations promulgated thereunder, the terms of which are hereby incorporated by reference; provided, however, that:

- (a) any specific Plan provisions and elections with respect to any provision of Code Section 415 as set forth herein that vary from any default rules under the final Treasury Regulations under Code Section 415 shall be applied in addition to the general incorporated Section 415 limitations.
- (b) For purposes of Code Section 415, Annual Compensation means the Compensation described in Code Section 415(c) provided, however, that for Plan Years commencing after December 31, 2007, the term "Compensation" shall also include the following payments if such payments are made by the later of:
  - (1) two and one-half (2 1/2) months following the date of the Participant's termination of employment; or
  - (2) the end of the Plan Year that includes the date of the Participant's termination of employment:
    - (i) payments that, absent a termination of employment, would have been paid to the Participant while the Participant continued in employment with his Employer and are regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's

- regular working hours (such as overtime), commissions, bonuses, or other similar compensation; and
- (ii) payments for accrued vacation, sick leave, and other leave but only if the Participant would have been able to use the vacation, sick leave, and other personal leave if employment had continued.

#### **4.5 Application of Aggregation Rules Under Code Section 415**

With respect to all Plan Years commencing after December 31, 2007, for all purposes (including, without limitation, Elective Contributions hereunder) for purposes of compliance of this Plan with the aggregation rules of Code Section 415, whenever an Employer maintains a Non-Multiemployer Plan in addition to this Plan:

- (a) pursuant to Treasury Regulations Section 1.415(f)-1(g)(2)(i), only those contributions and/or benefits actually provided by such Employer, pursuant to this Plan may be aggregated to any contributions and/or benefits provided by such Employer to any Non-Multiemployer Plan maintained by such Employer; and
- (b) any disqualification resulting from any violation of such aggregation of the contributions and/or benefits set forth in subsection (a) above, shall first be exercised against the Non-Multiemployer Plan maintained by such Employer, pursuant to Treasury Regulations Section 1.415(g)-1(b)(3)(ii)(A).

#### **4.6 Adoption of Section 401(k) Final Regulations**

- (a) Effective date of amendment - This Amendment to the Plan is adopted to reflect certain provisions of the Final Regulations under Code Sections 401(k) and 401(m) that were published on December 29, 2004, and are to be effective for Plan years beginning on or after January 1, 2006.
- (b) Supersession of inconsistent provisions - This Amendment shall supersede the existing provisions of the Plan to the extent that any of those provisions are inconsistent with the provisions of this Amendment.
- (c) To satisfy the Actual Deferral Percentage Test of Code Section 401(k)(3), the Plan uses the prior year testing method. For the first Plan Year the actual deferral ratio of the Non-Highly Compensated Employees is deemed to be three (3%) percent.

#### **4.7 Deferral Elections**

A cash or deferred arrangement (“CODA”) is an arrangement under which eligible Employees may make elective deferral elections.

- (a) Such deferral elections cannot relate to Compensation that is currently available prior to the adoption or effective date of the CODA. In addition, except for occasional, bona fide administrative considerations, contributions made pursuant to such an election cannot precede the earlier of (1) the performance of services relating to the contribution and (2) when the compensation that is subject to the election would be currently available to the Employee in the absence of an election to defer.
- (b) Elective Contributions are always fully vested and nonforfeitable. The Plan shall disregard Elective Contributions in applying the vesting provisions of the Plan to other contributions or benefits under Code Section 411(a)(2). However, the Plan shall otherwise take a participant's Elective Contributions into account in determining the Participant's vested benefits under the Plan. Thus, for example, the Plan shall take Elective Contributions into account in determining whether a Participant has a nonforfeitable right to contributions under the Plan for purposes of forfeitures, and for applying provisions permitting the repayment of distributions to have forfeited amounts restored, and the provisions of Code Sections 410(a)(5)(D)(iii) and 411(a)(6)(D)(iii) permitting a plan to disregard certain service completed prior to breaks-in-service (sometimes referred to as "the rule of parity").

#### **4.8 Actual Deferral Percentage (ADP) Test**

- (a) Targeted contribution limit - Qualified Non-Elective Contributions (as defined in Regulation Section 1.401(k)-6) cannot be taken into account in determining the Actual Deferral Ratio ("ADR") for a Plan Year for a Non-Highly Compensated Employee ("NHCE") to the extent such contributions exceed the product of that NHCE's Code Section 414(s) compensation and the greater of five percent (5%) or two (2) times the Plan's "representative contribution rate."

For purposes of this section:

- (1) The Plan's "representative contribution rate" is the lowest "applicable contribution rate" of any eligible NHCE among a group of eligible NHCEs that consists of half of all eligible NHCEs for the Plan Year (or, if greater, the lowest "applicable contribution rate" of any eligible NHCE who is in the group of all eligible NHCEs for the Plan Year and who is employed by the Employer on the last day of the Plan Year), and
- (2) The "applicable contribution rate" for an eligible NHCE is the sum of the Qualified Non-Elective Contributions ("QNECs") made for the eligible NHCE for the Plan Year, divided by the eligible NHCE's Code Section 414(s) compensation for the same period.

Notwithstanding the above, QNECs that are made in connection with an Employer's obligation to pay prevailing wages under the Davis-Bacon Act (46 Stat. 1494), Public Law 71-798, Service Contract Act of 1965 (79 Stat. 1965), Public Law 89-286, or similar legislation can be taken into account for a Plan Year for an NHCE to the extent such contributions do not exceed 10 percent (10%) of that NHCE's Code Section 414(s) compensation.

- (b) Limitation on QNECs - QNECs cannot be taken into account to determine an ADR to the extent such contributions are taken into account for purposes of satisfying any other Actual Deferral Percentage ("ADP") test or the requirements of Regulation Section 1.401(k)-3, 1.401(m)-3, or 1.401(k)-4. Thus, for example, if a plan switches from the current year testing method to the prior year testing method pursuant to Regulation Section 1.401(k)-2(c), QNECs that are taken into account under the current year testing method for a year may not be taken into account under the prior year testing method for the next year.
- (c) Treatment of ADR of HCE if Multiple Plans - The ADR of any Participant who is a Highly Compensated Employee ("HCE") for the Plan Year and who is eligible to have Elective Contributions (as defined in Regulation Section 1.401(k)-6) (and any QNECs, if treated as Elective Contributions for purposes of the ADP test) allocated to such Participant's accounts under two (2) or more cash or deferred arrangements described in Code Section 401(k), that are maintained by the same Employer, shall be determined as if such Elective Contributions (and, if applicable, such QNECs) were made under a single arrangement. If an HCE participates in two or more cash or deferred arrangements of an Employer that have different Plan Years, then all Elective Contributions made during the Plan Year being tested under all such cash or deferred arrangements shall be aggregated, without regard to the plan years of the other plans. However, for Plan Years beginning before the effective date of this Amendment, if the plans have different Plan Years, then all such cash or deferred arrangements ending with or within the same calendar year shall be treated as a single cash or deferred arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under the Regulations of Code Section 401(k).

#### **4.9 Adjustments to ADP Test**

- (a) Correction Method - The Plan uses the correction method set forth in Regulation Section 1.401(k)-2(b)(1)(B). The terms of Regulation Sections 1.401(k)-2(b)(2)(i), (ii) and (iii) are hereby incorporated by reference.
- (b) Distribution of Income attributable to Excess Contributions - Distributions of Excess Contributions must be adjusted for income (gain or loss), including an adjustment for income for the period between the end of the Plan Year and the date of the distribution (the "gap period").

- (1) Method of allocating income - The Administrator shall allocate income to Excess Contributions for the Plan Year by multiplying the income for the Plan Year allocable to the Elective Contributions and other amounts taken into account under the ADP test (including contributions made for the Plan Year), by a fraction, the numerator of which is the Excess Contributions for the Employee for the Plan Year, and the denominator of which is the sum of the:
- (i) Account balance attributable to Elective Contributions and other amounts taken into account under the ADP test as of the beginning of the Plan Year, and
  - (ii) Any additional amount of such contributions made for the Plan Year.
- (c) Corrective contributions - If a failed ADP test is to be corrected by making an Employer contribution, then the provisions of the Plan for the corrective contributions shall be applied by limiting the contribution made on behalf of any NHCE pursuant to such provisions to an amount that does not exceed the targeted contribution limits of Section 4.8 of this Amendment.

#### **4.10 Reserved**

#### **4.11 Adoption of Final 415 Regulations**

- (a) Effective date - The provisions of this section shall apply to limitation years beginning on and after July 1, 2007.
- (b) Section 415 Compensation paid after severance from employment - A Participant's Compensation, as such term is defined pursuant to Code Section 415(c)(3) (hereinafter referred to in this section as "Section 415 Compensation"), shall be adjusted, as set forth herein, for the following types of compensation paid after a Participant's severance from employment with an Employer maintaining the Plan (or any other entity that is treated as an Employer pursuant to Section 414(b), (c), (m) or (o)). However, amounts described in subsections (1) and (2) below may only be included in Section 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered Section 415 Compensation within the meaning of Section 415(c)(3), even if payment is made within the time period specified above.
- (1) Regular pay - Section 415 Compensation shall include regular pay after severance of employment if:



- (i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
  - (ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.
- (2) Leave cash-outs and deferred compensation - Leave cash-outs shall be included in Section 415 Compensation, if those amounts would have been included in the definition of Section 415 Compensation if they were paid prior to the Participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in Section 415 Compensation if the compensation would have been included in the definition of Section 415 Compensation if it had been paid prior to the Participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.
  - (i) Salary continuation payments for military service participants - Section 415 Compensation does not include payments made to an individual who does not currently perform services for an Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for an Employer rather than entering qualified military service.
  - (ii) Salary continuation payments for disabled Participants - Section 415 Compensation does not include compensation paid to a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)).
- (c) Administrative Delay ("the first few weeks") Rule - Section 415 Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Participants, and no compensation is included in more than one limitation year.
- (d) Inclusion of certain nonqualified deferred compensation amounts - A Participant's Section 415 Compensation shall include amounts that are includible in the Participant's gross income under the rules of Code Section 409A or Code Section 457(f)(1)(A) or because the amounts are constructively received by the Participant.

- (e) Definition of annual additions - The Plan's definition of "annual additions" is modified as follows:
- (1) Restorative payments - Annual additions for purposes of Code Section 415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under ERISA or under other applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under ERISA are not restorative payments and generally constitute contributions that are considered annual additions.
- (2) Other Amounts - Annual additions for purposes of Code Section 415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) Rollover contributions (as described in Code Sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (3) Repayments of amounts described in Code Section 411(a)(7)(B) (in accordance with Section 411(a)(7)(C)) and Code Section 411(a)(3)(D), as well as any Employer restorations of benefits that are required pursuant to such repayments.
- (f) Change of limitation year - The limitation year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.
- (g) Excess Annual Additions - Notwithstanding any provision of the Plan to the contrary, if the annual additions (within the meaning of Code Section 415) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2013-12 or any superseding guidance, including, but not limited to, the preamble of the Code Section 415 Final Regulations.

**ARTICLE 5**  
**LOSS OF CREDITS**

**5.1 Breaks in Service**

- (a) A Break in Service shall occur when a Participant fails to earn Five Hundred (500) Hours of Service during a Plan Year. However, no Credits shall be lost except as provided in Section 5.2 (Loss of Credits).
- (b) A Break in Service shall not occur if the Participant fails to earn Five Hundred (500) Hours of Service during a Plan Year due to the Participant:
  - (1) becoming totally disabled so as to be unable to work; or
  - (2) entering into the Armed Forces of the United States, provided the person returns to work in Covered Employment within ninety (90) days of discharge, or within ninety (90) days of discharge from a hospital, if the person was hospitalized at the time of separation from the Armed Forces; or
  - (3) becoming employed in Contiguous Non-Covered Employment (as defined in Subsection 1.20(c) hereof); or
  - (4) being absent from work due to maternity or paternity leave as provided in Section 1.26 (Maternity or Paternity Leave).
- (c) Effective as of December 12, 1994, notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

**5.2 Loss of Credits and Benefits**

A Participant who is not vested shall lose all Vesting Credits and all Benefits earned to date (“Forfeiture”), as of the last day of any Plan Year in which:

- (a) the Participant has five (5) or more consecutive Breaks in Service; and,
- (b) the number of consecutive Breaks in Service equals or exceeds the total number of Vesting Credits.

**5.3 Allocation of Participant Account Balances due to Forfeiture**

The account balance of a Participant who experiences a forfeiture shall be allocated among other Participants as set forth in Section 10.2 hereof.

**ARTICLE 6**  
**RETIREMENT BENEFITS**

**6.1 Right to Retirement Benefits**

- (a) A Retirement benefit shall be payable only if the Participant satisfies all of the following:
- (1) has a vested right to a retirement benefit;
  - (2) has reached the applicable retirement age;
  - (3) has retired;
  - (4) has filed a claim for retirement benefits.
  - (5) With respect to sums held in Participant's Elective Contribution Account, has attained age fifty-nine and one-half (59 1/2).
- (b) The normal retirement age shall be age sixty-five (65) plus the first anniversary of the time the Participant commenced participation in the Plan; provided, however, that in no event shall the normal retirement age be later than the tenth anniversary of the date on which the Participant commences participation in the Plan.
- (c) Retirement under this plan shall mean complete withdrawal from any further employment and work in the same industry, in the same trade or craft, and in the same geographical area covered by the Collective Bargaining Agreement. The term "geographical area" shall include: (1) any area covered by any Reciprocal Agreement; (2) the State of Florida; (3) and any standard metropolitan statistical area which falls in part within the State of Florida determined at the time of the withdrawal and/or attempted retirement; provided, however, that no rights, obligations, privileges or elections with respect to work performed in an area with respect to which a Reciprocal Agreement is in effect between this Plan and any other Plan may be exercised for work performed in Dade, Broward and Monroe Counties, Florida.

Benefit payments will commence the first day of the first month, which month commences not later than ninety (90) days following satisfaction of both (1) the requirements prescribed for that type of benefit and (2) date of receipt of completed application in the offices of the Fund Administrator.

**6.2 Early Retirement Age**

- (a) The Early Retirement age shall be fifty-five (55), but shall be fifty-nine and one-half (59 1/2) with respect to sums held in Elective Contribution Accounts.
- (b) The early retirement age for any Participant who performs employment or after the effective date of this Plan in the Jurisdiction of the Fund that is not covered by a Collective Bargaining Agreement between the Union and an Employer in any Plan Year, shall be delayed one (1) year for each Plan Year in which such employment is performed.

**6.3 Early Retirement and Re-Employment**

If a Participant elects early retirement and then subsequently has contributions paid on his behalf, the said individual may receive an additional credit for said contributions if all other provisions of this Plan are satisfied to entitle said Participant of such additional credit, but shall not be entitled to withdraw such additional credits until obtainment of normal retirement age and satisfaction of all requirements for normal retirement.

**6.4 Normal Retirement Benefit**

The Early, Normal and/or Late Retirement Benefit shall be the Participant's total account balance provided in Article 10 (Benefit Level), as of the Participant's Retirement Date.

**6.5 Late Retirement Benefit**

The late retirement age shall be the age of the Participant who files a claim for Benefits after reaching normal retirement age.

**ARTICLE 7**  
**DISABILITY BENEFITS**

**7.1 Right to Disability Benefits**

- (a) A disability benefit shall be payable if the Participant:
- (1) has earned and retained at least two (2) Vesting Credits;
  - (2) has not at any time after becoming a Participant performed any employment in the jurisdiction of the Fund that was not covered by a Collective Bargaining Agreement between the Union and a Contributing Employer;
  - (3) has completely withdrawn from work; and,
  - (4) has been determined to be totally and permanently disabled under Section 7.2.
- (b) No disability benefits shall be payable, if the individual sustained the disability in the course of employment for any employer other than a Contributing Employer as defined hereunder.

**7.2 Totally and Permanently Disabled**

- (a) The term "totally and permanently disabled" shall mean a physical or mental condition as of the date set forth in Subsection 7.2(d) such that the Participant:
- (i) has obtained the medical certification detailed in Subsection 7.2(b); or,
  - (ii) has been certified as eligible for disability benefits by the United States Social Security Administration.

However, no Participant shall be deemed to be totally and permanently disabled if the disability was contracted, suffered, or incurred, while engaging in a felonious enterprise or as the result of intentional self-inflicted injury.

- (b) The Participant shall be considered "totally and permanently disabled" for purposes of Section 7.1 provided that the Participant submits to the Board of Trustees written certifications on a form provided by the Board of Trustees from two (2) medical doctors duly licensed to practice in the State in which the Participant is then residing, Board Certified by the Medical Examiners of the State in which the Participant is then residing and/or in the specialty and for which the condition requires treatment and/or evaluation, stating that such medical doctor:

- (i) has conducted a usual and customary examination of the Participant; and,
  - (ii) has formed his professional opinion that the Participant is permanently and totally disabled so as to be prevented from engaging in any kind of work or occupation for wage or profit which would be performed by a person of like age, condition and educational level.
  
- (c) A Participant who wishes to apply for a disability award shall file a claim for disability benefits with this Plan and make application to the United States Social Security Administration for the Certification described in Paragraph 7.2(a)(ii). He may simultaneously commence obtaining the two (2) written certifications from two (2) different medical doctors described in Subsection 7.2(b).
  
- (d) The date on which the Participant shall be deemed to be "permanently and totally disabled" shall be the earlier of either:
  - (i) date set forth in the certification of disability from the Social Security Administration;
  - (ii) date set forth from the physical examinations described in Subsection (b) above in the event the Participant has elected the procedure described in Subsection (b) above.

In no event may the date of disability precede the date the Participant has filed a claim for disability benefits with the Plan.

### **7.3 Disability Benefit**

The disability benefit shall be the benefit level provided in Article 10 (Benefit Level).

### **7.4 Payment of Disability Benefit**

The Disability Benefit will be payable on the first day of each month, commencing the first day of the first month following: (i) the expiration of five (5) full and consecutive calendar months after the date specified in Paragraph 7.2(d)(i); or (ii) the date specified in Paragraph 7.2(d)(ii). In no event may Disability Benefit payments commence prior to the date on which the Participant has filed a claim for Disability Benefits with the Plan.

### **7.5 Forms of Disability Benefits**

- (a) The standard form of disability benefit shall be the same form as set forth in Section 8.1 hereof with respect, hereof, to retirement benefits.

- (b) The Optional Form of Disability Benefits - The form of optional disability benefits shall be one of the forms set forth in Section 8.2 with respect to optional forms of retirement benefits unless an optional form is specifically set forth in Section 8.4 to be not available to an employee who has applied for disability benefits.



## **ARTICLE 8**

### **FORM OF BENEFIT PAYMENT**

#### **8.1 Form of Benefit Payment**

A Participant who has a right to receive a retirement or disability benefit as provided in Section 6.1 (Right to Retirement Benefits) or Section 7.1 (Right to Disability Benefits) shall automatically be paid the standard form of benefit payment. For purposes of this Article 8 any optional form of benefit shall have a present value (sometimes referred to as “actuarial equivalent”) which, for the Plan Years commencing:

- (a) Before January 1, 2008 will be determined in accordance with the requirements of Code Section 417(e)(3); and
- (b) After December 31, 2007 will be determined in accordance with the “applicable interest rate” as defined in Code Section 417(e)(3) in effect for the month before the date of the distribution, consent, waiver, election or other matter for which present value is required to be determined [subject to the transitional rule of Code Section 417(e)(3)(D)(ii)], based upon the applicable mortality table under Code Section 417(e)(3), which is prescribed by Revenue Ruling 2007-67 and any subsequent guidance issued by the Commission of the Internal Revenue Service.

#### **8.2 Standard Benefits**

- (a) Married Participants - The standard retirement and disability benefit for married Participants shall be a Joint and Survivor Annuity as described in Subsection 8.2(c) below based on the lump sum accrued benefit amount calculated as described in Article 10 hereof. The Joint and Survivor Annuity shall provide for monthly annuity payments to the Participant for life.
- (b) Unmarried Participants - The standard retirement and disability benefit for Participants who are not married shall be a lump sum payment of the accrued benefit amount calculated as described in Article 10 hereof.
- (c) Joint and Survivor Annuity – A Joint and Survivor Annuity shall be a monthly annuity payable for the life of the Participant with monthly payments continuing for the life of the Participant’s spouse; provided however that for benefits commencing after December 31, 2007 the words “sixty-two and two-thirds (66 2/3%) percent” shall be replaced by the words “one hundred (100%) percent”, in each place they appear in this Subsection (c). The monthly benefit payable to the spouse shall be one hundred (100%) percent of the monthly benefit paid during the joint lives of the Participant and the spouse, at the election of the Participant.

- (i) This will result in the monthly benefit amount payable to the Participant being reduced (from the monthly annuity benefit payable solely for the life of the Participant), actuarially, to account for the spouse annuity.
- (ii) The annuity will be based upon the lump sum accrued benefit amount calculated in accordance with Article 10 hereof.
- (iii) The Plan, may in the sole discretion of the Trustees, pay said annuity from the Participants Account Balance or purchase the annuity from an insurance company licensed to do business in the State of Florida with assets in such amount and ratings of such quality deemed prudent by the Trustees of not less than One Billion Dollars.

### **8.3 Notice of Forms of Retirement and Disability Benefits**

- (a) Written notice of the availability of all forms of retirement, death and disability benefits shall be provided to all vested Participants no less than thirty (30) days and no more than ninety (90) days prior to the annuity start date.
- (b) The notice shall contain a written explanation of:
  - (1) the terms and conditions of all forms of benefits; and,
  - (2) the Participant's right to make, and the effect of, an election to receive a benefit, waiver of the joint and survivor annuity; and,
  - (3) the right of the Participant's spouse to consent to a waiver of the joint and survivor annuity; and,
  - (4) the right to revoke, and the effect of a revocation of, an election to waive the joint and survivor annuity; and,
  - (5) the right to elect, and to revoke an election of, any other optional form of benefit payment.
- (c) 180-day notification period. For any distribution notice issued in Plan Years beginning after December 31, 2006, any reference to the 90-day maximum notice period prior to distribution in applying the notice requirements of Code Sections 402(f) (the rollover notice), 411(a)(11) (Participant's consent to distribution), and 417 (notice under the joint and survivor annuity rules) will become 180 days.
- (d) Notice of right to defer distribution. For any distribution notice issued in Plan Years beginning after December 31, 2006, the description of a Participant's right, if any, to defer receipt of a distribution also will describe the consequences of failing to defer receipt of the distribution. Such notification shall include a general description of the material features, an explanation of the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of Code Section 417(a)(3).

### **8.4 Optional Benefits; Manner of Election and Revocation**

- (a) The following optional forms of benefits may be elected by a married Participant.

- (i) Lump Sum Payment. Any married Participant may file an election to receive a lump sum payment of the accrued benefit amount calculated as described in Article 10 hereof.
  - (ii) Any married Participant may file an election to receive a monthly annuity payable for the life of the Participant with monthly payments continuing for the life of the Participant's spouse. The monthly benefit payable to the spouse shall be seventy-five (75%) percent of the monthly benefit paid during the joint lives of the Participant and the spouse, at the election of the Participant.
    - (A) This will result in the monthly benefit amount payable to the Participant being reduced (from the monthly annuity benefit payable solely for the life of the Participant), actuarially, to account for the spouse annuity.
    - (B) The annuity will be based upon the lump sum accrued benefit amount calculated in accordance with Article 10 hereof.
    - (C) The Plan, may in the sole discretion of the Trustees, pay said annuity from the Participant's Account Balance or purchase the annuity from an insurance company licensed to do business in the State of Florida with assets in such amount and ratings of such quality deemed prudent by the Trustees of not less than One Billion Dollars.
- (b) Election of Optional Benefits and Revocation of Elective.
- (i) Manner of Electing Optional Benefits – Optional forms of benefit payments shall only be payable if a timely election is made. Such election must be in writing, signed by the Participant, on a form provided by the Board of Trustees, and must clearly indicate that an optional form of Benefit has been chosen.
  - (ii) Consent of Spouse – The spouse of a Married Participant must consent to any election to waive a joint and survivor annuity. Such consent must be in form and substance satisfactory to the Plan, including without limitation:
    - (A) be in writing;
    - (B) designate a beneficiary (or form of benefits) which may not be changed without consent of the spouse which consent must comply with the provisions of this Subsection 8.4(b), or in the alternative the written consent of the spouse must expressly permit designations by the Participant (to specific named beneficiary or beneficiaries and specific form or forms of benefits) without any requirement of further consent by the spouse;
    - (C) must acknowledge the effect of the waiver under applicable Federal law and Florida Statutes Section 732.201 et. seq. (“Spousal Elective Share”);
    - (D) the consent of the spouse must be witnessed by a Plan representative or a Notary Public; and,
    - (E) be filed with the Plan during the ninety (90) day period ending on the date on which benefits are to commence.
  - (iii) Time Limits – Any optional form of benefit must be elected prior to the receipt of the first payment of benefits from this Plan.

(c) Revocation of Election.

- (i) Revocation by Participant – An election of a standard or optional form of benefit payment may be revoked prior to the receipt of the first payment of benefits from this Plan. Such a revocation of any election must be in writing, signed by the Participant, and must clearly indicate that the Participant is revoking the initial election.
- (ii) Consent of Spouse – the spouse of a married Participant must consent to any revocation of a joint and survivor annuity and election of any other form of benefit including, without limitation, a standard form of benefit in the same manner as provided in Subsection 8.4(b).
- (iii) If an election is revoked, then the standard form of benefit payment shall be paid unless another election of an optional benefit payment is timely made as provided in Subsection 8.4(b) hereof.

**8.5 Commencement of Benefits Under a Qualified Pre-Retirement Survivor Annuity**

The Plan shall cause a surviving spouse to begin receiving benefits under a qualified pre-retirement survivor with a reasonable time after the Participant's death.

**8.6 Continuation of Benefits After Death of Participant**

- (a) Benefits Commenced Prior to Participant's Death. In the event benefits have commenced being paid prior to the Participant's death, the remaining benefits shall be distributed at least as rapidly as they would have been under the method of distribution being used at the date of the Participant's death, based upon the form of benefit selected.
- (b) Benefits Commenced After Death of the Participant. In the event benefits do not commence being paid until after the death of a Participant then:
  - (i) any benefit payable to a party other than a beneficiary designated by the Participant pursuant to Sections 12.2 or 13.1 hereof must be distributed within five (5) years after the Participant's death; and,
  - (ii) any benefit payable to beneficiary designated by the Participant pursuant to Sections 12.2 or 13.1 hereof will be distributed over:
    - (A) the life of the beneficiary; ora period not extending beyond the life expectancy of said beneficiary, commencing not later than the end of the calendar year following the calendar year in which the Participant died; provided however, that if a designated beneficiary is the Participant's surviving spouse, the commencement date shall be not later than the end of the calendar year following the calendar year in which the Participant would have obtain the age of seventy and one-half (70 1/2).

**ARTICLE 9**  
**PAYMENT OF BENEFITS**

**9.1 Payment of Benefits**

**Frequency of Payments** - Retirement, death and disability benefits shall be paid as set forth in Article 8.

**9.2 Required Payment of Retirement Benefits After Age Seventy and One-Half (70 1/2)**

Retirement benefits to and/or on behalf of a Participant shall begin no later than a Participant's Required Beginning Date. A Participant's Required Beginning Date shall be April 1, following the calendar year in which the Participant attains or would have attained the age of seventy and one-half (70 1/2), even if the Participant has not filed a claim for retirement benefits. A Participant required to be paid pursuant to this section shall be exempt from the provisions of Section 11.1 (Suspension of Benefits).

**9.3 General Rules**

- (a) Effective Date - The provisions of this article will apply for purposes of determining required minimum distributions for Plan Years beginning after December 31, 2002.
- (b) Coordination with Minimum Distribution Requirements previously in effect - If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this article equals or exceeds the required minimum distributions determined under this article, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this article is less than the amount determined under this article, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this article.
- (c) Precedence - The requirements of this article will take precedence over any inconsistent provisions of the Plan.
- (d) Requirements of Treasury Regulations Incorporated - All distributions required under this article will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9).

**9.4 Time and Manner of Distribution**

- (a) Timing of Distributions to Participants - The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (b) Death of Participant Before Distributions Begin - If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (i) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.
  - (ii) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (iii) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (iv) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection, other than Paragraph 9.4(b)(i) hereof, will apply as if the surviving spouse were the Participant.

For purposes of Sections 9.4 and 9.6, unless Paragraph 9.4(b)(iv) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Paragraph 9.4(b)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 9.3. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 9.3), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of Distribution - Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Sections 9.5 and 9.6 of this article. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations.

**9.5 Required Minimum Distributions during Participant's Lifetime**

- (a) Amount of Required Minimum Distribution For Each Distribution Calendar Year  
During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
- (i) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
  - (ii) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death  
Required minimum distributions will be determined under this section beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

**9.6 Required Minimum Distributions After Participant's Death**

- (a) Death On or After Date Distributions Begin
- (i) Participant Survived by Designated Beneficiary - If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:
    - (A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
    - (B) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

- (C) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
  - (ii) No Designated Beneficiary - If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (b) Death Before Date Distributions Begin
  - (i) Participant Survived by Designated Beneficiary - If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Paragraph 9.6(a)(i).
  - (ii) No Designated Beneficiary - If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin - If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Paragraph 9.4(b)(i), this Subsection 9.6(b) will apply as if the surviving spouse were the Participant.

## **9.7 Definitions**

- (a) Designated Beneficiary - The individual who is designated as the beneficiary under Section 14.4 of the Plan and is the designated beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- (b) Distribution Calendar Year - A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Subsection 9.4(b). The required minimum



- distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (c) Life Expectancy - Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
  - (d) Participant's Account Balance - The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
  - (e) Required Beginning Date - The term "Required Benefit Date" shall have such meaning as is provided for within Section 9.2 of the Plan.

**ARTICLE 10**  
**BENEFIT LEVEL**

**10.1 Calculation of Benefit Amount**

- (a) A Participant's Accrued Benefit shall be:
  - (i) based upon the value of his account balance (as defined in Subsection 10.1(b) below) as adjusted for in accordance with Article 10.
  - (ii) Calculated as of the Valuation Date, immediately:
    - (A) preceding the Participant's Retirement Date; or
    - (B) succeeding the Participant's Retirement Date, as the Participant may elect.
  
- (b) A Participant's account balance shall be the total of the Participant's allocable share as of the Valuation Date elected by the Participant pursuant to Subsection 10.1(a) of:
  - (i) Contributions as defined in Section 1.11 hereof;
  - (ii) Forfeitures, which are defined as that portion of a Participant's account(s): (1) not vested at the time he incurs a Loss of Credits and Benefits pursuant to Section 5.2 hereof; and (2) forfeited in accordance with the provisions of Section 4.2 hereof; and,
  - (iii) Earnings and losses of the Participant's account.
  
- (c) Separate Accounts - The Trustee shall establish and maintain for each Participant until his initial distribution date a Separate Account, provided; however, that if a Participant files an Elective Form pursuant to Subsection 1.11(b) hereof, the Trustee shall maintain, on behalf of said Participant, two separate accounts: an Employer Contribution Account and an Elective Contribution Account (herein sometimes called "Accounts"). Each such account shall be credited or debited to the extent required by the following paragraphs. All entries on such individual accounts shall be conclusive and binding upon all parties. Notwithstanding the foregoing, all contributions paid to the Trustees, and the income therefrom, without distinction between principal and income, shall be held and administered, as a single Fund and the Trustee shall not be required to invest separately any share of any Participant in the Fund.

**10.2 Allocation of Employer Contributions, Forfeitures, Income, Loans and Expenses**

- (a) Beginning with the last day of each Plan Year (Valuation Date) and effective thereafter, the sum of the following shall be allocated to the accounts of each Participant, less any sum distributed to a Participant prior to that current Valuation Date:
  - (i) To each Participant's Employer Contribution Account the amount of Employer Contributions made by Employers for the Plan Year, on behalf of any Participant who has completed Five Hundred (500) Hours of Service during such Plan Year; and,

- (ii) To the Participant's Elective Contribution Account the amount of Elective Contributions made by Employers on behalf of any Electing Participant; and,
  - (iii) Any amounts which are forfeited under any provisions of this Plan after the next preceding Valuation Date; and,
  - (iv) Any income and/or losses (including realized and unrealized capital gains) and expenses of the Plan experienced after the next preceding Valuation Date through the current Valuation Date; and,
  - (v) Sums allocated to said Participant's Accounts pursuant to Paragraphs (iii) and (iv) above shall be reallocated pro-rata among said Participant's Employer Contribution Account and Elective Contribution Account based on the respective balances of such accounts as of such Valuation Date.
- (b) Allocation of Contributions and Forfeitures - As of the Valuation Date of each Plan Year for which Employers shall make contributions hereunder:
- (i) Contributions shall be allocated among, and credited to the Account of each Employee based upon the ratio that the total Contribution for each Employee on whose behalf Contributions have been made by Employers during such Plan Year, bears to the total Contribution of all Employees on whose behalf Contributions have been made by Employers during the Plan year.
  - (ii) Forfeitures shall be applied only to those Employees who had an Account Balance prior to the Valuation Date for the Plan Year in which such forfeitures are being allocated, provided that such Employee's prior Account Balance is not otherwise forfeited as of that Valuation Date (hereinafter collectively called "Eligible Employee"). Such forfeitures shall be allocated to each Eligible Employee on whose behalf the Contributions have been made by Employers during such Plan Year bears to the total Contributions for all Eligible Employees to whom forfeitures are to be allocated have been made by Employers during such Plan Year.
- (c) Until allocated as provided in Subsections (a) and (b) hereof, Employer Contributions to the Plan shall be held in the Suspense Account.

### **10.3 Limitation on Allocation to Participants**

- (a) Notwithstanding any other provision of the Plan to the contrary, effective for any Limitation Year beginning December 31, 2001, the Annual Addition, as defined herein, that may be contributed or allocated to a Participant's Account for any Limitation Year shall not exceed the lesser of:
  - (1) Forty Thousand Dollars (\$40,000.00), adjusted for increases in the cost-of-living under Code Section 415(d), or
  - (2) One hundred percent (100%) of a Participant's Compensation within the meaning of Code Section 415(d).

- (b) In the event the amount allocated to a Participant's Account exceeds the amount permitted in this Subsection 10.3(a) such amounts shall be considered "excess amounts". Excess amounts in the Participant's Account shall be allocated and reallocated to the other Participants. If excess amounts remain after such allocation and reallocation, then such amounts shall be held unallocated in a Suspense Account. The amounts in the Suspense Account shall be allocated and reallocated, beginning in the next Plan Year, before any Employer or Employee contributions, which would constitute annual additions, may be made to the Plan.
- (c) Limitation for Plan Years Beginning Prior to December 31, 1993 - In addition to other applicable limitations which may be set forth in the Plan and notwithstanding any other contrary provision of the Plan, compensation taken into account under the Plan shall not exceed Two Hundred Thousand Dollars (\$200,000.00), adjusted for changes in the cost of living as provided in Code Sections 401(a)(17) and 415(d), for the purpose of calculating a Plan Participant's accrued benefit (including the right to any optional benefit provided under the Plan) for any Plan Year commencing after December 31, 1988. However the accrued benefit determined in accordance with this provision shall not be less than the accrued benefit determined on December 31, 1988.
- (d) Limitation For Plan Year Beginning After December 31, 2001
- For the year commencing after December 31, 2001:
- (i) All limitations shall be calculated in accordance with Code Sections 415(b)(7) and 415(b)(11).
- (ii) Limitations will be calculated without regard to benefit or Contributions made by a Contributing Employer to any other retirement plan qualified pursuant to Code Section 401.
- (e) The term, "Annual Addition", as used in this Article shall have the meaning provided for pursuant to Code Section 415(c)(2).

#### **10.4 Certification of Allocations**

Within One Hundred Twenty (120) days following each Valuation Date, the Trustees shall certify the name of the Participants and the amount allocable to the accounts of each of them and the Trustees shall enter on their records the amount allocated to each Participant and all transactions with respect to the Accounts of such Participant.

#### **10.5 Income and Loss**

The Trustees, as of the Valuation Date of each year, shall allocate and credit the net income or debit the net loss of the Plan for such period to the Accounts of the Participants in the same proportion to which the Accounts of each Participant bear to the amount of the total Accounts of all Participants as the same shall have existed as of the last Valuation Date.

- (a) Until allocated, the net income or net loss shall be held in the Suspense Account.
- (b) For purposes hereof, all expenses of the Plan and/or the Plan's share of the expenses of the Trust, shall be separately stated and then allocated as losses under this paragraph.

**10.6 Appreciation and Depreciation**

The Accounts of all Participants shall be adjusted as of each Valuation Date for any net unrealized appreciation or net depreciation in the assets of the Plan, and such adjustment shall be made in the same proportion, to which the Accounts of each Participant bear to the amount of the total Accounts of all Participants as the same shall have existed as of the last Valuation Date. The Trustees shall make a written evaluation of the Plan assets on an annual basis which shall be valued as of the Valuation Date of each year, and such evaluation shall be submitted to the Employer and the Trustees within One Hundred Twenty (120) days after the Valuation Date. Plan assets shall always be valued at their fair market value.

**10.7 Maximum Benefit Amount**

A Participant may not receive a retirement or disability benefit which exceeds the lesser of:

- (a) one hundred (100%) percent of the Participant's average Compensation for the highest three (3) consecutive years as Participant in the Plan; or
- (b) the maximum amount allowed under Code Section 415, which is incorporated herein by reference.

**ARTICLE 11**  
**EMPLOYMENT AFTER RETIREMENT**

**11.1 Suspension of Benefits**

- (a) A Participant who returns to work for a Contributing Employer after retirement shall receive an additional credit for said Contributions if all other provisions of this Plan are satisfied to entitle said Participant of such additional credits until attainment of normal retirement age and satisfaction of all requirements for normal retirement; provided that commencing January 1, 2007,
  - (i) the provisions of Subsection (b) shall apply to those persons who have attained the age of sixty-two (62) years and otherwise satisfy the requirements of Code Section 410(a)(36); and,
  - (ii) the provisions, of Subsection (b) shall apply to any persons who, as of December 31, 2006, were working in excess of forty (40) hours per month and receiving retirement benefits pursuant to an uniformly applied waiver of the provisions of subsection (a) previously adopted by the Board of Trustees (including, without limitation, the Resolution commonly known as ER 60) who have not attained the age as of January 1, 2007.
- (b) The retirement benefits of any person described in Paragraphs (a)(i) and (a)(ii) and who continues to work more than forty (40) hours in any month shall be suspended, but shall accrue Benefit Credits in accordance with Subsection (a) hereof.

**11.2 Offset of Retirement Benefits Improperly Paid**

To the extent necessary to recoup any retirement benefits paid to any Participant during period in which said Participant performed work of the type and amount described in Section 11.1 hereof, the Board of Trustees shall upon resumption of payment of retirement benefits hereunder deduct from such resumed retirement benefits the following amounts:

- (a) from initial payment an amount up to one hundred (100%) percent of said initial payment as may be necessary to recoup the entire amount of retirement benefits erroneously paid;
- (b) from all payments subsequent to the initial payment an amount not in excess of twenty-five (25%) percent of each monthly retirement benefit payment until the amount of the retirement benefit erroneously paid is entirely recouped.

**11.3 Claims, Notices and Inquiries**

- (a) Notices to the Board of Trustees

All notices to the Trustees, including notices of re-employment certificates of retirement, notices of cessation of work, requests for advance determinations, and all other inquires and matters regarding letters under this Article 11 shall be submitted to the Board of Trustees addressed as follows:

Board of Trustees of the ACRA-Local 725  
Defined Contribution Retirement Trust  
C/O NATIONAL EMPLOYEE BENEFITS ADMINISTRATORS, INC.  
2010 N.W. 150th Avenue, Suite 100  
Pembroke Pines, FL 33028

All notices, claims, inquiries, etc. to the Board of Trustees shall be in writing effective only upon actual receipt thereof by the Board of Trustees at the address set forth above.

**(b)** Notices by the Board of Trustees

**(i)** In general, all notices by the Board of Trustees shall be directed to the participant, retiree or employee at his last address as set forth on the records of the Board of Trustees and shall be in writing and shall be effective upon deposit in the US Mail, first class mail or by personal delivery.

**(ii)** Notifications of suspension of retirement benefits pursuant to this Section 11.3 shall comply with the provisions of Paragraph (b)(i) above and shall contain:

- (A)** a description of the specific reasons why benefit payments are suspended;
- (B)** a general description of the plan provisions relating to a suspension of benefits;
- (C)** a copy of such provisions;
- (D)** a statement of Department of Labor Regulations may be found in Section 2530.203-3 of the Code of Federal Regulation;
- (E)** a statement that the Employee has the right to have the determination reviewed in accordance with the claims review procedure may be found in the Summary Plan Description;
- (F)** a statement that in order to have benefits resumed a resumption notice must be filed with the Board of Trustees and a copy of the form which must be filed.

In the event benefits were inadvertently paid during a period of re-employment which the plan intends to offset against future benefits payable upon resumption, and identification of the specific periods of employment, the suspendable amount subject to offset, and the manner in which the Plan intends to offset suspendable amounts also be set forth specifically.

**11.4 Computation of Benefit Amount at Re-Retirement**

Retirees - The benefit amount at re-retirement shall be calculated as set forth in Section 6.3 hereof.

**ARTICLE 12**  
**BENEFITS PAYABLE UPON DEATH**

**12.1 Right to Death Benefits**

A Death benefit shall be payable upon the death of the Participant if:

- (a) no retirement or disability benefit is payable at the time of death; and
- (b) a timely claim for death benefits is filed as provided in Section 17.2 (Claims for Benefits).

**12.2 Types of Death Benefits**

- (a) Married Participants.
  - (i) Death Before Annuity Starting Date – The death benefit payable on behalf of a married Participant who was vested at the time of death, but dies prior to his annuity starting date shall be those benefits payable to the spouse as provided in Article 13 (Spouse's Pre-Retirement Survivor Benefits).
  - (ii) Death After Annuity Starting Date – The death benefit payable on behalf of a married Participant who was vested at the time of death, but dies after his annuity starting date shall be a pre-retirement survivor benefit payable to the spouse as provided in Section 8.2 (Joint and Survivor Annuity).
- (b) Other Death Benefits - The death benefits payable on behalf of a Participant who dies in circumstances other than set forth in Subsection 12.2(a) above are those set forth in Article 14 hereof (Death Benefit Payment).
- (c) For purposes hereof the term "annuity starting date" means:
  - (i) The first date of the first period for which the amount is payable as an annuity, or in the case of benefit not payable in the form of annuity, the first day on which all events have occurred which will entitle the Participant to such a benefit.
  - (ii) The above definition of annuity starting date will not apply to disability payments if the Participant receiving the disability benefit will, upon attainment of early or normal retirement age, receive a benefit that satisfies the accrual and vesting rules of the Internal Revenue Code without taking into account the disability payments made up to that date.
  - (iii) Notwithstanding the foregoing, in no event shall the annuity starting date be later than the later date set forth in Section 9.2 hereof.
- (d) Any annuity provided hereunder shall in all respects and form to the provisions of Section 8.5 hereof.



**12.3 Reduction of Death Benefits**

For purposes of determining the amount of any qualified pre-retirement survivor annuity and/or any other death benefit, the amount of any loan outstanding to the Participant from the Plan, or any other sum due to the Plan (which shall include any provision for set-off or reduction in benefits pursuant to the terms of this Plan) from the Participant secured by any security interest by the Plan shall be taken into account and shall reduce the amount of such benefit.

## **ARTICLE 13**

### **SPOUSE'S PRE-RETIREMENT SURVIVOR BENEFITS**

#### **13.1 Forms of Spouse's Survivor Benefit Payments**

A spouse who has a right to receive a pre-retirement survivor benefit as provided in Subsection 12.2(1) (Types of Death Benefits) shall automatically be paid the standard spouse's survivor benefit unless a timely election is made to receive an optional lump sum spouse's survivor benefit pursuant to Subsection 13.2(d) hereof.

#### **13.2 Standard Spouse's Survivor Benefits**

- (a) Death After Earliest Retirement Age - If a Participant dies after the earliest retirement age the spouse's survivor benefit shall begin on the first day of the month after the Participant's death. At that time, the surviving spouse shall receive monthly payments for life equal to the same retirement benefit that would have been payable to the spouse if the Participant had retired with a sixty-six and two-thirds (66 2/3%) percent joint survivor annuity on the day before the Participant's death or separation from service, whichever is the earlier date. Any adjustment in the benefit due to the Participant's early retirement age shall apply in the same manner in calculating the spouse's survivor benefit.

In the event that any portion of the Participant's benefit from all retirement plans, is considered attributable to a benefit from a Defined Benefit Plan, (hereinafter called the "defined benefit") then the spouses standard survivor benefits attributable to that portion shall be an annuity for the life of the surviving spouse, the actuarial equivalent of which is not less than sixty-six and two-thirds (66 2/3%) percent of the portion of the defined benefit to which the Participant had a non-forfeitable right within the meaning of Code Section 411(a).

- (b) Death Before Earliest Retirement Age - If a Participant dies on or before the earliest retirement age, then:
- (1) the spouse's survivor benefit shall not be payable until the first day of the month after the Participant would have reached the Earliest Retirement Age.
  - (2) At such time, the surviving spouse (if any) shall receive monthly payments for life equal to the same benefit that would have been payable to the spouse if the Participant had retired with a sixty-six and two-thirds (66 2/3%) percent joint and survivor annuity, and had died on the day before separation from service. The reduction in the benefit due to the Participant's early retirement age shall apply in the same manner in calculating the spouse's survivor benefit.
  - (3) If the spouse dies before the Participant would have reached the Earliest Retirement Age, then no benefits shall be paid whatsoever.

- (4) In the event that any portion of the Participant's benefit from all retirement plans is considered attributable to a benefit from a Defined Benefit Plan (hereinafter, called the "Defined Plan Benefit") then the spouse's standard survivor benefits attributable to that portion shall be an annuity for the life of the surviving spouse, the actuarial equivalent of which is not less than sixty-six and two-thirds (66 2/3%) percent of the portion of the Defined Plan Benefit to which the Participant had a non-forfeitable right within the meaning of Code Section 411(a).
- (c) Definition - For purposes of this Article, the term "Earliest Retirement Age" means the earlier of:
- (1) the date the Participant would have reached early retirement age (age 55), provided the Participant was vested to an early retirement benefit; or
  - (2) the date the Participant would have reached normal retirement age (age 65 plus the fifth anniversary of the time the Participant commenced participation in this Plan).
- (d) Election of Optional Lump Sum Death Benefit - If a vested Participant dies before benefit payments commence, then the spouse may file an election to have lump sum death benefit paid as provided in Section 14.3 (Lump Sum Death Benefits). Such election must be in writing and filed with the Plan no later than thirty (30) days prior to issuance of the first annuity benefit payment. Such an election must be in writing, signed by the spouse, and the spouse's signature must be notarized. An election of the lump sum death benefit must be filed no later than ten (10) days after the spouse receives the first monthly spouse's survivor benefit payment. Such Lump Sum Death Benefit may be paid only in accordance with the procedures set forth in Sections 15.2 and 15.5 hereof.

### **13.3 Election of Optional Spouse's Survivor Benefits**

- (a) Forms of Optional Survivor Benefits - A married, vested Participant who has not retired may file an election to receive:
- (i) A Lump Sum Survivor Benefit. This form of benefit shall provide, upon the death of the Participant, a benefit payable to the spouse equal to the benefit described in Section 14.3 hereof.
  - (ii) With respect to any Participants who die in any Plan Year commencing after December 31, 2007, a seventy-five (75%) percent monthly spouse annuity which shall provide a benefit payable to the spouse equal to the benefit described in Paragraph 8.4(a)(ii).
- (b) Manner of Electing Optional Spouse's Survivor Benefit - An optional spouse's survivor benefit shall only be payable if a timely election is made. Such election must be in writing, signed by the Participant, on a form provided by the Board of Trustees.
- (c) Time Limits - The lump sum optional spouse's survivor benefit may be elected at any time and for any number of times before the death of the Participant.

- (d) All other provisions regarding payment of the spouse's survivor benefit as provided in Section 13.2 (Standard Spouse's Survivor Benefit) shall apply to payment of an optional spouse's survivor benefit.
- (e) Consent of Spouse - Consent of the spouse shall be required to elect an optional spouse's survivor benefit which will result in a lesser benefit for the spouse. Such spousal consent must comply with the provisions of Section 15.6 of the Plan.

#### **13.4 Revocation of Election**

- (a) An election of the lump sum optional spouse's survivor benefit may be revoked at any time and for any number of times before the death of the Participant. Such revocation must be in writing, signed by the Participant.
- (b) Consent of Spouse - The spouse of a married Participant must consent to any such revocation in writing. Such revocation must in all respects conform to the requirements of Section 15.6 hereof.
- (c) If an election is revoked, the sixty-six and two-thirds (66 2/3%) percent spouse's survivor benefit shall be paid unless another election of the spouse's survivor benefit is made before the Participant's death as provided in Section 13.3 (Election of Optional Lump Sum Spouse's Survivor Benefits).

#### **13.5 Notice of Spouse's Pre-Retirement Survivor Benefits**

- (a) Written notice of the right to elect optional spouse's survivor benefits shall be provided to all married, vested Participants on an annual basis.
- (b) The notice shall contain a written explanation of:
  - (1) the terms and conditions of the standard spouse's pre-retirement survivor benefit and the optional spouse's survivor benefits; and,
  - (2) the Participant's right to waive, and the effect of, a waiver of the spouse's pre-retirement survivor benefit; and,
  - (3) the right of the Participant's spouse to consent to a waiver of the spouse's pre-retirement survivor benefit; and,
  - (4) the right to revoke, and the effect of the spouse's pre-retirement survivor benefit; and,
  - (5) the right to elect, and to revoke an election of, any optional spouse's survivor benefits.

**ARTICLE 14**  
**DEATH BENEFIT PAYMENT**

**14.1 Requirements for Payment of Death Benefits**

A death benefit shall be payable to the beneficiary or beneficiaries of a Participant determined in the manner set forth herein upon the death of the Employee provided that the requirements of Section 12.1 have been satisfied.

**14.2 Types of Death Benefits**

**(a) Married Employees.**

- (1)** Spouse Pre-Retirement Survivor Benefit – A pre-retirement survivor benefit as described in Article 13 hereof shall be paid to the surviving spouse of an Employee who was married at the time of death provided that the Employee was vested and otherwise satisfied the requirements for a pre-retirement survivor benefit as set forth herein in Article 13.
- (2)** Notwithstanding Paragraph (1) above, if a vested participant dies before commencement of benefit payment, then the surviving spouse may elect to receive a lump sum death benefit in accordance with Section 14.3 below, in which event, the monthly spouse's survivor benefit shall be reduced to take into account the payment of the lump sum death benefit. Such an election must be in writing, signed by the spouse and the spouse's signature must be notarized. An election of the lump sum death benefit must be filed no later than thirty (30) days prior to the date on which the Plan (or the party to which the Plan has assigned the annuity obligation) issues the first monthly spouse's pre-retirement survivor annuity benefit payment and must acknowledge that receipt of a lump sum benefit may reduce the pre-retirement survivor benefit to zero.
- (3)** The surviving Spouse of an Employee who was married at the time of death, but was not vested or otherwise did not qualify for a pre-retirement benefit, shall be a lump sum death benefit as set forth in Section 14.3 hereof.
- (4)** For purposes of this Article, the term "Earliest Retirement Age" means the earlier of:
  - (i)** the date the Participant would have reached Early Retirement Age (age 55), provided the Participant was vested to any Early Retirement Benefit; or
  - (ii)** the date the Participant would have reached normal retirement age (age 65 plus the fifth anniversary of the time the Participant commenced participation in this Plan).

(b) Unmarried Employee.

The death benefit payable upon death of a non-married Employee shall be a lump sum benefit as provided in Section 14.3 hereof.

**14.3 The Lump Sum Death Benefit**

The Lump Sum Death Benefit payable hereunder shall be the sum of the vested account balance of the Participant as of December 31 of the Plan Year immediately preceding the death of the Participant.

**14.4 Designation of Beneficiary**

The Beneficiary shall be the surviving spouse or such other person as the Participant (with the written consent of the spouse as required by this Plan) has designated in writing on a form approved by the Board of Trustees. If all designated beneficiaries predecease the Participant, or if none have been designated, then the Trustees may pay:

- (a) first to the Participant's surviving spouse, then;
- (b) if a surviving spouse cannot be located, then to the beneficiary designated under the ACRA-Local 725 Health and Welfare Plan; and if none were designated or if all have pre-deceased the Participant; then;
- (c) if none of the above can be located then, equally to the Participant's children if all can be located;
- (d) if not all the Participant's children can be located (or if any child pre-deceased the Participant) then, the Plan shall be entitled to petition the appropriate Probate Court to open the estate of the Participant and to appoint an Administrator Ad-Litem to receive the sums to be paid by the Plan; and
- (e) if all the foregoing cannot be accomplished then the Plan may file an Interpleader as set forth in Section 17.9. The Plan shall be reimbursed, as a deduction from the Benefit, for all court costs and attorney fees incurred in connection with Subsections (d) and/or (e).

Upon payment as set forth above, the Plan's obligations will be completely discharged to the extent of such payment and the Plan will not be required to see to the application of the payment. Notwithstanding any provision of this section, under no circumstances shall any death benefit exceed the sum of the anticipated monthly benefit computed pursuant to Section 14.3 hereof multiplied by one hundred (100%) percent.

**ARTICLE 15**  
**LUMP SUM PAYMENTS**

**15.1 Involuntary Lump Sum Distributions**

- (a) If the present value of a benefit is Five Thousand Dollars (\$5,000.00) or less and the payment of such benefit has not begun, the Board of Trustees shall pay the actuarial equivalent of such benefit in a lump sum, or if the Participant so elects, in monthly installments over a period of time not to exceed sixty (60) months, without the consent of the Participant or the Participant's spouse.
- (b) Effective for distributions made on or after March 28, 2005, if the value of a Participant's vested account balance is One Thousand Dollars (\$1,000.00) or less, if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a direct rollover in accordance with Section 15.5, or to receive the distribution directly, then the Board of Trustees shall designate an individual retirement plan, and pay the distribution in a direct rollover to such plan.

**15.2 Voluntary Lump Sum Distributions**

- (a) If the present value (computed pursuant to Code Section 417(e)(3)) is more than Five Thousand Dollars (\$5,000.00), or if the payment of a benefit of any value has already begun, the Board of Trustees may in its sole discretion, pay the actuarial equivalent of such benefit in a lump sum, or in monthly installments, or in any combination thereof, provided the Participant and the Participant's spouse, if any, shall consent in writing to such payment. Such consent must in all respects conform to the requirements of Section 15.6 hereof.
- (b) Be pursuant to a Notice, which conforms to the requirements of Section 205 of ERISA and/or Code Section 411(a)(11) (and complies with regulations issued by the Internal Revenue Service pursuant to Section 1102(b)(2)(B) of the Pension Protection Act of 2006) and must be given no later than thirty (30) days and no earlier than one hundred eighty (180) days, after the Participant and the Participant's spouse has been given notice required by this subsection.

**15.3 Interest Assumption**

For purposes of computing the present value of a benefit payable under this section the interest assumption to be used shall be the interest rate as set forth in Section 1.32 ("Present Value"), provided that such interest rate shall not be greater than the interest rate that would be used (as of the date of the distribution in which the distribution occurs) by the Pension Benefit Guaranty Corporation in determining the present value of a lump sum distribution on Plan termination, provided however, that for Plan Years beginning after December 31, 2007, the interest assumption should comply with the requirement of Code Section 417(e)(3).

**15.4 Reserved****15.5 Rollover Distributions**

All Lump Sum Distributions from this Plan made after December 31, 1992 which are Eligible Rollover Distributions as defined below shall be governed by this Section 15.5:

- (a)** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee may elect, at the time and in the manner prescribed by the Board of Trustees, but no earlier than the time required under Section 6.1 or Article VII of this Plan, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (b) Definitions:**
  - (1) Eligible Rollover Distribution:** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee; provided that such is an "Eligible Rollover Distribution" as defined in Code Sections 402(c)(4), 401(a)(21), and 408(A), except that:
    - (i)** an Eligible Rollover Distribution does not include:
      - (A)** any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more;
      - (B)** any distribution to the extent such distribution is required under Code Section 401(a)(9);
      - (C)** the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities); and,
      - (D)** any distribution which is made upon hardship of the Distributee.
    - (ii)** For Plan Years commencing after December 31, 2007 the Trust is not responsible for assuring that the Distributee is eligible to make a rollover to a Roth IRA (as set forth in Internal Revenue Bulletin 2008-12 Q/A-5).
  - (2) Eligible Retirement Plan:** For Plan Years beginning on or after December 31, 2011, an Eligible Retirement Plan is an individual retirement account described in Code Section 408(a)(9), an individual retirement annuity described in Code Section 408(b), or a qualified trust described in Code Section 401(a), an annuity plan described in Code Section 403(a), an eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code



Section 414(p), which accepts the Distributee's Eligible Rollover Distribution. With respect to a Distributee who is a surviving spouse, an Eligible Retirement Plan is an individual retirement account or an individual retirement annuity.

For purposes of this Paragraph 15.5(b)(2), a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified defined contribution plan described in Code Sections 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (3) Distributee: A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employees or former Employee's spouse or former spouse which is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(b) and a "designated beneficiary" as defined in Code Section 409(a)(9)(E), are Distributees with regard to the interest of the spouse or former spouse.
- (4) Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee or an Eligible Retirement Plan established for the purpose of receiving an Eligible Rollover Distribution on behalf of a designated beneficiary who is a Distributee.
- (5) Notice Regarding Rollover Distribution: A Plan must provide to a Participant and the Participant's spouse the requirements of Section 417(a) of the Explanation.
- (6) 2009 RMD's: Notwithstanding any other provisions of Sections 9.2 and 15.5, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMD's"), and who would have satisfied that requirement by receiving distributions that are:
  - (i) equal to the 2009 RMD's' or
  - (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMD's) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least ten (10) years ("Extended 2009 RMD's"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding Section 15.5, and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2009, as chosen by the Employer in the Adoption Agreement (attached hereto as Exhibit 1), will be treated as eligible rollover distributions).

If no election is made by the Employer in the Adoption Agreement, a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H).

- (c) Limitations on Rollover Distributions to the Plan and from the Plan. No Rollover Distribution from another qualified plan shall be accepted with this Plan, unless the Employee agrees by requesting such Rollover Distributions be accepted by this Plan by making application to the Board of Trustees as provided in Subsection 1.10(c), which is accepted by the Board of Trustees, and which said application expressly provides that said Rollover Distributions are subject to the following limitations on withdrawals.
- (1) All sums included in or as a part of such Rollover Distribution may be withdrawn by the Participant only at the discretion of the Board of Trustees, which may condition same upon withdrawal of all sums from the separate account of said Participant.
  - (2) All sums included in or as a part of such Rollover Distribution shall be subject to all expenses and investment losses and earnings of the Trust Fund as set forth in Paragraph 10.1(b)(iii).
  - (3) The Board of Trustees may defer and delay such withdrawal for a period not to exceed for thirty-six (36) months if, in the sole and at the absolute discretion of the Board of Trustees, such withdrawal would result in an investment loss to the Plan (which investment loss is deemed unreasonable in the sole discretion of the Board of Trustees) by reason of said withdrawal.

### **15.6 Consent of Spouse**

The spouse of a married Participant must consent to any election to waive a Joint and Survivor Annuity. Such consent must:

- (i) be in writing;
- (ii) designate a beneficiary (or form of benefits) which may not be changed without consent of the spouse which consent must comply with the provisions of this Section 15.6, or in the alternative the written consent of the spouse must expressly permit designations by the Participant (to specific named beneficiary or beneficiaries and specific form or forms of benefits) without any requirement of further consent by the spouse;
- (iii) the spouse must acknowledge the effect of the waiver;
- (iv) the consent of the spouse must be witnessed by a Plan representative or a Notary Public; and,
- (v) be filed with the Plan during the ninety (90) day period [one hundred eighty (180) days, for Plan Years commencing after December 31, 2006] ending on the date on which benefits are to commence.

The Board of Trustees may in its sole discretion determine that a consent of spouse is not required if it is established to the satisfaction of the Board of Trustees that such consent may not be obtained because there is no spouse, because the spouse cannot be located, or for any other circumstances as may be prescribed by regulations of the Secretary of Treasury. Any consent by a spouse (or an election not requiring consent as provided herein) shall only be effective with respect to such spouse.

**ARTICLE 16**  
**TOP-HEAVY RULES**

**16.1 Effective Date**

For Plan Years beginning after December 31, 2001, this section shall apply for purposes of determining whether the Plan is a Top-Heavy Plan under Code Section 416(g), and whether the Plan satisfies the minimum benefits requirements of Code Section 416(c) for such years.

**16.2 Definitions**

For purposes of this Article, the following definitions shall apply:

- (a) Aggregation Group means a "Required Aggregation Group" or a "Permissive Aggregation Group" as defined below:
  - (1) "Required Aggregation Group" - means each plan of the Employer in which a Key Employee is a Participant and each other plan of the Employer, which enables each plan of the Employer in which a Key Employee is a Participant, to meet the requirements of Code Sections 401(a)(4) or 410.
  - (2) "Permissive Aggregation Group" - means any plan not required to be included in an "Aggregation Group", which may be treated as being part of such Aggregation Group is such Aggregation Group would continue to meet the requirements of Code Sections 401(a)(4) or 410 with such Plan being taken into account.
  
- (b) "Determination Date" – means, with respect to any Plan Year, the last day of the preceding Plan Year or in the case of the final Plan Year for any Employer, the last day of such Plan Year.
  
- (c) "Key Employee" – Key Employee means any Employee or Former Employee (including any deceased Employee) who at any time during the Plan Year that includes the Determination Date was or is:
  - (1) an officer of the Employer having Annual Compensation greater than \$130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002);
  - (2) a 5-percent owner of the Employer; or
  - (3) a 1-percent owner of the Employer having Annual Compensation of more than \$150,000.

For this purpose, Annual Compensation means Compensation within the meaning of Code Section 415(c)(3). The determination of who is a Key Employee will be made in accordance with Code Section 416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.

- (d) “Non-Key Employee – means any Employee (including his beneficiaries) who is not a Key Employee.
- (e) “Top-Heavy Group” – means any Aggregation Group if, as of the Determination Date, the sum of the present value of the cumulative accrued benefits for Key Employees under any employee retirement plan exceeds sixty (60%) percent of a similar sum determined for all Key Employees and Non-Key Employees combined.
- (f) “Top-Heavy” – with respect to any Plan Year, the present values of accrued benefits and the amounts of account balances of an Employee as of the Determination Date, shall be increased by the distributions made with respect to the Employee under the Plan and any Plan with the Plan under Code Section 416(g)(2) during the 1-year period ending on the Determination Date.
- (g) “Valuation Date” – means, with respect to any Plan Year, the same valuation date used by the Plan for computing Plan costs for minimum funding regardless of whether a valuation is performed for such Plan Year and for which purpose the Accrued Benefit for each current Employee must be determined as if the individual terminated service as of such Valuation Date.

### **16.3 Top Heavy Rules**

- (a) For the purpose of determining whether an Employee is a Key Employee an Employee shall never be deemed to be more than one (1) Key Employee even if such Employee is deemed to be a Key Employer under more than one (1) of the preceding definitions of a Key Employee.
- (b) For purposes of determining if this Plan is a Top-Heavy Plan, the following rules shall be applicable:
  - (1) The present values of the cumulative accrued benefits for Key Employees and Non-Key Employees shall be determined as of the most recent respective Valuation Dates for such plans which occur within the respective twelve (12) month periods ending on the respective Determination Dates for such Plans.
  - (2) Notwithstanding the results of the 60% Test, the Plan shall not be considered a Top-Heavy Plan for any Plan Year in which the Plan is a part of a Required or Permissive Aggregation Group (as defined in Code Section 416(g)) which is not Top-Heavy.
- (c) For purposes of determining the present value of the cumulative accrued benefit, the following shall apply:
  - (1) For any Key Employee or Non-Key Employee contributions not made by the Employer shall not be taken into account; and,
  - (2) The accrued benefits and accounts of any individual who has not performed services for an Employer during the 1-year period ending on the Determination Date shall not be taken into account.

**16.4 Top Heavy Vesting Requirements**

Effective as of the first day of each Plan Year in which the Plan is Top-Heavy, a non-bargaining unit Participant's Vested Percentage in his Accrued Benefit derived from Employer contributions shall be determined from the regular Vesting Schedule for the Plan or the following vesting schedule, whichever produces the higher Vested Percentage for the Participant and shall continue to apply for that Participant (in the manner described in the preceding sentence) thereafter even if this Plan subsequently ceases to be deemed Top-Heavy, unless otherwise amended as provided for in Section 3.4 (Changes in Vesting Schedule).

<u>Vesting Credits</u>	<u>Vesting Percentage</u>
Less than 2	0%
2	20%
3	40%
4	60%
5	80%
6	100%

**16.5 Top Heavy Benefit Accrual**

If the Plan becomes Top-Heavy, then for all Non-Key Employees who also participate in the ACRA-Local 725 Pension Plan the Top-Heavy minimum benefit requirements of Code Section 416 shall be satisfied under the ACRA-Local 725 Pension Plan. Otherwise, a minimum employer contribution of 5% of Annual Compensation shall be made to the Participant's account under this Plan.

**16.6 Maximum Annual Compensation**

The maximum annual compensation to be taken into account under this Plan during any Plan Year in which the Plan is Top-Heavy for any Participant shall not exceed the sums set forth in Subsections 10.3(c) or (d), whichever is applicable, or higher dollar amount for the Plan Year established by regulations or determined by the Commissioner of Internal Revenue to be effective as of January 1 or each calendar year (but no earlier than January 1, 1988) and which applies to the Plan Year ending with or within the calendar year.

**ARTICLE 17**  
**ADMINISTRATION**

**17.1 Board of Trustees**

The Board of Trustees shall administer and control the operation of this Plan in accordance with the provisions of this Plan and the Trust Agreement. The Board of Trustees, or any other person to whom the Board of Trustees may allocate or delegate such authority, shall, from time to time, establish rules for the interpretation, application and administration of the Plan. In making any such determination or rule, the Board of Trustees shall pursue uniform policies and shall not unreasonably discriminate in favor of, or against, any person or group of persons.

**17.2 Claims for Benefits**

- (a) Advance Claim Required - In order to receive a benefit under this Plan, a claim for benefits must be submitted, in writing, and shall be made on a duly prescribed form containing the information required in this section. The claim for benefits should be filed at least three (3) months before the Participant's expected date of retirement. A claim for benefits must be filed before any benefits are payable, after a Participant dies, a claim for death benefits (or survivor benefits if applicable), must be filed within one (1) year of the death of the Participant. If a retired Participant returns to work and earns additional Benefit Credits, then the Participant must file a written request to increase the amount of retirement benefits within three (3) months of pre-retirement.
  
- (b) Information Required - All Participants and beneficiaries shall furnish such information as the Board of Trustees considers necessary or desirable for the purposes of administering the Plan. This shall include the expected date of retirement of the Participant, the marital status and proof of date of marriage of the Participant, proof of age of the Participant and any designated beneficiaries, and date and proof of death if a claim is filed for a survivor annuity or a death benefit. If proof of age is not submitted as required, other information may be used as the Board of Trustees deems reliable. Proof of good health may be required to elect a survivor annuity. Any adjustment required by reason of lack of proof, or misstatement of age, shall be made in such a manner as the Board of Trustees deems equitable. Benefits provided under this Plan are conditioned upon the furnishing of such true and complete information as may be needed. The Board of Trustees and any other persons involved in the administration of the Plan shall be entitled to rely upon any certification, statement or representation made by a Participant or beneficiary with respect to age, marital status, death of the Participant, or other facts required to be determined under any of the provisions of the Plan, and the Board of Trustees shall not be liable on account of the payment of any monies or the commission of any act or failure to act, in reliance thereon.

**17.3 Multiple Claims Prohibited**

Once a claim for benefits has been approved by the Board of Trustees, no further claims for a retirement or a disability benefit shall be permitted.

**17.4 Designation of Beneficiary**

A Participant may designate a beneficiary and a contingent beneficiary to receive a benefit under this Plan. A designation of a beneficiary may be revoked and a new beneficiary may be designated at any time before the first payment of benefits has been made. A designation of a beneficiary, or revocation of such designation, shall be in writing, signed by the Participant, on a duly prescribed form.

**17.5 Death of Participant or Beneficiary**

If a Participant or beneficiary dies while entitled to a benefit under this Plan, then the benefit shall be paid to such other designated beneficiary then alive. If there is no designated beneficiary alive at the time of such death, then the benefit shall be payable to the beneficiary designated in the ACRA-Local 725 Health and Welfare Trust Fund, or if there is no such beneficiary, then the benefit shall be paid in a lump sum in accordance with Section 14.4.

**17.6 Notification of Mailing Address**

- (a) All Participants and beneficiaries shall file with the Board of Trustees, from time to time, in writing, their mailing address and each change of address. Failure to submit such mailing address may result in the payment of benefits being delayed.
- (b) Any check representing payment hereunder, and any communication addressed to a Participant, beneficiary or other person, at the last address on the records of the Board of Trustees, shall be binding on such persons for all purposes of this Plan.
- (c) If the Board of Trustees is in doubt whether payments are being received by the person entitled thereto, it may notify such person, by certified mail at the last known address, that all payments of benefits shall be withheld until the Board of Trustees is provided such information it deems necessary.

**17.7 Benefits Payable to Minors and Incompetents**

- (a) Whenever any person entitled to payments under this Plan shall be a minor, under legal disability, or, in the sole judgment of the Board of Trustees, be otherwise unable to care for their affairs in their own best interest and advantage (whether because of illness, accident, incapacity or other mental or physical condition), the Board of Trustees may direct that all or any portion of such payments be made in any of the following ways (unless a claim has been made by a legal guardian, tutor, conservator, committee or other duly appointed legal representative in which event payment shall be made to such representative):

- (1) to the spouse, child, parent, or other blood relative to be expended on behalf of the person (or on behalf of those dependents as to whom the person has the duty to support); or
  - (2) to a recognized charity or governmental institution to be expended for the benefit of the beneficiary (or for the benefit of those dependents as to whom the person has the duty to support); or
  - (3) to such other persons, organizations or institutions as the Board of Trustees deems appropriate to provide for the care and benefit of the person (or for the benefit of those dependents as to whom the person has the duty to support).
- (b) The decision of the Board of Trustees shall be final and binding upon all persons. After such decision the Board of Trustees shall not be obliged to see to the proper application or expenditures of any payments so made.

**17.8 Reserved**

**17.9 Interpleader**

In the event of any controversy under and/or regarding the Trust and Plan including, without limitation, questions or controversies of whatever character, arising in any manner or between any persons or entities in connection with the Trust Fund or the operation thereof, or which are related to any claim for any benefit by any Participant or any other person, the Board of Trustees may file an interpleader action or any action of judicial determination and declaratory judgment in any court of competent jurisdiction to determine the rights, duties, and/or obligations of the Plan, Trust, and Participant's Beneficiary, and/or Trustees. The court costs and all professional fees and costs of an interpleader action may be deducted from the sums deposited with the court or disbursed pursuant to the Order of such Court.

**17.10 Reliance on Experts**

With respect to any and all determinations and decisions required and/or permitted to be made by the Board of Trustees pursuant to the terms of this Plan, including, without limitation, all determinations and decisions to which the Board of Trustees are entitled to exercise discretion in interpreting the provisions of this Plan, determinations of eligibility for benefits, termination of eligibility, medical, physical, and/or health conditions of any person, the Board of Trustees shall be entitled to rely upon, accept, and based on its decisions or determinations upon, the opinion of any expert engaged by the Board of Trustees to review and evaluate such matters, including, without limitation, any licensed health care professional (including, without limitation, a licensed nurse, nurse practitioner, medical doctor, chiropractor or other physician, as the term "physician" is defined in the ACRA-Local 725 Health and Welfare Plan (hereafter collectively called "Referred Physician"), notwithstanding the fact that, the opinion of such Referred Physician may be contrary or otherwise inconsistent with, and/or contradict the opinion and/or evaluation expressed by the treating physician or other expert for said individual. It is specifically the right of the Board of Trustees to not grant special deference, weight or authority to the opinion or evaluation of the treating physician of any individual and the Board of the Trustees is not required to afford the opinion or evaluation of such treating physician of any individual over the opinion and/or



evaluation of any Referred Physician to which the Board of Trustees has submitted the matter for evaluation and opinion.

**17.11 Payment of Expenses of Trust and Plan Documents and Legal Compliance**

All expenses incurred with respect to preparation of Trust and/or Plan documents, design, administration, operation, and compliance of the Trust and Plan with all applicable legal requirements, including, without limitation, amendments to the Trust, Plan, and/or related documents, and compliance with applicable law, as such law may be enacted, amended or modified, (including, without limitation, by action or decision of any court having applicability to the Trust and/or Plan) from time to time, shall and are hereby declared and determined to be, activities and expenses undertaken and incurred by the Board of Trustees in their capacity as fiduciaries to the Trust and Plan (and not in any other capacity), in accordance with ERISA and Department of Labor Field Assistance Bulletin 2002-2 and shall be expenses to be paid by the Trust.

**ARTICLE 18**  
**CLAIMS, NOTICES AND INQUIRIES**

**18.1 Claims, Notices and Inquiries**

All claims for benefits, elections (or revocations of election) for a specific form of benefit, requests to increase benefits after returning to work, notices of re-employment, notices of re-retirement, verification of retirement, advance determinations of prohibited work, notices of mailing address, notices of appeal, and all other inquiries and matters concerning the Plan shall be submitted to the Board of Trustees addressed as follows:

Board of Trustees of the ACRA-Local 725  
Defined Contribution Retirement Plan  
C/O National Employee Benefits Administrators, Inc.  
2080 N.W. 150th Avenue, Suite 100  
Pembroke Pines, FL 33028

**18.2 Response to Claims and Inquiries**

All inquiries shall be answered promptly. The final decision for approval of benefits shall be made by the Board of Trustees.

**18.3 Denial of Benefits**

If any claim for benefits is denied, suspended, or terminated, in whole or in part, then the claimant shall be furnished with a Notice of denial, suspension or termination no later than thirty (30) days after the final decision has been made. The Notice shall be provided in writing, by certified mail, and shall set forth:

- (1) the specific reasons for the denial, suspension or termination of benefits; and,
- (2) the specific references to the pertinent provisions of the Plan upon which the action is based and a copy of the Plan provisions shall be furnished with this Notice; and,
- (3) a description of any additional material or information necessary for the claimant to perfect the claim, along with an explanation of why such material or information is necessary; and,
- (4) in the event of a suspension of benefits, reference to Department of Labor Regulations, 29 CFR Section 2530.203(c); and,
- (5) an explanation of the Claims Review Procedure.

**18.4 Claims Review Procedure**

- (a) Requests for Review - If a claim for benefits is denied, suspended or terminated, in whole or in part, then the claimant may appeal to the Board of Trustees for a full and fair review. In order to file an appeal, a written Notice of Appeal must be submitted within sixty (60) days after the Notice of denial, suspension or termination is received by the claimant (or such

- later time as the Board of Trustees deems reasonable). The Notice of Appeal shall briefly describe the grounds upon which the appeal is based and should be signed by the claimant. The claimant shall be allowed to review all pertinent documents during normal business hours, and shall be permitted to submit comments and a statement of issues for consideration by the Board of Trustees.
- (b) Representation - A claimant may designate an attorney, or any other duly authorized person, to act as his or her representative at any stage of the Claims Review Procedure. Any rights provided to the claimant during the Claims Review Procedure shall automatically extend to the representative designated by the claimant. A designation of representative shall be signed by the claimant and the representative, and shall be submitted in writing.
- (c) Claims Review Board - The Board of Trustees shall rule on all appeals brought under this section. A decision to grant or deny an appeal shall be based solely on the record before the Board of Trustees, unless the Board of Trustees determines, in its sole discretion, that hearing is necessary for the proper resolution of the appeal. The Board of Trustees shall decide, by majority vote, to grant or deny an appeal. The final decision shall be made by the Board of Trustees, in writing, and shall be made no later than sixty (60) days after receipt of the Notice of Appeal, unless special circumstances (such as the need for a hearing) require an extension of time. In no event, however, should the decision of the Board of Trustees be made later than one hundred and twenty (120) days after receipt of the Notice of Appeal. If an appeal is denied, in whole or in part, then the decision shall set forth the specific reasons for the action, with specific references to those Plan provisions upon which the decision is based. The claimant shall be promptly provided with a copy of this decision. The decision of the Board of Trustees shall be final and binding.

### **18.5 Exhaustion of Claims Review Procedure**

No action in law or in equity shall be brought to contest a denial, suspension or termination or benefits until the claimant has complied with the procedures provided in Section 18.4 (Claims Review Procedure), unless the Board of Trustees fails to render a decision within one hundred and twenty (120) days after receipt of the Notice of Appeal. In no case, however, shall any action be brought unless instituted within one (1) year from the time the claimant received the Notice of denial, suspension or termination provided in Section 18.3 (Denial of Benefits).

### **18.6 Notices to Participants and Beneficiaries Regarding Certain Distribution Options**

Notwithstanding any other provision of the Plan, there shall be provided to the Beneficiaries and Participants:

- (a) the Notice and Explanation required by Section 205 of ERISA and/or Code Sections 402(f), 411(a)(11), and 417(a); and,

- (b) not earlier than one hundred eighty (180) days nor later than prior to thirty (30) days prior to the commencement of any distribution and/or the date of which any covenant or election which is required and/or permitted by ERISA or the Code (including, without limitation, the cited in subsection (a) above) with respect to Distributions to such Beneficiaries and/or Participants.

### **18.7 Right to Inspect or the Request of Certain Documents**

- (a) Right to Inspect - Any person described in Paragraph 18.7(c)(iii) may examine, without charge, at the Trust Administrator's Office and at other specified locations, such as worksites and union halls, all Plan Documents, including insurance contracts, collective bargaining agreements, a list of participating employers and employee organizations sponsoring the Plan and copies of all documents filed by the Plan with the U. S. Department of Labor, such as detailed annual reports and plan descriptions. Upon written request, any person described in Paragraph 18.7(c)(iii) may receive information as to whether a particular employer or employee organization is a sponsor of the Plan, and if so, the sponsor's address.
- (b) Information to Certain Persons Upon Written Request - The Trust shall provide to the persons listed in Paragraph 18.7(c)(iii) the information listed in subsection (d) in accordance with paragraphs (c)(i) and (c)(ii).
- (c) Persons Who May Request Information - Except as provided in Subsection (e) hereof, the Trust shall, not later than thirty (30) days after receipt of a written request for the information described in subsection (d) from a person described in Paragraph 18.7(c)(iii), furnish the requested document or documents to said person.
  - (i) The Trust Administrator shall furnish reports and applications pursuant to this section in a manner consistent with the requirements of 29 CFR 2520.104b-1, including Paragraph (c) of that Section relating to the use of electronic media.
  - (ii) The Trust may impose a reasonable charge to cover the costs of furnishing documents pursuant to this section, but in no event may such charge exceed:
    - (A) The lesser of: (1) the actual cost to the Trust for the least expensive means of acceptable reproduction of the documents; or (2) a twenty-five (\$.25) cents per page; plus
    - (B) The cost of mailing or delivery of the document.
  - (iii) Persons Entitled to Request Documents. For purposes of this section, a person entitled to request and receive reports and applications includes:
    - (1) Any Participant within the meaning of Section 3(7) of ERISA;
    - (2) Any Beneficiary receiving benefits under the Plan;
    - (3) Any labor organization representing Participants under the Plan; and,
    - (4) Any Employer that is a party to the Collective Bargaining Agreements pursuant to which the Plan is maintained.
- (d) Documents to be Furnished - Subject to the limitations of Subsection (e), a person described in Paragraph 18.7(c)(iii), shall be entitled to request in writing and receive a copy of any of the following documents specifically listed in said request:

- (1)** Any document listed in Subsection (a) hereof.
  - (2)** Periodic actuarial report. For purposes of this section the term "periodic actuarial report" means any:
    - (i)** Actuarial report prepared by an actuary of the Plan and received by the Plan at regularly scheduled, recurring intervals; and,
    - (ii)** Study, test (including a sensitivity test), document, analysis or other information (whether or not called a "report") received by the Plan from an actuary of the Plan that depicts alternative funding scenarios based on a range of alternative actuarial assumptions, whether or not such information is received by the Plan at regularly scheduled, recurring intervals, and,
  - (3)** Quarterly, semi-annual, or annual financial report prepared for the Plan by any Plan investment manager or advisor (without regard to whether such advisor is a fiduciary within the meaning of Section 3(21) of ERISA) or other fiduciary.
- (e)** Limitations and Exceptions - For purposes of this section, reports and applications (and related determinations) required to be disclosed under this section shall not include:
- (1)** Any report or application that was furnished to the requester within the twelve (12) month period immediately preceding the date on which the request is received by the Plan; and,
  - (2)** Any report or application that, as of the date on which the request is received by the Trust, has been in the Trust's possession for six (6) years or more.
  - (3)** Any report described in Paragraphs 18.7(e)(1) and (2) above, that, as of the date on which the request is received by the Trust, has not been in the Trust's possession for at least thirty (30) days; except that, if the Trust elects not to furnish any such document, the Trust shall furnish a notice, not later than thirty (30) days after the date on which the request is received by the Trust, informing the requester of the existence of the document and the earliest date on which the document can be furnished by the Trust.
  - (4)** Any information or data which served as the basis for any report or application described in Subsection (d), although nothing herein shall limit any other right that a person may have to review or obtain such information under ERISA; or
  - (5)** **(i)** Any information within a report or application that the Trust Administrator reasonably determinates to be either.
    - (A)** individually identifiable information with respect to any Plan Participant, Beneficiary, Employee, Fiduciary, or Contributing Employer, except that such limitation shall not apply to an investment manager, adviser, or other person (other than an employee of the Plan or Trust) preparing a financial report described in Paragraph 18.7(d)(2); or
    - (B)** proprietary information regarding the Plan or Trust, any Contributing Employer, or entity providing services to the Plan or Trust.

- (ii)** For purposes of Item 18.7(e)(5)(i)(B), the term "proprietary information" means trade secrets and other non-public information (e.g., processes, procedures, formulas, methodologies, techniques, strategies) that, if disclosed by the Plan or Trust, may cause, or increase a reasonable risk of, financial harm to the Plan or Trust, a Contributing Employer, or entity providing services to the Plan.
- (iii)** The Trust may treat information relating to a Contributing Employer or entity providing services to the Plan or Trust as other than proprietary if the Contributing Employer or service provider has not identified such information as proprietary.
- (iv)** The Trust shall inform the requester if the Trust withholds any information described in Subparagraph 18.7(e)(5)(i) from a report or application requested under Section 18.7(b).

**ARTICLE 19**  
**FUNDING**

**19.1 Basis of Payments to the Trust**

Each Employer shall contribute to the Trust for this Defined Contribution Plan such amounts and at such times as are required by the applicable provisions of the Collective Bargaining Agreement. No self-contributions shall be allowed.

**19.2 Basis of Payments from the Plan**

All benefits and expenses shall be paid in accordance with the provisions of this Plan and the Trust Agreement and consistent with ERISA, the Internal Revenue Code and other applicable laws.

**ARTICLE 20**  
**EFFECT OF DOMESTIC RELATIONS ORDERS**

**20.1 Assignment of Benefits Upon Divorce**

The prohibition against assignment, alienation and transfer of benefits provided in Section 21.3 (Benefits Not Assignable) shall also apply to a domestic relations order, unless such order is determined to be a "qualified" domestic relations order as defined in ERISA and the Internal Revenue Code.

**20.2 Filing of Claims**

All claims for benefits under a domestic relations order shall be filed, in writing, with the Board of Trustees along with a copy of the domestic relations order.

**20.3 Alternate Payee**

The term "alternate payee" means any spouse, former spouse, child or other dependent of a Participant who is recognized by a domestic relations order as having a right to all, or a portion or a benefit payable under this Plan with respect to the Participant.

**20.4 Notice of Receipt of Claim**

- (a) Within thirty (30) days of receipt of a domestic relations order, the Board of Trustees will notify the Participant, the alternate payee(s) and their respective legal counsel of receipt of the domestic relations order.
- (b) At the same time, the Board of Trustees shall notify the Participant, the alternate payee(s) and their respective legal counsel of the procedures for determining whether the order is a "qualified" domestic relations order by providing a written copy of this Article.
- (c) Notice to the alternate payee(s) shall be given at their address as shown in the domestic relations order.

**20.5 Designation of Representative**

The Participant and the alternate payee(s) may designate an attorney or other representative to receive notices and communications from the Trust Fund instead of the Participant or the alternate payee. This designation must be in writing and must be signed by the Participant or by the alternate payee.



**20.6 Payment of Benefits Pending Trustees Decision**

Pending a decision by the Board of Trustees whether the domestic relations order is "qualified", any amount which would be payable to the alternate payee(s) if the domestic relations order is "qualified" shall be separately accounted for under the Plan.

**20.7 Qualified Domestic Relations Orders**

- (a) Review by Legal Counsel - All domestic relations orders shall be immediately submitted to legal counsel for the Trust Fund on opinion of whether same is qualified in accordance with Subsection 20.7(b).
- (1) Standard of "Qualified" - For purposes of this section the term "Qualified Domestic Relations Order" means any Domestic Relations Order.
- (A) Clearly and with specificity set forth:
- (i) the name and last known mailing address (if any), of the Participant and the mailing address of each alternate payee covered by the Order;
  - (ii) the amount or percentage to be paid by the Plan to each such alternate payee, or the manner in which such amount or percentage is to be determined;
  - (iii) the number of payments or period to which such Order applies; and,
  - (iv) each plan to which such Order applies, by specifying the name of the plan, and as to this Plan including specifically the name of this Plan.
- (B) Such Order specifically does not:
- (i) require a Plan to provide any type or form of benefits or any option not otherwise provided under the Plan; provided however, that this prohibition shall not prohibit an Order from requiring any payment prior to a date on which a Participant has separated from service provided that the payment of benefits is made to the alternate payee:
    - (aa) on or after the later of the following dates:
      - (I) The date on which the Participant is entitled to a distribution under the Plan; or
      - (II) the earlier of:
        - (AA) the date the Participant attains age fifty (50); or
        - (BB) the date on which the Participant attains (or would have attained) the ability to elect the early retirement under the Plan.
    - (bb) If the Participant had retired on the date on which such payment is to begin under the order (but taking into account only the present value of the benefits accrued and not taking into account the present value of any Employer subsidy for early retirement, utilizing as the interest rate in determining set present value, the interest rate set forth for actuarial assumptions under Section 1.32 of the Plan); and,

- (cc) In any form in which such benefits may be paid under the Plan to a Participant other than in a form of joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse.
    - (ii) required the Plan to provide increased benefits determined on the basis of actuarial standard; and,
    - (iii) does not require the payment of benefits to any alternate payee which will be required to be paid to another alternate payee under another order previously determined by the Plan to be a qualified domestic relations order.
    - (iv) Notwithstanding anything contained herein to the contrary, under no circumstances may an Order require the Plan to permit the former spouse of a Participant to be treated as the spouse for purposes of a joint and survivor annuity with respect to the portion of the Participant’s benefit which is not assigned to the former spouse as alternate payee pursuant to the terms of said Order.
  - (C) Subsequent Domestic Relations Orders - Pursuant to 29 CFR Section 2530.206, such Orders shall not fail to be treated as “Qualified” solely because:
    - (i) the Order is issued after or revises another Domestic Relations Order or another Qualified Domestic Relations Order; or
    - (ii) of the date or time at which said Order is issued.
- (2) Procedures for Determining "Qualified" - The Plan may adopt written procedure to supplement these provisions for determining whether a domestic relations order received by the Plan constitutes a Qualified Domestic Relations Order, and for administration of distributions under Qualified Domestic Relations Orders. Since pursuant to Section 206(d)(3)(j) of ERISA, any person who is an alternate payee under a Qualified Domestic Relations Order is considered a beneficiary for purposes of ERISA under the Plan, such written procedures shall also specify claims and appellate procedure not inconsistent with those set forth under this Plan in Sections 18.4 and 18.5. If the Trustees decide that a domestic relations order is not "qualified", the Notice of denial of the claim shall be provided in the manner provided in Section 18.3 (Denial of Benefits). If an order is determined to be a Qualified Domestic Relations Order in accordance with the provision of Paragraph 1 above, the former spouse of such Participant, shall, if so provided in the Qualified Domestic Relations Order, be treated as being entitled to all rights and privileges or a spouse or surviving spouse for purposes of any joint and survivor annuity and/or pre-retirement survivor annuity as may be provided for under this Plan or any amendments hereto. In addition, if so provided in the Qualified Domestic Relations Order and if married for at least one (1) year, the former spouse may be treated as satisfying the requirements of Section 205(f) of ERISA as added by the Retirement Equity Act of 1984.

- (A) Assignment of Benefits.
- (1) Filing of Claims – All claims for benefits under a domestic relations order shall be filed, in writing, with the Board of Trustees along with a copy of the domestic relations order.
  - (2) Alternate Payee – The term “alternate payee” means any spouse, former spouse, child or other dependent of a Participant who is recognized by a domestic relations order as having a right to all, or a portion of, a benefit payable under this Plan with respect to the Participant.
  - (3) Notice of Receipt of Claim -
    - (i) Within thirty (30) days of receipt of a domestic relations order, the Board of Trustees will notify the Participant, the alternate payee(s) and their respective legal counsel of receipt of the domestic relations order.
    - (ii) At the same time, the Board of Trustees shall notify the Participant, the alternate payee(s) and their respective legal counsel of the procedures for determining whether the order is a qualified domestic relations order by providing a written copy of this Article.
    - (iii) Notice to the alternate payee(s) shall be given at their address as shown in the domestic relations order.
  - (4) Designation of Representative – The Participant and the alternate payee(s) may designate an attorney or other representative to receive notices and communications from the Trust Fund instead of the Participant or the alternate payee. This designation must be in writing and must be signed by the Participant or by the alternate payee.
  - (5) Trustees Decision – The Board of Trustees shall decide whether an order is “qualified” domestic relations order no later than one hundred and twenty (120) days after receipt of the order, unless circumstances require more time. Notice of the Trustees decision shall be promptly provided. If the Trustees decide that a domestic relations order is not “qualified”, the Notice of denial of the claim shall be provided in the manner provided in Section 18.3 (Denial of Benefits).
- (B) Appeal of Trustees Decision – a party may file an appeal of the Trustees decision by filing a Notice of Appeal within sixty (60) days after receipt of the Trustees decision. The appeal shall be governed by the procedures provided in Sections 18.4 and 18.5 (Claims Review Procedure, and Exhaustion of Claims Review Procedure).
- (C) Notices – The Board of Trustees shall notify both the Participant and the alternate payee(s), or their designated representative, of all Trustee decisions under this section.
- (D) Payment of Benefits Pending Trustees Decision – During the period of time in which the Plan is determining whether a domestic relations is a “Qualified

Domestic Relations Order” (including administrative determination by the Plan, as well as, by potential determination by any courts or competent jurisdiction or otherwise) the Plan shall separately account for the amounts in which would have been payable to the alternate payee during the determination period as if the order was a Qualified Domestic Relations Order.

- (1) The Board of Trustees shall continue to separately account for any disputed benefits pending an appeal of the Trustees decision under Section 18.4 (Claims Review Procedure).
- (2) If within eighteen (18) months, the order or any modification thereof is determined to be a Qualified Domestic Relations Order, the Plan shall pay the segregated or escrow amounts together with any interest earned thereon to the alternate payee named in said order (or any persons entitled thereto named in said order).
- (3) If the issue of whether a domestic relations order is “Qualified” is resolved in the negative, or cannot be finally resolved within eighteen (18) months from the date on which the first payment would be required to be made under the order the amounts separately accounted for shall be paid to the person who would have been entitled to such amounts as if the order was not “Qualified”.
- (4) Any decision that an order is a “Qualified” domestic relations order, which is made beyond the eighteen (18) month period described in Paragraph 20.7(d)(5) shall be applied prospectively only.
- (5) The eighteen (18) month period described above shall commence with the date on which the first payment would be required to be made under the order purporting to be domestic relations order as that term is described in Code Section 414(p)(1)(B).
- (6) Nothing contained in Sections 20.8 or 20.9 shall be construed as requiring this Plan to pay interest at any specified rate in the absence of any requirement of any applicable law to do so.

## **20.8 Reserved**

## **20.9 Forfeiture**

During any period in which an alternate payee cannot be located the Plan may not forfeit amounts which would have been paid to said alternate payee unless the Plan will fully reinstate said amounts forfeited when an alternate payee is located.

**ARTICLE 21**  
**MISCELLANEOUS**

**21.1 Construction**

- (a) The terms and conditions of this Plan shall be construed subject to the purposes and provisions of the Trust Agreement establishing the Trust Fund, and subject to ERISA, the Code and all other applicable laws.
- (b) The Board of Trustees is vested with sole and exclusive authority to construe and interpret the provisions of the Plan, including without limitation eligibility and payment of benefits hereunder and all such constructive interpretations and rulings adjudged by the Board of Trustees in good faith shall be binding and conclusive upon all parties, including without limitation the Union, Employers, Employees, Participants and Beneficiaries. The discretion granted to the Board of Trustees under this provision shall include the discretion to decide between beneficiary claimants on a case by case basis and all factual determinations made by the Board of Trustees shall be presumed to be correct unless it is found that there is no basis, subject only to said presumption being rebuttable by a showing of absolute lack of any basis on which to make such a factual determination; provided however that in the absence of any evidence as to any facts whatsoever all presumptions of fact, assumptions of fact or other projections of fact by the Board of Trustees shall be entitled to deference, unless shown to have been made in bad faith.

**21.2 Standards of Proof**

The Board of Trustees shall be the sole judge of the standards of proof required in any case. In the application and interpretation of this Plan, the decisions of the Board of Trustees shall be final and binding on the Participants and beneficiaries, the Associations, the Employers, the Union, and all other persons.

**21.3 Benefits Not Assignable**

- (a) This Plan and the Trust described herein shall be deemed to be a Spendthrift Trust. The right of any person to any payment under this Plan shall not be subject to assignment, alienation or voluntary or involuntary transfer, and to the fullest extent permitted by law, shall not be subject to attachment, execution, garnishment, sequestration or other legal or equitable process. In the event any person attempts to assign, transfer or dispose of such right, or if an attempt is made to subject said right to such process, such assignment, transfer or disposition shall be null and void.
- (b) This section does not apply to Qualified Domestic Relations Orders as provided in Article 20 (Effect of Domestic Relations Orders on Payment of Benefits).

**21.4 Reserved****21.5 Merger**

- (a) This Plan shall not merge or consolidate with nor transfer any assets or liabilities to any other Plan or other Employee Benefit Plan, (hereafter collectively called "New Plan") including without limitation, by virtue of a change in Collective Bargaining Representative, if, after such merger, consolidation or transfer occurred, any Participant of this Plan would be a Participant in a New Plan:
- (i) which New Plan has, at time of, or would have immediately after such merger, consolidation, or transfer, a higher amount, percentage and/or ratio of Unfunded Vested Benefits than this Plan; or
  - (ii) in which New Plan the amount, security and/or liquidity of any Participant's benefit would be in any way inferior to that immediately in this Plan; or
  - (iii) unless each Participant in the New Plan will receive, on a termination basis from the New Plan, immediately after such merger, consolidation or transfer a benefit which is equal to or greater than the benefit which would have been received immediately before the merger, consolidation or transfer from this Plan, on a termination basis, if this Plan had terminated, and
  - (iv) unless all calculations pursuant to this Paragraph (a) shall be conducted in the manner set forth in Subsection 21.5(c) or as otherwise required by Code Section 414, and Treasury Regulations Section 1.414(l), and such merger, consolidation or transfer of assets satisfies all requirements of Code Section 414 and 29 USC Section 1411.
- (b) Before any merger, consolidation or transfer of assets or liabilities, the Board of Trustees shall notify the Pension Benefit Guaranty Corporation at least one hundred and twenty (120) days before the effective date and shall file with the Secretary of the Treasury an actuarial statement of valuation demonstrating compliance with this section and ERISA at least thirty (30) days before the effective date.
- (c) All calculations required under Subsection 21.5(a) shall be conducted utilizing the following definitions:
- (1) **Single Plan.** A plan is a "single plan" only if, on an ongoing basis, all of the plan assets are available to pay benefits to Employees who are covered by the plan and their beneficiaries. For purposes of the preceding sentence, all the assets of a plan will not fail to be available to provide all the benefits of a plan merely because the plan is funded in part or in whole with allocated insurance instruments. Moreover, a plan will not fail to be a single plan merely because of the following:
- (i) The plan has several distinct benefit structures which apply either to the same or different Participants;
  - (ii) The plan has several plan documents;
  - (iii) Several Employers, whether or not affiliated, contribute to the plan;

- (iv) The assets of the plan are invested in several trusts or annuity contracts; or
- (v) Separate accounting is maintained for purposes of cost allocation but not for purposes of providing benefits under the plan.

However, more than one (1) plan will exist if any portion of the plan assets is not available to pay some of the benefits, even if each plan has the same benefit structure or plan document, or if all or part of the assets are invested in one trust with separate accounting with respect to each plan.

- (2) Merger or Consolidation - The terms “merger” or “consolidation” means the combining of two (2) or more plans into a single plan. A merger or consolidation will not occur:
  - (i) merely because one (1) or more employers, sponsoring union or other plan sponsors undergo a reorganization (whether or not taxable); or
  - (ii) if two (2) plans are not combined into a single plan, such as by using one (1) trust which limits the availability of assets of one (1) plan to provide benefits to Participants and beneficiaries of only that plan.
- (3) Transfer of Assets or Liabilities - A “transfer of assets or liabilities” shall be deemed to occur when there is a diminution of assets or liabilities with respect to one plan and the acquisition of these assets or the assumption of these liabilities by another plan for any reason whatsoever (including without limitation a change in Collective Bargaining Representatives) except as specifically set forth below in this Paragraph 21.5(c)(3). The shifting of assets or liabilities pursuant to a reciprocity agreement between two (2) plans in which one (1) plan assumes liabilities of another plan is a transfer of assets or liabilities; provided however, that the shifting of assets between several funding media used for a single plan (such as between trusts, between annuity contracts, or between trusts and annuity contracts) is not a transfer of assets or liabilities.
- (4) Spinoff - The term “spinoff” means the splitting of a single plan into two (2) or more plans.
- (5) Separate Accounting of Assets - The term “separate accounting of assets” means the maintenance of an asset account with respect to a given group of Participants which is:
  - (i) Credited with contributions made to the plan on behalf of the Participants and with its allocable share of investment income, if any, and
  - (ii) Charged with benefits paid to the Participants, and with its allocable share of investment losses or expenses.
- (6) Date of Merger, Transfer of Assets or Spinoff - The actual date of a merger, transfer of assets or spinoff shall be determined on the basis of the facts and circumstances of the particular situation. For purposes of this determination, the following factors, none of which is necessarily controlling, are relevant:
  - (i) The date on which the affected Employees stop accruing benefits under one plan and begin coverage and benefit accruals under another plan.
  - (ii) The date as of which the amount of assets to be eventually transferred is calculated.

- (iii) If the merger, transfer of assets, or spinoff agreement provides that interest is to accrue from a certain date to the date of actual transfer, the date from which such interest will accrue.

**21.6 Termination of the Plan**

In the event of termination of the Plan, the Board of Trustees shall follow the procedures contained in the Trust Agreement, ERISA, the Internal Revenue Code, and all other applicable laws. In the event there are any funds remaining after paying benefits earned by the Participants, then such remaining funds shall not revert to the Employers.

**21.7 Change of Plan Year**

The Plan Year shall not be changed unless notice is provided to, and approval is received from, the Secretary of the Treasury.

**21.8 Incorporation by Reference**

This Plan is maintained for the exclusive purpose of providing benefits to Participants and beneficiaries, and is intended to satisfy all the requirements of Section 302(c) of the National Labor Relations Act of 1947, ERISA and the Code. In the event any requirements of such laws have been omitted, they shall be deemed to be incorporated herein by reference.

**21.9 Amendment of the Plan**

- (a) This Plan may be amended at any time by majority vote of the Board of Trustees, prospectively or retroactively, provided that such amendment complies with the Code, ERISA, all other applicable laws, the Collective Bargaining Agreement creating the Trust Fund, and the purposes as set forth in the Trust Agreement. Additionally, and not by way of limitation, the Board of Trustees may amend this Plan when it is deemed necessary to maintain its tax exempt status, or to preserve compliance with the Code, ERISA, and all other applicable laws. It is provided, however, that no amendment which reduces the accrued benefits of any Participant shall take effect until the Secretary of Labor and the Pension Benefit Guaranty Corporation have been so notified, and until such amendment has either been approved, or has not been disapproved, within ninety (90) days of such notice.
- (b) A copy of each amendment to this Plan shall be made available to the Union, the Associations, the Employers, the Participants and their beneficiaries.



**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Board of Trustees of the ACRA-LOCAL 725 DEFINED CONTRIBUTION RETIREMENT TRUST FUND caused this Fourth Amended and Restated Defined Contribution Retirement Plan to be signed this 16th day of January, 2015, to be effective January 1, 2015.

**UNION TRUSTEES**

**EMPLOYER TRUSTEES**

  
KENNETH E. SCOTT, JR.

  
EDUARDO LLOSENT

  
JAMES E. TAYLOR

  
L. WADE HELMS

  
RICHARD JOHN FOLKMAN

  
MARK KERNEY

  
RALPH MARINELLO

  
JULIE DIETRICH

WITNESSED BY: 