

**Laborers Local 270**  
**Hod Carriers Division**  
**Defined Benefit Pension Plan**

[Restated January 1, 2008]

**LABORERS INTERNATIONAL LOCAL 270  
HOD CARRIERS DIVISION  
DEFINED BENEFIT PENSION PLAN**

**ARTICLE I  
DEFINITIONS**

**SECTION 1.01.** “*Actuarial Equivalent*” means a benefit of equivalent value based on the factors contained in Appendix A. However, for purposes of determining the value of the single sum cash payment provided in Section 5 of Article VI, such Actuarial Equivalent shall be determined using the Applicable Mortality Table and the Applicable interest Rate as follows:

Applicable Mortality Table shall mean the applicable mortality table for purposes of determining the present value of plan benefits under Section 417(e)(3) of the Internal Revenue code. Such Applicable Mortality Table shall be based on the prevailing commissioners' standard table described in Section 807(d)(5)(A) of the Code and used to determine reserves for group annuity contracts issued on the date of which the present value is being determined.

Applicable Interest Rate shall mean the annual interest rate on 30 year Treasury securities for the month preceding the stability period. The initial stability period is the plan year beginning January 1, 2000. Subsequent stability periods shall be the plan year. For any calculations not described above, Actuarial Equivalent shall be determined using mortality for Participants under the 1971 Group Annuity Mortality Table, mortality for non-Participants under the 1971 Group Annuity Mortality Table set back five years and interest at 6.00% per annum.

**SECTION 1.02.** “*Actuarial Present Value*” shall mean shall mean a benefit determined using the interest rate prescribed by the Pension Benefit Guaranty Corporation for valuing annuities under single-employer plans that terminate without Notice of Sufficiency during the first day of the Calendar Year in which the benefit is valued. The mortality assumption shall be as follows:

- a. The 1971 Group Annuity Mortality Table, weighted as follows:
  1. For a Participant's benefit, 100% male and 0% female
  2. For the benefit of a Participant's Spouse or former Spouse, 0% male and 100% female; and
  3. In any other case, 50% male and 50% female.
- b. Effective for distributions made on or after December 31, 2002 the applicable mortality Table is the mortality table described in Rev-Ruling 2001-62.

Notwithstanding the foregoing, the lump sum Actuarial Present Value of any benefit payable under the Plan shall not be less than the amount produced by using the Mortality Tables in a. or b. above based on a 7% interest assumption.

**SECTION 1.03. "Amendments"**. This plan of retirement benefits maintained by the Hod Carriers Division of the Laborers International Union of North America Local 270 Pension Trust Fund has been amended from time to time. The plan so amended shall hereafter be evidenced by the plan of retirement benefits contained in this article and in the following pages as may be further amended from time to time. This restated plan shall not apply to former participants who retired or otherwise terminated their participation under the prior plan unless this plan or subsequent amendments indicate otherwise. The benefits or credits earned by such a former participant shall continue to be governed by the provisions of the plan in effect at the time the participant earned the benefits or credits. In addition, any break-in-service shall be covered by the break-in-service rule in effect at the time the break would have occurred under that rule rather than the rule at the time of retirement.

**SECTION 1.04 "Administrator"** means an agent of the Board of Trustees empowered by the Board to carry on the routine administration of the Trust.

**SECTION 1.05. "Annuity Starting Date"** for a Participant shall mean the first day of the first calendar month starting after the Participant has fulfilled all of the conditions for entitlement to benefits and after the later of:

- a. The first day of the month after submission by the Participant of a completed application for benefits, or
- b. 30 days after the Plan advises the Participant of the available benefit payment options, unless
  - (1) The benefit is being paid as a Husband-and-Wife Pension at or after the Participant's Normal Retirement Age,
  - (2) The benefit is being paid out automatically as a lump sum under Section 3.15, or
  - (3) The Participant and Spouse (if any) consent in writing to the commencement of payments before the end of that 30-day period.

The Annuity Starting Date shall not be later than the Participant's Required Beginning Date.

The Annuity Starting Date for a Beneficiary or alternate payee designated under a Qualified Domestic Relations Order shall be determined under this Section, except that references to the Husband-and-Wife Pension and spousal consent shall not apply.

A Participant who retires before his Normal Retirement Age and then earns additional benefit accruals under the Plan through reemployment shall have a separate Annuity Starting

Date determined under this Section with respect to those additional accruals including the election of any benefit payment options available under the Plan, except that an Annuity Starting Date that is on or after Normal Retirement Age shall apply for any additional benefits accrued through re-employment after that date.

**SECTION 1.06.** "*Beneficiary*" means the person entitled to receive any Death Benefit payable under the Plan.

**SECTION 1.07.** "*Collective Bargaining Agreement*" means:

(a) any current agreement between the Union signatory hereto and any of the two Employer Associations signatory hereto and any extensions, amendments, modifications, or renewals of the above-described collective bargaining agreements, or any substitute or successor agreement or agreements executed between the Union and the Employer Associations signatory hereto which provide for the making of Employer contributions to the Plan; and

(b) Any extensions, amendments, modifications, or renewals of any of the above-described collective bargaining agreements, or any substitute or successor agreement or agreements which provide for the making of Employer contributions to the Plan.

**SECTION 1.08.** "*Continuous Non-Covered Employment*" means employment for an Employer not covered by the Collective Bargaining Agreement which is continuous with a Participant's Covered Employment with the same Employer. A period of Non-Covered Employment will be considered to be continuous with Covered Employment only if there is no quit, discharge, or other termination of employment between the period of Covered and the period of Non-Covered Employment.

**SECTION 1.09.** "*Contributory Hours*" means hours of work in Covered Employment for which Contributions are made or required to be made to the Trust.

**SECTION 1.10.** "*Covered Employment*" means on and after the effective date of this Plan, the hours of active employment of a Participant for an Employer as defined herein, on account of which employment such Employer makes the required contributions into the Pension Fund.

**SECTION 1.11.** "*Credited Service*" means the sum of a Participant's Past and Future Service Credits.

**SECTION 1.12.** "*Death Benefit*" means any benefit becoming payable under the provision of the Plan upon the death of a Participant except such amounts as may become payable under one of the Optional Forms of benefit provided for in Article VI.

**SECTION 1.13.** "*Effective Date*" means September 1, 1965.

**SECTION 1.14.** "*Employer*" means any individual employer (including any individual, partnership, corporation, contractor, joint venture or other entity), the Employer Association, their present and future members, and any other Employer who is required by any collective bargaining agreement to make contributions to this Trust Fund. Employer shall also include the Union if it is required by a written agreement between it and the Trust Fund to make contributions on its employees to the fund for pension benefits.

**SECTION 1.15.** "*Hours Worked*" or "*Hours of Service*" mean all hours for which an Employee is paid, or entitled to payment by a Contributing Employer after the Contribution Date, directly or indirectly, but excluding any time compensated under a workers' compensation law (except if contributions are made during such period in accordance with the Collective Bargaining Agreement) or an unemployment compensation law or a plan pursuant to a mandatory disability benefits law, and excluding any hours of non-work time in excess of 501 hours in any continuous period. "Hours of Service" shall also include hours for which back pay, irrespective of mitigation of damages, is awarded or agreed to by an Employer, to the extent that such award or agreement is intended to compensate an Employee for periods during which the Employee would have been engaged in the performance of duties for the Employer.

Two periods of paid non-work time shall be deemed continuous if they are compensated for the same reason and are not separated by at least 90 days. Furthermore, whenever it is necessary to compute Hours of Service in situations where no work is performed or where pay is computed on other than an hourly basis, or to determine the computation periods to which Hours of Service will be credited, the Trustees shall establish a rule specifically permitted under applicable lawful regulations issued by the Department of Labor under ERISA, or some other rule no less favorable to the Participant.

With regard to Hours of Service during which no duties are performed and for crediting hours for computation periods, the Hours of Service shall be determined in accordance with Department of Labor Regulations 29 CFR 2530.200b-2(b) and (c).

**SECTION 1.16.** "*Joint and Survivor Annuity/Qualified Pre-Retirement Survivor Annuity.*"

(a) The term Joint and Survivor Annuity means a reduced monthly Fixed Annuity payable for the life of the Participant with a Survivor Annuity payable for the life of the Participant's Beneficiary. The monthly annuity payment to the Beneficiary shall be equal to 50% of the reduced amount which was payable to the Participant. This benefit shall be an automatic benefit unless elected against by the Participant and the Participant's spouse in writing.

(b) A qualified pre-retirement survivor annuity means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50% of the account balance of the participant as of the date of death.

**SECTION 1.17.** "*Normal Retirement Age*" shall mean the later of:

(a) The time a Plan Participant attains age 63 (for retirements after 1/1/92 age 62 provided the participant has earned a minimum of 1000 hours in the three plan years prior to retirement) or,

(b) The fifth anniversary of the date a Plan Participant commenced participation.

**SECTION 1.18.** "*Participant*" means any employee in the employ of an Employer who is covered under a collective bargaining agreement between the Employer and the Union and on whose behalf the Employer makes contributions to the Pension Fund. Participant also includes employees of the Union upon whose behalf the Union makes contributions to the Trust Fund pursuant to a written agreement.

**SECTION 1.19.** "*Pension Fund*" means the trust estate created by and defined in the Agreement and Declaration of Trust, and administered by the Trustees of Hod Carriers Division of the Laborers International Union of North America Local No. 270 Pension Fund.

**SECTION 1.20.** "*Plan*" means the Hod Carriers Division of the Laborers International Union of North America Local No. 270 Pension Plan as described herein and as from time to time hereafter amended.

**SECTION 1.21.** "*Plan Year*" means the twelve month period from January 1 through December 31 of the same calendar year.

**SECTION 1.22.** "*Retirement Benefit*" means any benefit payable to a Participant upon retirement, as provided herein.

**SECTION 1.23.** "*Retirement Date*" means the date as of which the Participant retires under the Plan and becomes entitled to receive monthly benefit payments in accordance with the Plan provisions.

**SECTION 1.24.** "*Retroactive Annuity Starting Date*" shall be an Annuity Starting Date:

a. That is affirmatively elected by a participant and occurs on or before the date the written explanation of benefit payment options described herein is provided to the Participant. It is a date that occurs before actual payment of an annuity is made to the Participant.

b. Where benefits shall be payable in the form of an initial single sum payment attributable to the period beginning on the Participant's Retroactive Annuity Starting Date and ending prior to the first of the month benefit payments actually commence. Such single sum shall include interest at 4% simple interest, until changed by the Board of Trustees, from the date the missed payment or payments would have been made to the date of the actual makeup payment. Monthly

payments made subsequent to the lump sum payment shall be in the amount that would have been paid to the participant had payments actually commenced on the participant's retroactive annuity starting date.

c. For purposes of satisfying the 30-day waiver requirements under the Plan and the consent requirements of the Plan, the Annuity Starting Date defined in Section 1.05 shall be used instead of the Retroactive Annuity Starting Date. Notwithstanding any other provision contained herein, this Section 1.23 shall be interpreted with the intent of complying with the Retroactive Annuity Starting Date requirements of the Internal Revenue Code and Treasury Regulations adopted pursuant thereto.

**SECTION 1.25.** "*Service*" means continuous service of a Participant with any Employer while covered under a collective bargaining agreement with the Union.

**SECTION 1.26.** "*Trustees*" means the trustees of the Hod Carriers Division of the Laborers International Union of North America Local No. 270 Pension Fund established by an Agreement and Declaration of Trust dated August 18, 1966, as amended April 29, 1976 and January 1, 1984.

**SECTION 1.27.** "*Union*" means Hod Carriers Division of the Laborers International Union of North America Local No. 270.

## **ARTICLE II** **ADMINISTRATION**

**SECTION 2.01.** The Plan shall be administered by the Trustees and, subject to the procedure provided in Section 6 of this Article II for resolving claims, actions and determinations of the Trustees with respect to the eligibility of any Participant, his rights to benefits hereunder and other questions arising in the administration of the Plan shall be final.

**SECTION 2.02.** Each Participant and Employer shall, from time to time, furnish the Trustees such data as may be considered necessary by the Trustees to administer the Plan. Each Participant and Employer shall fully cooperate with the Trustees in the administration of the Plan.

**SECTION 2.03.** As a condition to his right to receive a Retirement Benefit hereunder, each Participant eligible therefore, sixty (60) days prior to the date of his retirement, shall file with the Trustees an application for such Retirement in such form as the Trustees may prescribe. No Retirement Benefit shall be paid to a Participant until he shall have complied with the terms of this Article. Upon the receipt of such application, the Trustees shall determine whether or not such applicant is entitled to a Retirement Benefit hereunder, and if so, the amount thereof, and shall notify such applicant of their findings.

**SECTION 2.04.** Subject to such conditions as the Trustees may prescribe, a Participant may designate a Beneficiary to receive any amount payable upon his death in accordance with the terms of the Death Benefit. Such Beneficiary designation shall be in writing and shall be dated. The Beneficiary may be changed from time to time by the Participant, however, no designation or change of Beneficiary shall be effective until it is approved by the Trustees. When so approved, such designation or change shall be effective as of the date of the instrument making the designation or change, but without prejudice on account of any payments made before the date of such approval.

(a) If there is no Beneficiary designated or surviving when a Death Benefit becomes payable, such Death Benefit shall be payable to the below indicated relative, or relatives, of the Participant in the first of the following classes of successive preference:

Beneficiaries then surviving:

- (i) Spouse
- (ii) Children
- (iii) Parents
- (iv) Intestate succession

(b) Payment of any Death Benefit to a designated Beneficiary or to a Participant's relative under Item (a) above, shall be subject to the Trustees receipt, within one year following the date of the Participant's death, of an appropriate application from the Beneficiary accompanied by a certified copy of the death certificate; and in the case of payment according to Item (a) above, such Beneficiary shall be required to furnish evidence satisfactory to the Trustees that he is the first successive preference surviving Beneficiary.

(c) Any minor's share of a Death Benefit may be claimed by and paid to an adult or adults who, in the opinion of the Trustees, have assumed the custody and principal support of such minor.

**SECTION 2.05.** Any Participant or Beneficiary who has a claim denied in whole or in part by the Trustees may present a claim appeal in writing to the Trustees and the matter shall be determined in accordance with the following claims and appeals procedure:

(a) No employee, beneficiary or any other person shall have any right or claim to benefits under this Trust except as specified in the rules of the Trust and Pension Plan. If any person has a dispute with the Trust or the Board of Trustees, as to eligibility, or the amount or duration of benefits, the dispute shall be resolved by the Board of Trustees, and its decision shall be final and binding on all parties.

(b) Any person whose application for a pension or for a pension in a certain



amount is wholly or partially denied, shall be notified in writing by the Administrator of the decision of the Trustees. The notice shall advise the applicant of the reason for the denial, the section of the Trust or Pension Plan on which the denial is based; with a description of any additional material or information needed to perfect the application with an explanation why such material or information is necessary, together with an explanation of his right to appeal said decision.

(c) Thereafter, the applicant may file an appeal in writing. Said appeal shall be filed with the Plan Administrator not more than sixty (60) days after the applicant has received written notice of the denial of his application. Failure to file an appeal within sixty (60) days will be a complete waiver of the applicant's right to appeal, and the initial decision of the Trust or Trustees will be final and binding.

(d) The appeal shall be in writing, and shall state in clear and concise terms, the reason why the applicant feels that the decision of the Trust or Trustees was in error. All arguments, issues and comments in support of the appeal shall be set forth in the written appeal. The applicant, if he desires, and in order to enable him to perfect his appeal, may examine any pertinent and relevant documents in possession of the Trust or Trustees.

(e) After the receipt of a timely filed appeal, and upon the written request of the applicant, the Board of Trustees, or a committee of the Trustees, may grant a hearing to be held within a reasonable time, to permit the applicant to personally appear in support of his appeal.

(f) After receipt of the appeal, and after the hearing, if any, the Trustees or its committee shall render its decision not later than (60) days after receipt of the written appeal. If special circumstances require additional time, the Trustees or its committee shall render its decision as soon as possible, but not later than 120 days after the receipt of the appeal.

(g) The decision of the Trustees or its committee shall be in writing, and shall state the specific reasons for the decision, with specific references to the Trust or Pension Plan on which the decision is based.

(h) The decision of the Board of Trustees or its committee shall be final and binding upon the applicant and all persons claiming under the applicant.

(i) This claims and appeals procedure shall apply to and shall include any and every claim or right asserted under the Trust or Pension Plan or against the Trust or Pension Plan, regardless of when the act or omission upon the claim is based occurred. The Trustee shall have full discretion to interpret the plan and to make factual determinations in deciding benefit eligibility, benefit amount or any other benefit related matter or claim.

**SECTION 2.06.** To the extent permitted by law, any payment made in good faith, shall to the extent of such payment, fully discharge the Trustees of any liability.

**ARTICLE III**  
**CREDITED SERVICE**

**SECTION 3.01.** A Participant's Credited Service is the sum of his Service Credits determined as follows:

(a) Past Service Credits - For service from January 1, 1954, through December 31, 1965, a Participant shall be granted one-twelfth of a Service Credit for each month of service under the jurisdiction of the Hod Carriers Division of the Laborers International Union of North America Local No. 270, provided he completed 500 hours

of Covered Employment during the period from September 1, 1965, through August 31, 1967.

(b) Future Service Credits - For service on and after January 1, 1966, a Participant shall be granted Service Credits in accordance with the following schedule:

<b>HOURS WORKED IN COVERED EMPLOYMENT IN A PLAN YEAR</b>	<b>PORTION OF SERVICE CREDIT EARNED</b>
1000 or more	1 year
750 - 999	3/4 year
500 - 749	1/2 year
250 - 499	1/4 year
Less than 250	None

For Employment after January 1, 1976 and upon application therefore, a Participant shall be granted Future Service Credits for Hours Worked in Continuous Non-Covered Employment as defined in Article I, Section 6. Such Service Credits shall be determined in accordance with the Schedule in this Article III, section 1(b).

**SECTION 3.02.** On or after January 1, 1976, a Participant's Service Credits and accrued benefits shall be 100% vested when he has accrued ten (10) Service Credits. When a Participant becomes Vested, he shall have a non-forfeitable right to receive any and all benefits accrued to him under the provisions of this Plan upon satisfying other requirements as outlined in Article IV of this Plan. Effective January 1, 1992, a Participant becomes vested with 10,000 hours of credited service. Hours credited before 1/1/92 are equal to vesting service multiplied by 1000. Hours credited after 1/1/92 are actual hours worked; however, at least 250 hours must be earned in (1) a plan year or (2) a 12-month period commencing with the first day of the plan year, excluding periods of up to 12 months of temporary disability, in order to receive any vesting

credit for that year. All participants who have not suffered a break in service as of January 1, 1998 and who accrue at least one hour of credited service on or after January 1, 1998 shall be 100% vested if they have accrued at least 5 years of service credits or 5000 hours of credited service.

**SECTION 3.03.** In determining whether 250 hours have been earned within 12 months commencing with the first day of a plan year, periods of temporary disability (up to 12 months) shall be excluded. Temporary disability shall include periods during which the participant receives temporary workers compensation benefits or State Disability Insurance benefits. Proof to the satisfaction of the Board of Trustees must be submitted by any participant claiming eligibility under this provision.

**SECTION 3.04.** Break in Service - A Participant who fails to be credited with at least 250 hours in each of a period of years equal to or exceeding the number of years of credited service he has earned or five consecutive plan years, whichever is greater, will lose his service credits and all rights to benefits accrued to the date of the break-in-service unless the Participant;

(a) is 100% vested in accordance with Section 2 of this Article III, or

(b) has been ill or disabled so as to be unable to perform the normal functions of a Hod Carrier, or

(c) has entered into the Armed Forces of the United States and returns to work under the jurisdiction Hod Carriers Division of the Laborers International Union of North America Local No. 270 within one year of his discharge, or within one year of his discharge from a hospital, if he is hospitalized at the time of his separation from the service.

(d) Restoration of Service Credits and accrued benefits shall be made to a Participant who has lost his Credited Service in accordance with this Article III if he once again becomes a Participant of the Plan provided that:

1. He is credited with at least 250 hours of Covered Employment in the first Plan Year after his return to Covered Employment.

(e) A Participant who is absent from work on account of pregnancy, childbirth, infant care or adoption is to be credited with up to 250 hours of service to prevent a one year break in service. The Participant shall provide proof that said absence is on account of pregnancy, childbirth, infant care or adoption to the Trustees on the satisfactory form as prescribed by the Board of Trustees. Any hours credited under this provision shall account only for vesting and shall not apply toward benefit accrual or for any other purpose.

**SECTION 3.06.** If Section 2 of this Article III is amended at any time, any Participant who has at least five (5) Service Credits shall have the right to elect within sixty (60) days after

the effective date of the amendment, to have any break in service determined under the rules of the Plan as it existed prior to the amendment. Any permanent break in service shall be covered by the break in service rules in effect at the time the break occurred rather than the rule at the time of retirement.

#### **ARTICLE IV** **ELIGIBILITY FOR BENEFITS**

##### **SECTION 4.01. NORMAL RETIREMENT BENEFIT.**

Any Participant shall be eligible to retire and receive a Normal Retirement Benefit:

(a) On the first day of the month coinciding with or next following his sixty-third (63rd) birthday provided he has completed at least ten (10) years of Credited Service or five (5) years of Credited Service after January 1, 1998 as provided in Article III, Section 2. For retirements after 1/1/92 normal retirement age is reduced to 62 for all participants who have earned a minimum of 1,000 hours in the three plan years immediately prior to retirement.

(b) Upon remaining a Participant for a period of at least five (5) consecutive years which ends after the Participant's sixty-second (62nd) birthday but ignoring years when Participation was retained based upon an excused absence due to military service or disability.

(c) A Participant's right to his or her normal retirement benefit is not forfeitable on attainment of normal retirement age, as defined in Article I, Sec.17 herein.

##### **SECTION 4.02. UNREDUCED EARLY RETIREMENT BENEFIT.**

(a) Any participant who retires on or after January 1, 1999;

(b) has accrued 25 years of Credited Service; and

(c) was active in the plan year ending December 31, 1998 or any plan year thereafter shall be eligible for an unreduced early retirement benefit. The amount thereof shall be calculated in the same manner as a normal retirement benefit.

##### **SECTION 4.03. EARLY RETIREMENT BENEFIT.**

A Participant who has accrued ten (10) Service Credits and at least one-half of a Future Service Credit or five (5) years of Future Service Credit after January 1, 1998 may retire any time after his fifty-third (53rd) birthday.

#### **SECTION 4.04. DEATH BENEFIT.**

After June 1, 1973, upon the death of a Participant, prior to retirement and after he has accrued at least five (5) Service Credits, there shall be payable to his Beneficiary:

- (a) A Lump Sum Death Benefit if he has at least five (5) and less than ten (10) Service Credits, or
- (b) If he has at least (10) Service Credits, a Monthly Death Benefit payable for 36 months.
- (c) Any Participant who has earned at least five (5) Service Credits shall be fully vested in a death benefit and the break in service rules of this Plan shall not thereafter apply for purposes of this death benefit.

#### **SECTION 4.05. JOINT AND SURVIVOR ANNUITY/QUALIFIED PRE-RETIREMENT SURVIVOR ANNUITY.**

After January 1, 1976, upon the death of a Participant or former Participant who has accrued (10) Future Service Credits or effective January 1, 1998 five (5) Future Service Credits as provided in Section 2 of Article III, provided that said Participant has been married for at least one year prior to his death, and in lieu of any benefits payable under Section 4 of this Article IV, his spouse may elect to receive a monthly benefit, payable for her lifetime.

#### **SECTION 4.06. DISABILITY RETIREMENT BENEFIT.**

- (a) A participant shall be eligible for a regular disability retirement benefit commencing with the 21st week of disability if he:
  - 1. is at least 45 years old and has completed at least (a) 10 years of credited service; (b) 10,000 hours of credited service, or (c) five years of credited service as provided in Article III, Section 2, whichever is applicable; and
  - 2. is disabled and is eligible for and receiving Social Security Disability Benefits or is permanently disabled from his usual occupation or trade as substantiated by medical evidence satisfactory to the Board of Trustees;
  - 3. is, at the time of his disability, an active participant in the Laborers International Local 270 Hod Carriers Division Pension Plan or has been an active participant in the Plan within the 12 month period immediately preceding the onset date of his disability.

4. This benefit is effective for disabilities occurring on or after January 1, 1990.

(b) A participant shall be eligible for the longevity disability retirement benefit commencing with the 21st week of disability if he:

1. is at least 50 years old and has completed at least 20 years of credited service (or 20,000 hours of credited service, whichever is applicable);

2. is disabled and is eligible for and receiving Social Security disability benefits;

3. is, at the time of his disability, an active participant in the Laborers International Local 270 Hod Carriers Division Pension Plan, or has been an active participant in the plan within the 12-month period immediately preceding the onset date of his disability; and

4. this benefit is effective for disabilities occurring on or after January 1, 1996.

## **ARTICLE V**

### **AMOUNT OF BENEFITS**

#### **SECTION 5.01. AMOUNT OF MONTHLY BENEFIT PAYABLE AT NORMAL RETIREMENT OR UNREDUCED EARLY RETIREMENT.**

The amount of monthly benefit payable at a normal retirement or unreduced early retirement shall be the actuarial equivalent of a life annuity with thirty-six (36) payments guaranteed of the sum of (a), (b), and (c) below:

(a) \$3.50 times the number of Past Service Credits;

(b) 2.30% of all contributions made on the Participant's behalf from September 1, 1965, to January 1, 1977; and

(c) 2.40% of all contributions made on the Participant's behalf on or after January 1, 1977 through December 31, 1998.

(d) 2.50% of all contributions made on the Participant's behalf on or after January 1, 1999.

If the amount of benefit as computed above is less than \$60.00, the minimum amount shall be \$60.00 per month on a life annuity with 36 months guaranteed basis payable at Normal Retirement.

All benefits earned as of December 31, 1979 for current pensioners, actives and inactive shall be increased by 10%. The effective date of the increased payments shall be October 1, 1980.

All benefits earned as of December 31, 1980, for current pensioners, actives, and inactive shall be increased by 7%. The effective date of the increased payments shall be May 1, 1981.

All benefits earned as of December 31, 1983, for all non-retired Participants shall be increased by 14% on their benefits earned through December 31, 1983. Effective date of the increased payment shall be January 1, 1984.

All benefits earned through December 31, 1984, for all participants and pensioners shall be increased by 5%. The effective date of the increased payment shall be June 1, 1985.

All benefits earned through December 31, 1985 for all active participants on that date and pensioners shall be increased by 3%. The effective date of the increased payment shall be January 1, 1986.

All benefits earned through December 31, 1986 for all active participants on that date and pensioners shall be increased by 8%. The effective date of the increased payment shall be January 1, 1987.

All benefits earned through December 31, 1987 for all active participants on that date and pensioners shall be increased by 5%. The effective date of the increased payment shall be October 1, 1988.

All benefits earned through December 31, 1988 for all active participants on that date shall be increased by 5%. The effective date of the increased payment shall be January 1, 1989.

All benefits earned through December 31, 1988 for all pensioners on that date shall be increased by 5%. The effective date of the increased payment shall be July 1, 1989.

All benefits earned through December 31, 1989 for all active participants on that date and pensioners shall be increased by 6%. The effective date of the increased payment shall be September 1, 1991.

All benefits for actives and pensioner accrued through December 31, 1991, shall be increased by 7%. The effective date of the increased payment shall be November 1, 1992.

All benefits earned through December 31, 1992 for all active participants on that date shall be increased by 5%. The effective date of the increased payment shall be December 1, 1993.

All benefits earned through December 31, 1995 for all active participants on that date shall be increased by 3%. The effective date of the increased payment shall be September 1, 1996.

All benefits earned through December 31, 1998 for all active participants on that date shall be increased by 40%. The effective date of the increased payment shall be January 1, 2000.

**SECTION 5.02. AMOUNT OF MONTHLY BENEFIT PAYABLE AT EARLY RETIREMENT.**

The amount of benefit payable at early retirement shall be the amount payable at normal retirement reduced by one-half ( $\frac{1}{2}$ ) of 1% for each month before age sixty-one (61) and by one-quarter ( $\frac{1}{4}$ ) of 1% for each month between ages sixty-one (61) and sixty-three (63) [62 for retirements after January 1, 1992 pursuant to Article I, sec. 17].

**SECTION 5.03. AMOUNT OF DEATH BENEFIT.**

(a) The amount of Lump Sum Death Benefit payable under Section 4(a) of Article IV shall be \$500 per year of credited service up to a maximum of \$5,000. The Beneficiary of a vested non-retired Participant shall receive thirty-six (36) monthly payments of the Participant's accrued retirement benefits. In the event the Beneficiary is the Participant's spouse, the spouse may elect to receive the thirty-six (36) monthly payments, or in lieu thereof, may elect to take the qualified pre-retirement survivor annuity.

(b) The amount of Monthly Death Benefit payable for thirty-six (36) months under Section 4(b) of Article IV shall be equal to the Participant's accrued benefit, the sum of (a), (b), (c) and (d) of Section 1 of this Article V.

**SECTION 5.04. AMOUNT OF JOINT AND SURVIVOR ANNUITY/PRE-RETIREMENT SURVIVOR ANNUITY.**

If the Participant was not yet eligible for Early Retirement as provided in Section 2 of Article IV, the spouse of a Participant eligible as provided in Section 4 of Article IV shall receive an amount equal to the amount such spouse would have received had the Participant retired on the day of his death, elected to have his monthly benefit commence on the date the Participant would have been eligible for Early Retirement payable under the Normal Form of benefit as described in Section 1 (a) of Article VI and then died. These payments will begin the month in which the Participant would have been eligible for Early Retirement and will continue for as long as the spouse is alive.

If the Participant was eligible for Early Retirement as provided in Section 2 of Article IV



the spouse of a Participant eligible as provided in Section 4 of Article IV shall receive an amount equal to the amount such spouse would have received had the participant retired on the day of his death under the Normal Form of benefit as described in Section 1 (a) of Article VI.

#### **SECTION 5.05. AMOUNT OF MONTHLY DISABILITY BENEFIT.**

The amount of benefit payable for a regular disability retirement shall equal the normal benefit amount, but shall be reduced between the ages of 61 and 63 by 1/4 of 1% for each month a participant retires before age 63 and between the ages of 59 and 61 shall be further reduced by 1/2 of 1% for each month that the participant retires below the age of 61. There shall be no reductions thereafter for disability retirements below the age of 59 and the benefits shall be paid only in the form of a single life annuity with 30 month guarantee. In no event shall the disability retirement benefit be less than \$200.00 per month. There shall be no benefit reduction past age 62 for disability retirements occurring after January 1, 1992 pursuant to Article I, sec. 17.

The amount of benefit payable for a longevity disability retirement shall not be reduced. It shall be the same as a normal retirement benefit.

#### **SECTION 5.06. BENEFIT LIMITATIONS.**

Notwithstanding any other provision of this Plan to the contrary, the maximum annual benefit under the plan shall not exceed the limits provided for under section 415 (b) and the Treasury Regulations thereunder. For this purpose, the maximum annual benefit is the amount of retirement benefits payable annually with respect to a participant under this plan in the form of a single life annuity (with no ancillary benefits), as described in section 3.04. Such benefit will not exceed the lesser of:

- a. The dollar limitation in effect under section 415 (b)(1)(A) of the Code (\$90,000 for limitation years beginning prior to March 1, 2001 and \$160,000 after April 30, 2001) or its Actuarial Equivalent payable in a different form;
- b. Only for limitation years which began prior to January 1, 2002, 100% of the Participant's highest average Compensation in the period of three consecutive calendar years of participation.
- c. For purposes of applying the limitations of section 415 the limitation year shall be the Plan year. For purposes of subsection a.(2) above, Compensation means "compensation" as defined within the meaning of Code section 415 (c)(3) which for limitation years beginning after April 30, 1998 includes deferrals under Code sections 125, 402 (g)(3), 403 (b), 457 and 132(f)(4).
- d. For purposes of applying the limitations of section 415 (b) of the Code, only the benefits provided by a Contributing Employer to a Participant that is the

Contributing Employer's employee shall be taken into account under this section. The amount attributable to the Contributing Employer is determined to be the excess of the Participant's benefit (as determined under this section) over the Participant's benefit (as determined under this section, but disregarding any Covered Employment earned with such Contributing Employer).

If benefits under the Plan begin before age 62, the 90,000 (or \$160,000 if applicable hereunder) limitation (but not the 100% compensation limit) shall be reduced so that it is the Actuarial Equivalent based on a five percent (5%) interest rate of an annual benefit of \$90,000 (or \$160,000 if applicable hereunder)) beginning at age 62, however, the \$90,000 (or \$100,000 if applicable hereunder) benefit limitation shall not be reduced to an amount less than \$75,000 for benefits commencing at or after age 55. For benefits commencing prior to age 55, the maximum benefit shall be the Actuarial Equivalent of \$75,000 payable at age 55 based on a five percent (5%) interest rate. This limitation shall not be applied to reduce the combined benefit of any Employee from his Plan and any other defined benefit plan maintained by the Trustees below \$10,000 unless such Employee has at sometime participated in a defined contribution plan maintained by the Trustees. If an Employee has completed less than 10 years of Credit Service on the date his Retirement Benefit commences, the limitation described in the preceding sentence shall be reduced by 1/10 for each year of Credited Service which is less than 10. If a retirement benefit is payable in an alternate form other than a life annuity or qualified joint and survivor annuity, the limitations described above shall be adjusted to the Actuarial Equivalent based on a five percent (5%) interest rate of a benefit payable in the alternate form.

## **ARTICLE VI**

### **FORMS OF BENEFIT**

#### **JOINT AND SURVIVOR ANNUITY**

**SECTION 6.01.** 1. Effective on or after January 1, 1976, the Normal Form of benefit payment to a Participant retiring under the provisions of this Plan shall be either:

(a) If the Participant has been married for at least one (1) year prior to his retirement date, he shall receive an actuarially reduced Contingent Annuity Form benefit which will provide that fifty (50) percent of the benefit he receives will continue to his spouse, if said spouse survives the Participant. Such continuing benefit shall be paid for the lifetime of the spouse. For participants who retire on or after January 1, 1999, if the spouse dies before the participant then the participant's monthly benefit shall be increased prospectively to equal the amount that would have been paid had the participant chosen a life annuity with 36 month guarantee. During the 180-day period ending on the annuity starting date, a participant may waive the Qualified Joint and Survivor Annuity (QJSA) form of benefit provided the following conditions are satisfied:

(i) the Participant's spouse consents in writing to the election and the spouse's consent is witnessed by a Plan representative or notary public;

(ii) the Participant's waiver and the spouse's consent state the specific non-spouse beneficiary (including any class of beneficiaries or contingent beneficiaries) in the particular optional form of benefit, neither of which may be further modified (except back to a QJSA) without subsequent spousal consent (unless expressly permitted by the spouse); and

(iii) the spouse's consent acknowledges the effect of the election. A Participant who has elected to waive the QJSA with spousal consent may revoke the election at any time and any number of times during the 180-day period ending on the annuity starting date.

A Participant who has been married for at least a year prior to retirement and who prefers to elect another form of benefit must make such election in writing and include his spouse's written consent and acknowledgment by notary public or a plan representative of such action, or

(b) If the Participant is unmarried or has not been married for at least one (1) year prior to his retirement date, he shall receive a life annuity benefit which will cease with the last payment due prior to the death of the Participant, except that, should the Participant die before receive thirty-six (36) monthly benefit payments, the balance of the thirty-six (36) payments shall be made to his Beneficiary as provided in Article II, Section 4.

**SECTION 6.02.** In lieu of the Normal Forms of Benefit provided in Section I of this Article VI, the Participant and his spouse, if any, may elect one of the following Optional Forms of benefit. Such election must be made in accordance with rules established by the Trustees prior to the Participant's Retirement Date and in writing on forms provided by the Trustees.

(a) Life Annuity with Three Years Certain Form - This benefit is payable for the lifetime of the Participant and ceases with the last payment due prior to the death of the Participant except that, should the Participant die before receiving thirty-six (36) monthly payments, the balance of the thirty-six (36) payments will be made to his Beneficiary.

(b) Contingent Annuity Form - This option provides for an actuarially reduced Retirement Benefit payable to the Participant for his lifetime with the continuation of a portion of such benefit to his named contingent annuitant should such named contingent annuitant survive the Participant. The Participant may elect the portion of benefit to continue to the contingent annuitant to be:

- (i) Fifty percent (50%)
- (ii) Seventy-five percent (75%); or
- (iii) One hundred percent (100%).

(c) Life Annuity with Five Years Certain Form - This option provides an actuarially adjusted benefit payable for the lifetime of the Participant and ceases with the last payment due

prior to the death of the Participant except that, should the Participant die before receiving sixty (60) monthly payments, the balance of the sixty payments will be made to his Beneficiary.

(d) Life Annuity with Ten Years Certain Form - This option provides for an actuarially adjusted retirement Benefit payable for the lifetime of the Participant and ceasing with the last payment due prior to the Participant's death except that should the Participant die before receiving one hundred twenty (120) monthly payments, the balance of the one hundred twenty (120) monthly payments will be made to his Beneficiary.

**SECTION 6.03.** Payment of all benefits provided under this plan, unless the employee elects otherwise, will commence not later than the 60th day after the latest of (1) the close of the Plan year which the Participant attains the earlier of age 65 or the normal retirement age specified in the Plan, (2) the close of the Plan year which occurs the tenth anniversary of the year in which the Participant commenced participation, or (3) the close of the Plan year in which the Participant terminates his service with any employer. A Participant's right to his normal retirement benefit shall be non-forfeitable after the Participant satisfies the requirements of this section and Article IV Section 1, whichever shall be applicable.

**SECTION 6.04.** Benefits provided under this Plan shall not be subject to assignment or alienation. Payments made to an alternate payee pursuant to a Qualified Domestic Relations Order [a domestic relations order satisfying the conditions of ERISA Section 206(d)(3)], shall not be in violation of this Section 4 of Article VI.

**SECTION 6.05.** If the benefit provided under the Plan has an Actuarial Equivalent value not in excess of \$5,000, the Trustees may direct that such benefit be paid to the Participant or Beneficiary in a single sum cash payment. Also, a partial or total cash out may not be made after the payout begins of an annuity and survivor annuity or qualified pre-retirement survivor annuity even if it does not exceed \$5,000.00, unless the cash out is consented to in writing by the Participant and Participant's spouse, if any, or where the Participant is dead, the surviving spouse.

**SECTION 6.06.** The Qualified Pre-retirement Survivor Annuity may only be waived by the Participant with the consent of the Participant's spouse and said consent must be in writing. The Participant may revoke an election to waive the Pre-retirement Survivor Annuity or choose to waive the pre-retirement Survivor Annuity again with the consent of such Participant's spouse as required herein at any time and any number of times from the first day of the plan year in which the Participant attains the age of 35 until the Participant's death.

## **ARTICLE VII**

### **SUSPENSION OF BENEFITS**

**SECTION 7.01.** Benefits under this Plan for early or normal retirement shall be permanently suspended (forfeited) for any month in which the retiree completes at least forty (40) hours of service in California either in a calendar or payroll month if said service is in the industry and trade or craft of the type the participant performed at any time when covered by the Plan as defined in Title 29, Code of Federal Regulations, Section 2530.203-3(c), and ERISA Section 203(a)(3)(B).

**SECTION 7.02.** For purposes of the permanent suspension of benefits as described herein, industry is defined as "Business activities of the types engaged in by any employers maintaining the Plan." Trade or craft is defined as "A skill or skills learned during a significant period of training or practice which is applicable in occupations in an industry covered by the Plan." Skill or skills utilized in the industry relating to selling or retailing, managerial, clerical or professional occupations are included and benefits will be suspended for work performed utilizing said skills. Employment in supervisory activities relating to any of the above skills will also result in a permanent suspension of benefits for any month in which forty (40) hours or more of such activity is performed.

In the event that a retiree becomes re-employed in employment as described above, the Plan Administrator must be advised immediately. In the event that the Plan Administrator is not advised, the Trustees will presume that the retiree worked at least forty (40) hours in prohibited employment for each month such prohibited employment was performed. The Trustees may also require a retiree to certify that said retiree is unemployed or require said retiree to provide factual information verifying that the retiree is not performing work as defined in Title 20, Code of Federal Regulations, Section 2530.203-3, ERISA Section 203(a)(3)(B) service. This information may be requested by the Trustees at reasonable time intervals.

In the event that benefits have been suspended under this Section because the retiree has performed work as defined in Title 29, Code of Federal Regulations, Section 2530.203-3, ERISA Section 203(a)(3)(B) service, the retiree must certify on an appropriate form prepared by the Plan that such service has ceased before future benefits will be resumed. A retiree may request in writing a determination of whether certain services would cause his benefits to be suspended. The request for such status of termination shall be treated as a claim for benefits and considered in accordance with the Plan's claims procedures.

**SECTION 7.03.** In the event the retiree received benefits during a period when benefits should have been suspended monthly benefits which are thereafter resumed may be reduced by an amount not to exceed twenty-five percent (25%) to reimburse the Plan for any amounts which were actually paid to the reemployed retiree during the period said retiree was employed and receiving pension benefits as described in this section. Furthermore, the Plan may recover

amounts erroneously paid under this section by withholding no more than sixty (60) days of benefits which would become due after the reemployed retiree ceases to work for forty (40) or more hours as described above and so notifies the Trustees as set forth above.

## **ARTICLE VIII**

### **SPECIAL PRO RATA PENSIONS**

**SECTION 8.01.** Special Pro Rata Pensions are provided under this Plan for Participants who:

(a) would otherwise be ineligible for a pension because their years of employment have been divided between employment creditable under this Plan and employment creditable under the Labors Pension Trust Fund of Northern California, or

(b) whose pension would otherwise be less than the full amount because of such division of employment.

**SECTION 8.02.** By resolution duly adopted, the Board of Trustees has recognized the Laborers Pension Trust Fund of Northern California as a Special Related Plan. The Board of Trustees may, by resolution, recognize other pension plans as Special Related Plans under this Article VIII.

(a) The term "*Related Hours*" means hours of employment which are creditable under a Special Related Plan.

(b) The term "*Special Related Credit*" means years of service, or portions thereof, creditable to a participant under a Social Related Plan.

(c) The term "*Combined Pension Credit*" means the total of a Participant's Special Related Credit plus the Service Credits accumulated under the Laborers International Union/Hod Carriers Division Pension Trust Fund, formerly the "Hod Carriers Local 234 Pension Trust Fund" (hereafter referred to as "Hod Carriers Pension Credit".)

If in a particular year, an Employee had not had sufficient number of hours of Covered Employment to be credited with one quarter of a Hod Carriers Pension Credit, but he would be so credited if his Related Hours were regarded as if they were hours of Covered Employment he shall be credited with Hod Carriers Pension Credit as if all hours were worked in Covered Employment. However, any Related Hours so used may not again be used by the Employee for the purpose of calculating his Special Related Credit.

**SECTION 8.03.** A Participant shall not receive double credit for the same period of employment. No more than one year of Service Credit or Special Related Credit shall be given for all employment in any given Plan Year.

**SECTION 8.04.** Eligibility for a Special Pro Rata Pension for a Participant who is retired in accordance with this Plan shall be granted if he meets the following requirements:

(a) He would be eligible for a Normal or Early Retirement Benefit under this Plan were his Combined Pension Credits treated a Hod Carriers Pension Credits.

(b) After September 1, 1965, he had at least 500 hours of Covered Employment under this Plan or a Special Related Plan.

(c) A pension is not payable to him from a Special Related Plan independently of its provisions for Pro Rata Pension (or its equivalent provisions, regardless of name). A Participant who is otherwise eligible for such a non-Pro Rata Pension may fulfill this requirement by electing not to apply for, or by waiving, such other pension.

**SECTION 8.05.** Related Hours shall be considered in determining whether a Participant has failed to be credited with at least 300 hours of Covered Employment in each year of a period of two consecutive Plan Years as required by Article III Section 3 in order to prevent cancellation of accumulated Pension Credits.

## **ARTICLE IX** **FINANCING**

**SECTION 9.01.** Anything in this Plan to the contrary notwithstanding, no contributions of the Employers or any part of the Pension Fund shall revert to the Employers or diverted to any purpose other than for the exclusive benefit of Participants, their Beneficiaries, their Spouses, or their Contingent Annuitants to pay benefits as provided for in this Plan.

**SECTION 9.02.** The Trustees shall establish and maintain a Minimum Funding Standard Account in compliance with the Employee Retirement Income Security Act of 1974.

## **ARTICLE X** **MERGERS, AMENDMENTS OR TERMINATION**

**SECTION 10.01.** To the extent permitted by law, the Trustees shall have the right at any time to modify, alter or amend the Plan in any respect by an instrument in writing, duly executed and acknowledged by the Trustees; provided that no such change in the Plan shall affect the amount or the terms of benefits that a Participant, Beneficiary or Contingent Annuitant is

receiving prior to the effective date of such change, unless the change is for the purpose of conforming this Plan under Section 401 of the Internal Revenue Code as expressed by the United States Treasury Department on review of this Plan pursuant to submission of a request for a determination letter. None of the assets purpose other than the exclusive benefit of the Participants, their Beneficiaries, their Spouses or Contingent Annuitants.

**SECTION 10.02.** The Trustees reserve the right to terminate the Plan in accordance with the terms and provisions of the Employee Retirement Income Security Act of 1974.

**SECTION 10.03.** All other provisions of this Plan notwithstanding, no merger or consolidation with, or transfer of assets or liabilities to, any other Plan shall be made unless each Participant in this Plan would receive a benefit, if the Plan then terminated immediately after the merger, consolidation or transfer, which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had been terminated. The provisions of this section shall become applicable and operative only to the extent determined by the Pension Guaranty Corporation.

**SECTION 10.04.** The parties establishing the Trust reserve the right to discontinue the Plan at any time. Upon termination or partial termination of the Plan, all participants are one hundred percent (100%) vested to the extent of funding in the Plan for said benefits. The assets then remaining in the Pension Plan after providing for expenses of the Plan shall be allocated to the extent that they shall be sufficient for the purposes of providing and continuing the retirement benefits which had been granted and accrued to participants as of the date of the termination of the Plan. If any assets thereafter remain available for distribution, they shall be distributed in the following class order preference:

(a) Participants for whom Retirement Benefits have not previously been provided, and who have completed at least ten (10) years of Credited Service and attained age 62;

(b) Participants, not included in (i) above, for whom Retirement Benefits have not previously been provided, and who have completed at least ten (10) years of Credited Service and attained age 53;

(c) All remaining participants for whom Retirement Benefits have not been previously provided.

**SECTION 10.05.** If the assets remaining in the Pension Plan are insufficient to provide the Retirement Benefits for participants in any of the above classes i through iii, then the monthly amount of Retirement Benefit to be provided for each participant of such class, to the exclusion of the succeeding classes, shall be proportionately reduced until the Pension Plan assets are completely exhausted.



**SECTION 10.06.** The first payment of any Retirement Benefit provided for a participant by such allocation shall be made on the second to occur of:

- (a) The first day of the month next following the date of termination, and,
- (b) The first day of the month coinciding with or otherwise next following such participant's attainment of age 65.

## **ARTICLE XI**

### **MISCELLANEOUS PROVISIONS**

**SECTION 11.01.** Nothing contained herein gives, nor is intended to give, any Participant the right to be retained in the employ of any Employer.

**SECTION 11.02.** All elections and designations made by participants under the Plan shall be submitted on forms prescribed and furnished by the Trustees.

**SECTION 11.03.** Participants and contingent annuitants shall be required to provide evidence of date of birth and sex for each, satisfactory to the Trustees, before any optional election will be made effective.

**SECTION 11.04.** All benefits under the Plan shall be paid from assets held in Trust for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the Plan as authorized by the Trustees pursuant to the Plan or the Trust Agreement. Such assets shall be held in Trust under a custodial agreement with a bank or under any other lawful contractual arrangement authorized by the Trustees pursuant to the Trust Agreement.

**SECTION 11.05.** The Trustees from time to time shall determine the immediate and long term financial requirements of the Plan and, on the bases of such determination, establish a policy and method of funding which enable the Trustees or the investment manager or managers, if any, to coordinate the investment policies of the Plan's funds with the objectives and financial needs of the Plan.

**SECTION 11.06.** The benefits payable under this Plan shall not exceed the limitations for defined benefits plan as set forth in Section 415(b) of the Internal Revenue Code. Notwithstanding the foregoing, the pension payable under this Plan when expressed in the form of a Straight Life Annuity may never exceed any applicable limitation imposed by Section 415 of the Internal Revenue Code.

As of January 1 of each calendar year, the dollar limitation as determined by the Commissioner of the Internal Revenue for that calendar year will become effective as the

maximum permissible dollar amount for that calendar year. The maximum permissible dollar amount for a calendar year applies to limitation years ending with or within that calendar year.

If the retirement benefit is any form other than a Straight Life Annuity, the benefit shall be adjusted to the actuarial equivalent of a Straight Life Annuity beginning at the same age for purposes of applying the limitation on benefits described above to the annual benefit of the Participant. In determining the actuarial equivalence of different forms of benefit payment the interest rate assumption shall be 5%.

**SECTION 11.07.** All other provisions of this Plan notwithstanding, no merger or consolidation with, or transfers of assets or liabilities to, any other plan shall be made unless each participant in this Plan would receive a benefit, if the Plan then terminated immediately after the merger, consolidation or transfer, which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer if the Plan had then terminated. The provisions of this Section shall become applicable and operative only to the extent determined by the Pension Benefit Guaranty Corporation.

**SECTION 11.08.** None of the benefits payable hereunder shall be subject to the claims of any creditor of any participant or his beneficiary nor shall the same be subject to attachment, garnishment or other legal or equitable process by any creditor of the participant or his beneficiary, nor shall any participant or his beneficiary have any right to alienate, anticipate, commute, pledge, encumber or assign any of such benefits. Notwithstanding the foregoing, benefits shall be paid in accordance with the applicable requirements of any "qualified domestic relations order" as defined in Section 206(d)(3) of ERISA.

**SECTION 11.09.** This Plan of retirement benefits maintained by the Laborers Local 270/Hod Carriers Division, has been amended from time to time. The Plan so amended shall hereafter be evidence by the plan of retirement benefits contained herein and in the Plan as may further be amended from time to time. This restated plan shall not apply to former participants who retired or otherwise terminated their participation under the prior plan unless this plan or subsequent amendments indicate otherwise. The benefits or credits earned by such a former participant shall continue to be governed by the provisions of the plan in effect at the time the participant earned the benefits or credits. In addition any break in service shall be covered by the break in service rule in effect at the time the break would have occurred under that rule rather than the rule at the time of retirement.

**SECTION 11.10.** The term "*Compensation*" shall mean the total amount of all payments made by the Employer to an Employee for services rendered to the Employer, including commissions, overtime pay, bonuses, but compensation shall not include director's fees, contributions made by the Employer under the Plan, payments made by the Employer for group insurance, hospitalization and like benefits, nor contributions made by the Employer under any other employee benefit plan it maintains. Furthermore, for purposes of a contribution or an

allocation under the Plan based on compensation, compensation shall only include amounts actually paid an Employee during the period he is a Participant in the Plan.

**SECTION 11.12.** As of the end of each Plan Year, or at such other regular intervals that the Board of Trustees shall decide upon, the Board of Trustees shall determine, or cause to be determined, the fair market value of the assets being held in the Plan pursuant to this Article. Fair market values so determined shall be conclusive for all purposes of the Plan. Any increase or decrease in the fair market value as so determined shall be allocated to all individual accounts then held in the Plan, in proportion to the ratio which the value of each account as of the preceding valuation date bears to the value of all individual accounts as of the preceding valuation date. The value of an individual account, as determined as of a given date under this section, shall remain the value thereof for all purposes of the Plan until re-valued hereunder, subject only to the crediting and debiting of contributions and withdrawals. The Trustees or their designated agents shall furnish each Participant with a written report of the value of their Basic Account at least once during each year.

## **ARTICLE XII**

### **REQUIRED DISTRIBUTIONS**

The provisions of this Article shall supersede any conflicting provisions in the Plan.

**SECTION 12.01.** The payment of benefits shall commence no later than the required beginning date. The required beginning date is April 1 of the calendar year following the later of (a) the calendar year in which the Participant attains age 70-1/2, or (b) the calendar year in which the Participant retires. In the case of a five percent (5%) owner condition (b) shall not apply.

Furthermore, the accrued benefit of an employee (other than a 5% owner) who retires in a calendar year after the calendar year in which the employee attains age 70 1/2 shall be actuarially increased from April 1 after the calendar year in which the employee attains age 70 1/2 to the date on which benefits commence after retirement in an amount sufficient to satisfy IRC §401(a)(9) in order to take into account the period in which the employee is not receiving benefits under the Plan. This actuarial increase shall also apply during periods when benefits have been suspended pursuant to Article VII of this Plan.

**SECTION 12.02.** In the event of the Participant's death or the death of a Participant's spouse, whichever is applicable, prior to the full distribution of the Participant's benefits under the option selected the balance due shall be distributed at least as rapidly as would have been distributed to the Participant under the option selected. Furthermore, if the Participant dies before distribution commences any remaining portion of the Participant's interest that is not payable to a beneficiary designated by that Participant will be distributed within five years after such Participant's death.

**SECTION 12.03.** If a Participant dies before distributions have commenced, the entire interest shall be distributed within five years of the death of the Participant. This requirement shall also be satisfied as to any portion of this interest if it is distributed to a designated beneficiary over a period not greater than the beneficiary's life or life expectancy, and such distributions begin no later than one year after the participant's death. For purposes of this paragraph, if the designated beneficiary is the surviving spouse, distributions shall be not required to begin earlier than the date on which the Participant would have attained age 70-1/2, unless the spouse dies before distributions begin. In such case, this paragraph shall be applied as if the surviving spouse were the Participant.

**SECTION 12.04.** For distributions made on or after January 1, 1993, §§ 5, 6, 7 and 8 of this Article apply. Notwithstanding any provisions 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 plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in direct rollover.

**SECTION 12.05. ELIGIBLE ROLLOVER DISTRIBUTION:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

**SECTION 12.06. ELIGIBLE RETIREMENT PLAN:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

**SECTION 12.07. DISTRIBUTE:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Also, a designated beneficiary hereunder shall be a "distributee."

**SECTION 12.08. DIRECT ROLLOVER:** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

**ARTICLE XIII**  
**CONSTRUCTION**

This Plan and all rights hereunder, shall be construed, administered and governed in all respects in accordance with the federal and state laws as applicable. The Trustees shall have complete discretion interpreting the Plan, evaluating evidence, and making any and all factual determinations relating to benefit eligibility and amount. The headings in this instrument are inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof. Pronouns or other words indicating gender shall be deemed to include other genders unless the content clearly indicates otherwise. Singular words shall include the plural in all cases where such meaning would be inappropriate.

This Plan is a restatement of the Plan as adopted December 27th, 1967 and amended through January 1, 2008.

IN WITNESS WHEREOF, the Trustees hereto have approved and adopted this Pension Plan on this, the \_\_ day of \_\_\_\_\_, 2008, at San Jose, California.

**EMPLOYER TRUSTEES**

**UNION TRUSTEES**


**LABORERS INTERNATIONAL LOCAL 270**  
**HOD CARRIERS DIVISION**  
**DEFINED BENEFIT PENSION PLAN**

**APPENDIX I**

**JOINT OPTION FACTORS**

Beneficiary's Age in Relation to <u>Retiree's Age</u>	<u>50% Joint</u> <u>Option</u>	66 2/3% <u>Joint</u> <u>Option</u>	<u>75% Joint</u> <u>Option</u>	<u>100% Joint</u> <u>Option</u>
Each additional year older	-0.005	-0.006	-0.007	-0.008
+10 years	0.930	0.909	0.899	0.869
+9	0.925	0.902	0.892	0.860
+8	0.920	0.896	0.885	0.852
+7	0.915	0.890	0.878	0.843
+6	0.910	0.883	0.871	0.835
+5	0.905	0.877	0.864	0.826
+4	0.900	0.871	0.857	0.818
+3	0.895	0.865	0.850	0.810
+2	0.890	0.859	0.844	0.802
+1	0.885	0.852	0.837	0.794
Same Age	0.880	0.846	0.830	0.786
-1	0.875	0.840	0.824	0.778
-2	0.870	0.834	0.817	0.770
-3	0.865	0.828	0.810	0.762
-4	0.860	0.822	0.804	0.754
-5	0.855	0.816	0.797	0.747
-6	0.850	0.810	0.791	0.739
-7	0.845	0.803	0.784	0.732
-8	0.840	0.797	0.778	0.724
-9	0.835	0.791	0.771	0.717
-10	0.830	0.785	0.765	0.709
Each additional year younger	+0.005	+0.006	+0.007	+0.008