

**AIRCONDITIONING AND REFRIGERATION INDUSTRY  
DEFINED CONTRIBUTION RETIREMENT PLAN**

**RESTATED RULES AND REGULATIONS**  
**(INCLUDING AMENDMENTS 1 - 9)**

November 1, 2001

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By resolution adopted by the Board of Trustees, the following restated defined contribution plan was adopted pursuant to the authority of the Board of Trustees granted under the Agreement and Declaration of Trust established as of January 1, 1994.

## ARTICLE I

### DEFINITIONS

1.01 **ACCRUED BENEFITS.** The term "Accrued Benefits" means the combined balances of the Employer Account and Employee Account maintained for each Participant, adjusted for Rollover Contributions, withdrawals, income, expenses, and realized and unrealized gains and losses attributed thereto.

1.02 **ANNUAL ADDITIONS.** The term "Annual Additions" means the sum for any Plan Year of Employer Contributions, Employee Contributions, Rollover Contributions, forfeitures, amounts allocated to an individual medical plan (as defined in IRC Section 415(l)(2)) which is part of a pension or annuity plan maintained by the Participant's Employer, and amounts derived from contributions which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in IRC Section 419A(d)(3)) under a welfare benefit plan (as defined in IRC Section 419(e)) which is maintained by the employer and is not a separate welfare benefit fund under a "collective bargaining agreement," as defined in IRC Section 419A(f)(5), less administrative expenses.

1.03 **ASSET VALUE.** The term "Asset Value" means the market value of the assets of the Plan. However, insurance company fixed-income contracts, in which the principal is guaranteed at cost, shall be valued at cost value.

1.04 **ASSOCIATION.** The term "Association" means the Airconditioning and Refrigeration Contractors Association and the Mechanical Contractors Association.

1.05 **BENEFICIARY.** The term "Beneficiary" means a person entitled pursuant to Section 7.03 to receive benefits under this Plan after the death of an Employee.

1.06 **COLLECTIVE BARGAINING AGREEMENT OR LABOR AGREEMENT.** The term "Collective Bargaining Agreement" or "Labor Agreement" means (a) the Airconditioning and Refrigeration Industry Master Labor Agreement between the Union and the Association, (b) a National Agreement with the Union's parent body which requires the signatory to subscribe to this Trust Agreement, and (c) a collective bargaining agreement with the Union covering businesses of a type not covered by the Master Labor Agreement requiring contributions to this Trust Fund.

1.07 **COMPENSATION.** Solely for purposes of determining the percentage limitations of IRC Section 415, the term "Compensation" shall include wages, salaries, fees for professional services, commissions; earned income described in IRC Section 401(c)(2); foreign

source earned income as defined in IRC Section 911(b); amounts includable in the gross income of the Employee pursuant to IRC Sections 104(a)(3), 105(a) and 105(h), to the extent the amounts are included in the gross income of the Employee, amounts described in IRC Section 105(d), whether or not excludable from the gross income of the Employee, moving expenses of the Employee paid or reimbursed by the Employer, to the extent not deductible by the Employee under IRC Section 217; the value of a non-qualified stock option to the extent includable in the gross income of the Employee in the year granted; and the amount includable in the gross income of an Employee upon making the IRC Section 83(b) election. For purposes of identifying Highly Compensated employees and applying the limits under IRC Section 415, a Participant's compensation shall include any elective deferrals (as defined in IRC Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which, by reason of IRC Section 125 or 457 is not includable in the gross income of the Employee. The Compensation actually paid or made available to the Employee during the limitation year will be considered the amount of his or her Compensation. Amounts paid by the Employer to a plan of deferred compensation, amounts realized by the exercise of a non-qualified option, or from the disposition of stock acquired under a qualified stock option and amounts which receive special tax benefits such as premiums for group term life insurance shall not be includable as Compensation as defined herein. For Plan Years beginning prior to January 1, 1994, annual Compensation taken into account hereunder shall not exceed \$200,000, as indexed pursuant to IRC Section 401(a)(17). For Plan Years beginning on and after January 1, 1994, annual Compensation taken into account hereunder shall not exceed \$150,000, as indexed pursuant to IRC Section 401(a)(17).

**1.08 CONTRIBUTION PERIOD.** The term "Contribution Period" means that regular period for which Contributions shall be made as specified in the Collective Bargaining Agreement.

**1.09 CONTRIBUTIONS.** The term "Contributions" means the amounts to be paid to the Trust Fund as required by the Collective Bargaining Agreements, the Trust Agreement, the Plan or applicable law, and shall consist of Employer Contributions, Employee Contributions and Rollover Contributions. Contributions become assets of the Plan when earned by the labor of an Employee.

**1.10 COVERED EMPLOYMENT.** The term "Covered Employment" means employment with respect to which contributions are permitted by a Labor Agreement or the Trust Agreement.

**1.11 DEPENDENT.** The term "Dependent" shall mean the spouse or unmarried child of an Employee, or other persons as defined in applicable eligibility rules or insurance or other contracts and as defined in applicable laws.

**1.12 DIRECT ROLLOVER.** The term "Direct Rollover" means a payment by the Plan to an Eligible Retirement Plan designated by a Distributee.

**1.13 DISABILITY RETIREMENT DATE.** The term "Disability Retirement Date" means the first day of the month coinciding with or next following the date on which a Participant becomes eligible to receive Permanent Disability Retirement benefits.

**1.14 DISTRIBUTE.** The term "Distributee" means a Participant, a Participant's spouse, a Participant's former spouse or any other person who is an alternate payee under a "qualified domestic relations order," as defined in IRC Section 414(p).

**1.15 ELIGIBLE RETIREMENT PLAN.** The term "Eligible Retirement Plan" means an individual retirement account as described in IRC Section 408(a), an individual retirement annuity as described in IRC Section 408(b), or a qualified trust described in IRC Section 403(a), that accepts a Distributee's Eligible Rollover Distribution. In the case of an Eligible Rollover Distribution to a Participant's spouse, an Eligible Retirement Plan is an individual retirement account or an individual retirement annuity.

**1.16 ELIGIBLE ROLLOVER DISTRIBUTION.** The term "Eligible Rollover Distribution" means any distribution of all or any portion of a Individual Account to the credit of a Distributee, except that an Eligible Rollover Distribution does not include any of the following distributions:

(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 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; or

(b) any distribution to the extent such distribution is required under IRC Section 401(a)(9); and

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

**1.17 EMPLOYEE.** The term "Employee" means (a) an individual working under the terms of an agreement between an Employer and the Union for whom contributions are made by the Employer; (b) an employee of the Union if they elect to include their employees as beneficiaries of this Plan and notify the Trustees in writing of such election; and (c) such other persons as the Trustees may agree to designate as employees within the meaning and purpose of an applicable Collective Bargaining Agreement; provided, however, that favorable rulings are received therefor from all taxing authorities to preserve the tax-exempt status of the Trust and Plan insofar as Employers, Employees and the Trust Fund are concerned. When reference is made herein to the benefit to be provided to an Employee, such reference shall also include benefits for the families and dependents of the employee, if the Trustees shall elect to include such coverage. Notwithstanding the foregoing, for purposes of Employee Contributions pursuant to a voluntary wage reduction agreement, the term Employee shall include an Apprentice Trainee working under the terms of an agreement between an Employer and the Union. In no event shall such Contributions on

behalf of an Apprentice Trainee be construed to require Contributions by an Employer except as specifically provided under a Collective Bargaining Agreement.

**1.18 EMPLOYEE ACCOUNT.** The term "Employee Account" means the account maintained for a Participant to record Contributions made on his or her behalf by the Employer pursuant to a voluntary wage reduction agreement as described herein, Rollover Contributions of accumulated deducted employee contributions from another eligible qualified plan or a qualifying individual retirement account to the extent that such Rollover Contributions consist of accumulated deducted employee contributions, and adjustments to such account.

**1.19 EMPLOYEE CONTRIBUTIONS.** The term "Employee Contributions" means the amounts which are contributed by an Employee pursuant to a voluntary wage reduction agreement which, when added to the amounts, if any, of Contributions to other plans qualified under IRC Section 401(a) or 401(k) to which his or her Employer contributes, do not exceed 25% of the Employee's Compensation while a Participant, to ensure compliance with IRC Section 415.

**1.20 EMPLOYER.** The term "Employer" means any employer who is required or permitted by a Labor Agreement, the Trust Agreement or applicable federal law to make contributions to this Trust Fund and who becomes a party to the Trust Agreement.

The Union and/or the Trust Fund and/or any related Trust Fund established by the parties hereto and/or the Association may be considered an Employer hereunder solely for the purpose of covering their employees hereunder, and for no other purpose, if permitted by law or governmental regulation to be so considered, with respect to such employees directly employed by such Union, Trust Fund or Association; provided that the tax exempt status of the Trust Fund and Plan shall not be adversely affected by such inclusion. An employer shall not be deemed an Employer simply because it is part of a controlled group of corporations or of a trade or business under common control, some other part of which is an Employer.

For purposes of those provisions of these Rules and Regulations governing limitations on allocations, the term "Employer" shall also include all members of a controlled group of corporations (as defined in IRC Section 414(b) as modified by IRC Section 415(h)), all commonly controlled trades or business (as defined in IRC Section 414(c) as modified by IRC Section 415(h)), and affiliated service groups (as defined in IRC Section 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the adopting employer pursuant to regulations under IRC Section 414(o).

**1.21 EMPLOYER ACCOUNT.** The term "Employer Account" means the account maintained for a Participant to record Employer Contributions made on his or her behalf by the Employer, Rollover Contributions from another qualified plan or qualified individual retirement account to the extent that such Rollover Contributions do not consist of accumulated employee contributions pursuant to a voluntary wage reduction agreement, and adjustments to such account.

**1.22 EMPLOYER CONTRIBUTIONS.** The term "Employer Contributions" means the amounts which are required to be paid into the Trust Fund by the contributing Employers pursuant to the existing or future Collective Bargaining Agreements, the Trust Agreement, any other agreement or document, or applicable law.

**1.23 ERISA.** The term "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as it may be amended from time to time, and any regulations issued pursuant thereto, as such act and such regulations affect this Plan and the Trust Fund.

**1.24 HIGHLY-COMPENSATED EMPLOYEE.** The term "Highly-Compensated Employee" includes highly-compensated active Employees and highly-compensated former Employees. A highly compensated active Employee includes any Employee who performs service for an Employer during the calendar year being tested who:

(a) for the preceding calendar year received Compensation from the Employer in excess of \$80,000 (as adjusted pursuant to IRC Section 415(d)), was a member of the top-paid group of Employees of such Employer for such preceding calendar year and is not otherwise excluded pursuant to IRC Section 414(q)(8) by virtue of his or her inclusion in the bargaining unit of employees covered by the Collective Bargaining Agreement. For this purpose, the top-paid group of Employees shall consist of the top 20% of the Employees when ranked on the basis of Compensation paid during such year; or

(b) was a 5% owner at any time during the calendar year or preceding calendar year.

The determination of who is a Highly-Compensated Employee, including the determinations of the number and identity of Employees in the top-paid group, the top 100 Employees, the number of Employees treated as officers and the Compensation that is considered, will be made in accordance with IRC Section 414(q) and the regulations thereunder. No Employee who is included in a bargaining unit under, or whose Compensation is governed by, the Collective Bargaining Agreements shall be considered a Highly-Compensated Employee and, pursuant to IRC Section 414(q)(8), no such Employee shall be taken into account in determining the number of employees in the top-paid group.

**1.25 HOUR OF SERVICE.** The term "Hour of Service" means:

(a) Each hour for which an Employee is paid or entitled to payment, directly or indirectly by an Employer for the performance of duties. Such hours shall be credited to the computation period in which the duties are performed.

(b) Each hour for which an Employee is paid or entitled to payment, directly or indirectly, by an Employer for a period of time during which no duties are performed, excluding any time compensated under a worker's compensation or unemployment compensation or disability insurance law. Such hours shall be credited to the computation period in which the period during which no duties are performed occurs. No more than 501

Hours of Service shall be credited under this subsection (b) in any continuous period. Two periods of paid non-work time shall be deemed to be continuous if they are compensated for the same reason and are not separated by at least ninety (90) days. Hours under this paragraph shall be calculated and credited pursuant to 29 C.F.R. § 2530.200b-2 of the Department of Labor Regulations which are incorporated herein by this reference.

(c) Each hour for which backpay, irrespective of mitigation of damages, is either awarded or agreed to by an Employer. Such hours shall be credited to the computation period to which the award or agreement pertains. In no event will hours be credited under this subsection (c) if they are credited under subsection (a) or subsection (b).

**1.26 INDIVIDUAL ACCOUNT.** The term "Individual Account" or "Account" means the account established for each Employee pursuant to Section 3.01 of this Plan.

**1.27 INVESTMENT FUNDS.** The term "Investment Funds" means the funds selected by the Trustees for the investment of Plan assets.

**1.28 INVESTMENT MANAGER.** The term "Investment Manager" means the source or sources selected by the Trustees to invest the assets of the Trust Fund. The Investment Manager may be any investment manager permitted by the Trust Agreement.

**1.29 IRC.** The term "IRC" means the Internal Revenue Code, 26 U.S.C. § 1 *et seq.*, as it may be amended from time to time, and any regulations issued pursuant thereto, as such code and such regulations affect this Plan and the Trust Fund.

**1.30 NONBARGAINING UNIT EMPLOYEE.** The term "Nonbargaining Unit Employee" means an Employee or any other employee whose participation in this Plan is not pursuant to a Collective Bargaining Agreement.

**1.31 PARTICIPANT.** The term "Participant" means any Employee who has had Contributions paid on his or her behalf in any Plan Year.

**1.32 PERMANENT DISABILITY.** The term "Permanent Disability" means that a Participant has been awarded Social Security disability benefits as established by a Social Security disability award certificate.

**1.33 PLAN.** The term "Plan" means these Rules and Regulations and any modification, amendment, extension or renewal thereof. The Plan, as set forth herein, provides for the administration, accumulation of assets, investment of assets, and funding as separate and apart from those of the Airconditioning and Refrigeration Workers Pension Plan. Pursuant to the requirements of IRC Section 401(a)(27), the Plan is intended to be a money purchase or profitsharing plan and, for periods prior to the Internal Revenue Service's issuance of a letter qualifying the Plan as a money purchase or profitsharing plan, a profit-sharing plan with a cash or deferred arrangement.

**1.34 PLAN YEAR.** The term "Plan Year" means the calendar year ending December 31. The Plan Year shall also serve as the Plan's fiscal year.

**1.35 QUALIFIED MILITARY SERVICE.** The term "Qualified Military Service" means service in the uniformed services of the United States within the meaning of the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), 38 U.S.C. § 4301 *et seq.* Qualified Military Service will be counted for the purpose of crediting a Individual Account with Contributions as set forth in Section 2.05 below.

**1.36 RETIRED.** The term "Retired" refers to an Employee who has completely withdrawn and refrains from any further employment in work of any kind in the Airconditioning and Refrigeration Industry. Work in the Airconditioning and Refrigeration Industry includes all work of any kind connected with or related in any way to the prefabrication, erecting, installing, joining together, handling and setting up, dismantling, charging, testing, adjusting, altering, servicing after completion, repairing and maintenance of all types of airconditioning or refrigeration equipment by any and all methods of equipment used to do this work now and in the future for any and all purposes.

Such work in the Airconditioning and Refrigeration Industry includes, but is not limited to, city, county, state and federal maintenance work; work for, or ownership interest in, any business doing airconditioning and refrigeration work or employing airconditioning or refrigeration workers, whether or not the business is incorporated or whether or not it contributes to the Plan; transportation of airconditioning and refrigeration equipment; performing airconditioning or refrigeration repair or maintenance, or equipment or parts sale; or performing any duties as to estimating, expediting, sales, design or consulting related to airconditioning and refrigeration work.

**1.37 ROLLOVER CONTRIBUTIONS.** The term "Rollover Contributions" means the amounts distributed to the Plan on behalf of a Participant from another qualifying plan or a qualified individual retirement account and thereafter allocated to such Participant's Individual Account.

**1.38 SECTION 414(s) COMPENSATION.** The term "Section 414(s) Compensation" means those Participant's Employee Contributions which have been recharacterized pursuant to Section 2.05 below plus Compensation paid during a Plan Year. The determination of Section 414(s) Compensation shall be made by including Employee Contributions which are not includable in the Participant's gross income under IRC Sections 125, 402(a)(8), 402(h), 403(b) or 457, and Contributions described in IRC Section 414(h)(2) that are treated as Employer Contributions.

**1.39 TERMINATION OF EMPLOYMENT.** The term "Termination of Employment" means a severance of the Employer-Employee relationship (without continued employment with another Employer) which occurs prior to a Participant's Retirement for any reason other than disability or death.

**1.40 TRUST AGREEMENT.** The term "Trust Agreement" means the Defined Contribution Agreement and Declaration of Trust for the Airconditioning and Refrigeration Industry

dated as of January 1, 1988, including any modification, amendment, extension or renewal thereof.

1.41 **TRUSTEE.** The term "Trustee" means any person designated as Trustee pursuant to the Trust Agreement, and the successors of such person from time to time in office. The terms "Board of Trustees," Board" and "Trustees" each means the Board of Trustees established by the Trust Agreement.

1.42 **TRUST FUND.** The term "Trust Fund" means the Defined Contribution Trust for the Airconditioning and Refrigeration Industry established by the Trust Agreement, and shall mean generally the monies and other items of value which comprise the corpus and additions therefore, received or held for or on behalf of the Trustees.

1.43 **UNION.** The term "Union" means the Refrigeration Fitters Division of Local 250 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO.

1.44 **VALUATION DATE.** The term "Valuation Date" means December 31st of each year, unless prescribed otherwise by the Trustees.

1.45 **VESTED INTEREST.** The term "Vested Interest on any date means the non-forfeitable right to a benefit in an amount which is equal to 100% of the Participant's Accrued Benefit.

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

## ARTICLE II

### PARTICIPATION AND CONTRIBUTIONS

**2.01 PARTICIPATION.** An Employee who is engaged in Covered Employment shall begin participation in the Plan as of the date contributions are first paid on his or her behalf by an Employer. An Apprentice Trainee who elects to make Contributions to the Plan pursuant to a voluntary wage reduction agreement shall begin participation in the Plan as of the date the first Employee Contribution is paid on his or her behalf.

**2.02 EMPLOYER CONTRIBUTIONS.** Subject to the terms of the Collective Bargaining Agreement and during its term, Employers shall contribute to the Plan with respect to each calendar month the amount which the Employer is obligated to pay on behalf of each Employee under the terms of the Collective Bargaining Agreement or any subscription agreement approved by the Board of Trustees authorizing contributions from the Union.

**2.03 EMPLOYEE CONTRIBUTIONS.** An Employee may elect to enter into with his or her Employer a written wage reduction agreement approved by the Trust which will be applicable to all payroll periods within such Plan Year. The wage reduction agreement shall provide that the Employee agrees to accept a reduction in wages or salary from his or her Employer equal to a percentage of his or her Compensation per payroll period, not to exceed \$7,000, as indexed in accordance with IRC Section 402(g)(5). The election to defer may be made only with respect to amounts which the Employee otherwise could elect to receive in cash, and with respect to amounts which were not currently available to the Employee at the time the Employee entered into the wage reduction agreement.

In accordance with such wage reduction agreement, the Employer shall make monthly wage reduction Employee Contributions to the Employee Account on behalf of the Employee for such month in an amount equal to the total amount by which the Employee's Compensation from the Employer was reduced during the month pursuant to the wage reduction agreement. Not less than once per Plan Year (or more frequently at such times and in such intervals as the Trustees may uniformly permit), an Employee may revoke his or her wage reduction agreement, or amend such agreement to increase or decrease the amount of such Employee's Compensation which is subject to the wage reduction agreement. Amounts credited to an Employee's Employee Account shall be 100% vested and nonforfeitable at all times.

**2.04 CREDITS FOR QUALIFIED MILITARY SERVICE.** 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 IRC Section 414(u).

**2.05 ADP TESTING LIMITATIONS.** This Plan is intended to satisfy the "safe harbor" requirements of IRC Section 401(k)(12)(A) inasmuch as the Collective Bargaining Agreements require Employer Contributions on behalf of non-Highly-Compensated Employees in an amount equal to at least 3% of the Employee's Compensation. The following provisions shall apply to periods before 2000 and, thereafter, to the extent that the Employer

Contributions of any Employer do not satisfy the requirements of IRC Section 401(k)(12)(A):

The Trustees may limit, revoke or modify an Employer's right to make Employee Contributions on behalf of any Participant at any time, but only if they determine that such limitation, revocation or amendment is necessary under one of the following circumstances:

(a) To insure that the discrimination tests of IRC Section 401(k) governing permissible levels of Employee Contributions are met for such Plan Year, or to insure that one of the following tests is met for such Plan Year:

(1) The actual average percentage of the Employee Contributions of the Highly-Compensated Employees eligible to participate is not more than 1.25 times the actual average percentage of the Employee Contributions for all other Employees eligible to participate; or

(2) The actual average percentage of the Employee Contributions for the Highly-Compensated Employees eligible to participate is not more than 2.0 times the actual average percentage of the Employee Contributions for all other Employees eligible to participate for the prior Plan Year and the actual average percentage of the Employee Contributions for the Highly-Compensated Employees eligible to participate does not exceed the actual average percentage of the Employee Contributions for all other Employees in the prior Plan Year who were eligible to participate by more than two percentage points; or

(b) To insure that a Participant's Annual Additions for any calendar year will not exceed the limitations of Section 7.08 below; or

(c) To insure deductibility of the Employer's entire Contributions to the Plan for federal income tax purposes.

If a limitation or amendment becomes necessary pursuant to subsection (a) or (c) above, such limitation or amendment will be first applied to the Participant who is the Highly-Compensated Employee with the largest amount of Employee Contributions until the tests of (a) or (c) are met or until such Participant's election is reduced to the same level as the Participant who is the Highly-Compensated Employee with the second highest amount of Employee Contributions. If further limitations are required, then both such Participants' Employee Contributions shall be reduced until the tests of (a) or (c) are met or until the two Participants' amounts of Employee Contributions are reduced to the same level as the Participant who is the Highly-Compensated Employee with the third largest amount of Employee Contributions, and such distributions shall continue to be made in a similar manner from the Participants who are Highly-Compensated Employees making the largest amounts of contributions to the lowest until the tests of (a) or (c) are satisfied. For purposes of this paragraph, the "largest amount" is determined after distribution of any Excess Contributions. If such excess amounts are distributed more than 2½ months after the last day of the Plan Year in which such excess amounts were paid, a 10% excise tax will be imposed on the contributing Employer with respect to such amounts.

An Employee Contribution will be taken into account under the actual deferral percentage test of IRC Section 401(k)(3)(A) for a Plan Year only if it is allocated to the employee as of a date within such Plan Year, and only if it relates to Compensation which either would have been received by the Participant in the Plan Year but for the deferral election or is attributable to services performed in the Plan Year and but for the deferral election would have been received by the Participant within two and one-half months after the close of the Plan Year. For this purpose, an Employee Contribution will be considered allocated as of a date within a Plan Year if the allocation is not contingent upon participation or performance of services after such date and the Employee Contribution is actually paid to the Trust no later than twelve months after the Plan Year to which such contribution relates.

(d) If two or more plans which include cash or deferred arrangements are considered one plan for purposes of IRC Section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as one arrangement. In addition, two or more cash or deferred arrangements may be considered as a single arrangement for purposes of determining whether or not such arrangements satisfy IRC Sections 401(a)(4), 410(b) and 401(k). In such a case, the cash or deferred arrangements included in such plans and the plans including such arrangements shall be treated as one arrangement and as one plan. Plans may be aggregated only if they have the same plan year.

(e) If a Highly-Compensated Employee is a Participant under two or more cash or deferred arrangements of the Employer or an affiliated employer, all such cash or deferred arrangements shall be treated as one cash or deferred arrangement for the purpose of determining the actual deferral ratio with respect to such Highly-Compensated Employee. If the cash or deferred arrangements have different plan years, however, this paragraph shall be applied by treating all cash or deferred arrangements ending with or within the same calendar year as a single arrangement.

The actual deferral ratios of all eligible Employees will be taken into account for purposes of the actual deferral percentage test in IRC Section 401(k). For this purpose, an "eligible Employee" means any Employee who directly or indirectly is eligible to make Employee Contributions under the Plan for all or any portion of a Plan Year, including: an Employee who would have been a Participant but for the failure to make required Contributions; an Employee whose eligibility to make Employee Contributions has been suspended because of an election (other than certain one-time elections) not to participate, or a distribution, or a loan; and an Employee who cannot defer because of Section 415 limits on Annual Additions. In the case of an eligible Employee who makes no Employee Contributions, the deferral ratio that is to be included in determining the actual deferral percentage is zero.

The amount of excess Employee Contributions to be distributed or recharacterized shall be reduced by excess deferrals previously distributed for the taxable year ending in the same Plan Year and excess deferrals to be distributed for a taxable year will be reduced by excess contributions previously distributed or recharacterized for the Plan beginning in such taxable year. Notwithstanding anything herein to the contrary, excess Employee Contributions shall in all circumstances be corrected by March 15 of the Plan Year following the Plan Year for which such contributions were made.

**2.06 EXCESS DEFERRALS.** If during any taxable year of a Participant, the total amount of his or her wage reduction contributions to all qualified cash or deferred arrangements exceeds \$7,000, as indexed in accordance with IRC Section 402(g)(5), then the amounts in excess of \$7,000, as so indexed, are to be included in the Participant's gross income for the taxable year for which such deferral relates.

Notwithstanding anything in this Plan to the contrary, the Plan shall return (not later than the first April 15 after the Participant's taxable year ends) the amount of the Participant's Employee Contributions with allocable income by which the Participant's Employee Contributions exceed the \$7,000 limit, as so indexed. The Trustees shall establish such rules and regulations as they deem necessary to carry out the intent of this Section. The Trustees shall apply their rules and regulations uniformly with respect to each Participant.

**2.07 ADMINISTRATION COSTS.** Administration costs include all fees and expenses of the Trust Fund, excluding benefit payments. Administration costs, including reasonable costs associated with lump sum, periodic and other distributions, may be deducted from each Participant's Employer Account, by allocation of a portion of an each hourly Employer Contribution, by periodic deductions from each Participant's Employer Account, or by a combination of these methods, as determined by the Trustees. The Trustees reserve the right to increase or decrease such deductions and allocations, and to make periodic assessments to meet administration expenses.

## ARTICLE III

### INDIVIDUAL ACCOUNTS

**3.01 CREATION OF ACCOUNTS.** An Individual Account shall be established for an Employee as soon as Employer contributions are first received on such Employee's behalf. An Individual Account consisting solely of an Employee Account shall be established for an Apprentice Trainee as soon as Employee Contributions are first received on his behalf. If such Apprentice Trainee subsequently becomes employed in work for which Employer Contributions are required, an Employer Account shall be added to his Individual Account as soon as Employer Contributions are first received on his behalf.

Subject to procedures established by the Trustees and applied in a uniform, nondiscriminatory manner, each Employee shall be permitted to direct the investment of his Account balance among any of the Investment Funds permitted under the Plan.

The Plan is intended to be a plan providing individual investment choice as described in Section 404(c) of ERISA and 29 C.F.R. §2550.404c-1, and the Trustees are therefore intended to be relieved of liability for any losses which are the direct or necessary consequence of investment instructions given by Participants. In the event an Employee fails to direct the investment of all or a portion of his Individual Account, such amounts shall be invested in such default fund or funds as the Trustees may from time to time direct.

An Employee's right to the monies in his Individual Account is governed by the provisions of Articles IV, V and VI.

**3.02 DETERMINATION OF AMOUNT (Annual Valuation).** As soon as practicable after each Valuation Date, the Trustees shall calculate and determine the amount in each Employee's Individual Account. The amount in each Individual Account as of the most recent Valuation Date shall be the amount in the Individual Account on the Valuation Date, minus an administrative expense charge to be charged all Individual Accounts as determined by the Trustees.

The Trustees shall establish the amount of the annual administrative expense charge to be applicable under this Section and such charge amount will continue to apply for subsequent Valuation Dates unless the Trustees authorize and adopt a different charge.

**3.03 ANNUAL STATEMENTS.** As soon as practicable after the close of each Plan Year, each Employee who has an Individual Account shall receive a statement reflecting the balance of his Individual Account as of the most recent Valuation Date.

**3.04 REDUCTION OF ACCOUNTS.** In no event on any Valuation Date shall the total amount in all Individual Accounts exceed the total Asset Value of the Plan. If such an event should occur, then all existing Individual Accounts shall automatically be proportionately reduced so that the total of all Individual Accounts is equal to the total Asset Value of the Plan.

**3.05 ADP TESTING LIMITATIONS.** The following provisions shall apply to periods before 2000 and, thereafter, to the extent that the Employer Contributions of any Employer do not satisfy the requirements of IRC Section 401(k)(12)(A):

The Trustees may limit, revoke or modify an Employer's right to make Employee Contributions on behalf of any Participant at any time, but only if they determine that such limitation, revocation or amendment is necessary under one of the following circumstances:

(a) To insure that the discrimination tests of IRC Section 401(k) governing permissible levels of Employee Contributions are met for such Plan Year, or to insure that one of the following tests is met for such Plan Year:

(1) The actual average percentage of the Employee Contributions of the Highly-Compensated Employees eligible to participate is not more than 1.25 times the actual average percentage of the Employee Contributions for all other Employees eligible to participate; or

(2) The actual average percentage of the Employee Contributions for the Highly-Compensated Employees eligible to participate is not more than 2.0 times the actual average percentage of the Employee Contributions for all other Employees eligible to participate for the prior Plan Year and the actual average percentage of the Employee Contributions for the Highly-Compensated Employees eligible to participate does not exceed the actual average percentage of the Employee Contributions for all other Employees in the prior Plan Year who were eligible to participate by more than two percentage points; or

(3) To insure that a Participant's Annual Additions for any calendar year will not exceed the limitations of Section 7.08 below; or

(4) To insure deductibility of the Employer's entire Contributions to the Plan for federal income tax purposes.

If a limitation or amendment becomes necessary pursuant to subsection (a) above, such limitation or amendment will be first applied to the Participant who is the Highly-Compensated Employee with the largest amount of Employee Contributions until the tests of this Section are met or until such Participant's election is reduced to the same level as the Participant who is the Highly-Compensated Employee with the second highest amount of Employee Contributions. If further limitations are required, then both such Participants' Employee Contributions shall be reduced until the tests of this Section are met or until the two Participants' amounts of Employee Contributions are reduced to the same level as the Participant who is the Highly-Compensated Employee with the third largest amount of Employee Contributions, and such distributions shall continue to be made in a similar manner from the Participants who are Highly-Compensated Employees making the largest amounts of contributions to the lowest until the tests of this Section are satisfied. For purposes of this paragraph, the "largest amount" is determined after distribution of any Excess Contributions. If such excess amounts are distributed more than 2½ months after

the last day of the Plan Year in which such excess amounts were paid, a 10% excise tax will be imposed on the contributing Employer with respect to such amounts.

An Employee Contribution will be taken into account under the actual deferral percentage test of IRC Section 401(k)(3)(A) for a Plan Year only if it is allocated to the employee as of a date within such Plan Year, and only if it relates to Compensation which either would have been received by the Participant in the Plan Year but for the deferral election or is attributable to services performed in the Plan Year and but for the deferral election would have been received by the Participant within two and one-half months after the close of the Plan Year. For this purpose, an Employee Contribution will be considered allocated as of a date within a Plan Year if the allocation is not contingent upon participation or performance of services after such date and the Employee Contribution is actually paid to the Trust no later than twelve months after the Plan Year to which such contribution relates.

(b) If two or more plans which include cash or deferred arrangements are considered one plan for purposes of IRC Section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as one arrangement. In addition, two or more cash or deferred arrangements may be considered as a single arrangement for purposes of determining whether or not such arrangements satisfy IRC Sections 401(a)(4), 410(b) and 401(k). In such a case, the cash or deferred arrangements included in such plans and the plans including such arrangements shall be treated as one arrangement and as one plan. Plans may be aggregated only if they have the same plan year.

(c) If a Highly-Compensated Employee is a Participant under two or more cash or deferred arrangements of the Employer or an affiliated employer, all such cash or deferred arrangements shall be treated as one cash or deferred arrangement for the purpose of determining the actual deferral ratio with respect to such Highly-Compensated Employee. If the cash or deferred arrangements have different plan years, however, this paragraph shall be applied by treating all cash or deferred arrangements ending with or within the same calendar year as a single arrangement.

The actual deferral ratios of all eligible Employees will be taken into account for purposes of the actual deferral percentage test in IRC Section 401(k). For this purpose, an "eligible Employee" means any Employee who directly or indirectly is eligible to make Employee Contributions under the Plan for all or any portion of a Plan Year, including: an Employee who would have been a Participant but for the failure to make required Contributions; an Employee whose eligibility to make Employee Contributions has been suspended because of an election (other than certain one-time elections) not to participate, or a distribution, or a loan; and an Employee who cannot defer because of Section 415 limits on Annual Additions. In the case of an eligible Employee who makes no Employee Contributions, the deferral ratio that is to be included in determining the actual deferral percentage is zero.

The amount of excess Employee Contributions to be distributed or recharacterized shall be reduced by excess deferrals previously distributed for the taxable year ending in the same Plan Year and excess deferrals to be distributed for a taxable year will be reduced by excess contributions previously distributed or recharacterized for the Plan beginning in such taxable year. Notwithstanding anything herein to the contrary, excess Employee

Contributions shall in all circumstances be corrected by March 15 of the Plan Year following the Plan Year for which such contributions were made.

**3.06 EXCESS DEFERRALS.** If during any taxable year of a Participant, the total amount of his or her wage reduction contributions to all qualified cash or deferred arrangements exceeds \$7,000, as indexed in accordance with IRC Section 402(g)(5), then the amounts in excess of \$7,000, as so indexed, are to be included in the Participant's gross income for the taxable year for which such deferral relates.

Notwithstanding anything in this Plan to the contrary, the Plan shall return (not later than the first April 15 after the Participant's taxable year ends) the amount of the Participant's Employee Contributions with allocable income by which the Participant's Employee Contributions exceed the \$7,000 limit, as so indexed. The Trustees shall establish such rules and regulations as they deem necessary to carry out the intent of this Section. The Trustees shall apply their rules and regulations uniformly with respect to each Participant.

## ARTICLE IV

### ACCUMULATED SHARES AND VESTING

4.01 **AMOUNT OF ACCUMULATED SHARE.** Upon the occurrence of any event calling for the payment of a lump-sum amount or any other benefit from this Plan, the amount to be paid, subject to the specific provisions of Article VI, shall be the amount in the Employee's Individual Account on the date payment is to be made. This amount shall be known as the "Accumulated Share."

4.02 **VESTING IN ACCUMULATED SHARE.** An Employee's Accumulated Share shall be 100% vested and non-forfeitable upon the Plan's receipt of Employer Contributions pursuant to Section 2.02 or Employee Contributions pursuant to Section 2.03.

## ARTICLE V

### FORFEITURE OF INDIVIDUAL ACCOUNTS

#### 5.01 FORFEITURES.

(a) If an eligible Employee or eligible Beneficiary fails to make the required application or makes the required application hereunder but, on the date that payment of the Accumulated Share is due to be made, the Board of Trustees is unable to locate the Employee or Beneficiary, the Trustees shall make a reasonable attempt to locate such Employee or Beneficiary and if unable to do so within three years of the date on which the payment of the Accumulated Share was to have been made, the Accumulated Share shall be forfeited. If the Employee or his or her Beneficiary is thereafter located, his or her Accumulated Share shall be paid to him or to her, or to his or her Beneficiary, in the amount originally payable. Such later payment shall be deducted from Plan assets as an administrative expense for the calendar year in which paid.

(b) The total value of all Individual Accounts forfeited during a Plan Year shall be applied directly to all existing Individual Accounts in the same proportion that the total value of each Individual Account bears to the total value of all existing Individual Accounts.

## ARTICLE VI

### BENEFITS AND ELIGIBILITY

**6.01 BENEFITS UPON RETIREMENT.** An Employee who has attained at least age 55 (age 57½ prior to September 1, 1995) and has Retired shall be eligible to receive his or her Accumulated Share in the form of a single lump sum payment to be paid no later than the sixtieth day after the close of the Plan year in which the Participant has become Retired or, provided that his or her Accumulated Share exceeds \$10,000, in the form of monthly, quarterly, semi-annual or annual payments in such amounts and with such frequency as may be designated from time to time by the Participant.

**6.02 BENEFITS UPON TERMINATION OF EMPLOYMENT.** An Employee whose Accumulated Share is less than \$20,000, who has Retired and who has not worked in Covered Employment for a 12 month period of time shall be eligible to receive his or her Accumulated Share in the form of a single lump sum payment to be paid no later than the sixtieth day after the close of the Plan year in which the Participant has become Retired.

**6.03 BENEFITS UPON TOTAL AND PERMANENT DISABILITY.** If an Employee who is vested in his Individual Account is awarded Social Security Disability Benefits under the Social Security Act, he shall be eligible to receive his Accumulated Share on the same terms and conditions provided in Section 6.01.

**6.04 TRUSTEES' RELIANCE.** The Trustees shall be entitled to rely on written representations, consents, and revocations submitted by Employees, spouses, Beneficiaries, Dependents or other parties in making determinations under this Article and, unless such reliance is arbitrary or capricious, the Trustees' determinations shall be final and binding and shall discharge the Plan and the Trustees from liability to the extent of the payments made. This means that, unless the Plan is administered in a manner determined to be inconsistent with the fiduciary standards of Part 4 of Title I of ERISA, the Plan shall not be liable under this Article for duplicate benefits with respect to the same Employee, or for any combination of surviving spouse, Dependent and/or other death benefits with respect to the Employee in excess of the value of the Employee's Account determined as of the date scheduled for the start of payments to the Employee or, if earlier, the date of the Employee's death.

**6.05 BENEFIT LIMITATIONS.**

(a) Notwithstanding any other provision of the Plan, if a distribution of the Employee's benefits commenced in accordance with the Plan before the Employee's death, the remaining interest will be distributed at least as rapidly as under the method used as of the date of the Employee's death.

(b) Notwithstanding any provision of the Plan to the contrary, all distributions shall be made in accordance with IRC Section 401(a)(9) and the regulations thereunder,

including the minimum distribution incidental benefit requirements of Section 1.401(a)(9)-2 of the proposed IRS Regulations.

## ARTICLE VII

### APPLICATIONS, BENEFIT PAYMENTS, CLAIMS AND APPEALS, AND ANNUAL ADDITIONS

**7.01 ADVANCE WRITTEN APPLICATION REQUIREMENT.** An application for benefits shall be made in writing on a form and in the manner prescribed by the Board of Trustees at least one month in advance of the first month for which benefits are payable.

**7.02 BENEFIT PAYMENTS GENERALLY.** All benefits payable under this Plan shall commence on the first day of the first month following the date on which the Employee has fulfilled all of the conditions for entitlement to benefits, including advance filing of an application in accordance with the provisions of Section 7.01.

Benefits shall be payable as soon as practicable after the claimant has fulfilled all the conditions for entitlement, including the requirement for filing an application with the Trustees and demonstrating separation from service or retirement. The filing of an application for benefits shall constitute consent by the Employee to the payment of benefits.

Notwithstanding the above, commencement of payments from an Employee's account shall begin by no later than the latest of (a) April following the calendar year in which the Employee reaches age 70½; or (b) as soon as practicable after the Trustees are able to locate the Employee, his heirs or his legal representative.

#### **7.03 BENEFICIARY DESIGNATION.**

(a) For the purpose of a distribution pursuant to Sections 6.01, 6.02 or 6.03, an Employee may designate a Beneficiary, or, change a prior designation, on a form provided by the Trustees and filed with them before the Employee's death. Notwithstanding the above, the designated Beneficiary of a married Employee shall be the spouse to whom the Employee was married on his or her date of death, unless an alternative Beneficiary was properly designated pursuant to paragraph (c). Unless expressly provided otherwise in writing, however, and to the extent not prohibited by paragraph (c), the designated Beneficiary of an Employee shall be the designated Beneficiary on file in the Fund Office with respect to the Airconditioning and Refrigeration Workers Pension Plan. If no Beneficiary has been designated, if the Beneficiary does not survive the Employee, or if the Beneficiary survives the Employee but dies before receiving the full amount of his or her Accumulated Share, the distribution shall be made to the Employee's children in equal Beneficiary shares or, if there are no children, to his or her estate.

(b) For the purpose of paragraph (a), an Employee's former spouse is deemed to be his spouse on the date of his death if and to the extent so provided in a qualified domestic relations order, as defined in IRC Section 414(p), and the rights of a former spouse or other alternate payee under a qualified domestic relations order, with respect to the former Employee's Accumulated Share, shall take precedence over claims of any subsequent spouse of the Employee under this Section.

(c) The designation of a Beneficiary other than a married Employee's spouse shall be honored only if the spouse has consented in a writing witnessed by a representative of the Plan or a notary public, to waive the right to any benefits under this Plan and to acknowledge the Beneficiary designated to receive any such benefits. A signed, witnessed waiver of the spouse's right to the death benefit shall not be required where the Trustees determine, on the basis of evidence that they may require the designated Beneficiary to provide, that there is no spouse or that the spouse cannot be located, or for other reasons as authorized by regulations promulgated under the IRC.

**7.04 ACTION OF TRUSTEES.** The Trustees shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case and the application and interpretation of this Plan, and decisions of the Trustees shall be final and binding on all parties. Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise such powers in a uniform and non-discriminatory manner.

**7.05 RIGHT OF APPEAL.** An Employee whose application for a benefit under this Plan has been denied, in whole or in part, is to be provided with adequate notice in writing setting forth the specific reasons for such denial, and shall have the right to appeal the decision, by written request filed with the Trustees within 180 days after receipt of such notice. The appeal shall be considered and decided by the Trustees or by a person or committee designated by the Trustees.

**7.06 NON-ASSIGNMENT OF BENEFITS.**

(a) No Employee, Beneficiary, Dependant or other claimant entitled to any benefits under this Plan shall have the right to assign, alienate, transfer, encumber, pledge, mortgage, hypothecate, anticipate or impair in any manner his legal or beneficial interest, or any interest, or any interest in the assets of this Plan, or benefits of this Plan. Neither the Plan, nor any of the assets thereof, shall be liable for the debts of any Employee, Beneficiary, Dependant or other claimant entitled to any benefits under this Plan, nor be subject to attachment or execution or process in any court or action or proceeding.

(b) Notwithstanding paragraph (a) or any other provision of the Plan, benefits shall be paid to an alternate payee pursuant to a qualified domestic relations order as such terms are defined and benefit rights prescribed in IRC Section 414(p). Benefits otherwise payable under the Plan shall be reduced by the amount of any payment ordered to be made to an alternate payee.

**7.07 NO RIGHT TO ASSETS.** No person other than the Trustees of the Plan shall have any right, title or interest in any of the income or property of any funds received or held by or for the account of the Plan, and no person shall have any right to benefits provided by the Plan except as expressly provided herein.

**7.08 MAXIMUM ANNUAL ADDITIONS.** In no event shall the Plan accept contributions in excess of the maximum specified for qualified plans by IRC Section 415 or the regulations promulgated thereunder. The following rules shall be applicable to periods prior to 2000:

(a) The Trustees shall be entitled to rely on representations by an Employer that the contributions payable from the Employer and Employee to the Plan over the course of any limitation year on behalf of the Employee under this Plan, to the extent attributable to employment with that Employer, do not, together with any contributions to any other plan as described in subsection (b) below, exceed the lesser of \$30,000 or 25% of the Employee's Compensation from the Employer for the same annual period. The \$30,000 limitation indicated above shall be increased, when greater, to 25% of the dollar limitation in effect for the year for defined benefit plans under IRC § 415(b)(1)(A).

(b) In applying the limits under this Section, contributions to and benefits of all other retirement plans sponsored by the Employer or any affiliate shall be taken into consideration, except for multiemployer plans. If necessary to observe these limits, benefits of or contributions to other plans will be reduced before contributions to the Plan, but contributions to the Plan will be reduced if contributions to the other plans cannot be reduced. The annual limits of this Section shall be applied on a Plan Year basis.

**7.09 HARDSHIP DISTRIBUTIONS.** An Employee may receive a distribution of benefits prior to death, disability or termination of employment, but subject to the following restrictions and rules:

(a) The Trustees shall make the distribution only from the Employee's Individual Account and the amount of the distribution shall be limited to the Employee's cumulative Contributions which he or she has made to this Plan. If the Employee has received a previous distribution under this paragraph, then the remaining Contributions available for distribution shall be determined by subtracting the distributions previously made under this paragraph from total cumulative Contributions which the Employee has made.

(b) The Employee must represent in writing that he or she requires the distribution to meet an immediate and heavy financial need which must fall under one of the following categories:

(1) Medical expenses (as defined in IRC Section 213(d)) which are incurred by the Employee, spouse or Dependent children.

(2) Purchase of a principal residence for the Employee. This does not include making mortgage payments on the Employee's principal residence.

(3) Payment of tuition for the next 12 months of post-secondary education for the Employee, spouse or dependent children.

(4) To prevent eviction or foreclosure on the mortgage of the Employee from his or her principal residence.

(5) Any other financial need specifically listed in IRC Regulations or other official guidance that allows the Plan to make hardship distributions.

(c) The Employee must satisfy all of the following requirements:

(1) The Employee has obtained all distributions, other than hardship distributions, and all non-taxable loans under all plans maintained by the Trust Fund.

(2) The Employee has exhausted all other resources which are reasonably available to the meet the financial need. An Employee's resources include assets owned by the Employee and the Employee's spouse and minor children, where these assets are available to the Employee. However, property held in an irrevocable trust or under a state uniform gifts to minors act, for the benefit of a child, shall not be considered a resource of the Employee.

(3) The distribution must not exceed the amount necessary to meet any of the needs described in paragraph (b) above. This amount includes amounts needed to pay federal, state, and local income taxes and penalties reasonably anticipated to result from the distribution.

(4) For the Employee's taxable year which follows the year of the distribution, the Employee's Salary Deferrals may not exceed the amount allowed under IRC Section 402(g) reduced by the Employee's Contributions for the taxable year in which the hardship distribution occurred.

(d) The Administrator shall have no duty or obligation to verify or investigate the Employee's representations. The Administrator may rely on these representations where it is reasonable to do so.

(e) Before the Plan may distribute any benefits pursuant to this Section, the following two conditions must be satisfied:

(1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Employee.

(2) The Employee has received all other distributions (other than under this hardship provision) and all non-taxable loans currently available under all plans maintained by the Union, Employer or Association.

(f) Employee's Contributions must be suspended for 12 months beginning with the first day of the month following the Employee's receipt of the hardship distribution.

(g) An Employee may make request for a Hardship Distribution no more often than twice every calendar year.

(h) All distributions the Plan makes under this Section shall be made in a single lump sum. Prior to receiving any distribution, the Employee and the Employee's spouse (if the Employee is married) must consent in writing to the single sum distribution as otherwise provided for lump sum distributions, without regard to the dollar amount of the distribution.

(i) The Plan shall make distributions under this Section as soon as administratively feasible. However, if the value of the Employee's Individual Account is not readily ascertainable at the time the distribution would otherwise be made, then the Plan shall defer the distribution until the following valuation of the Trust Fund has been completed, unless the Trustees can determine with reasonable certainty that the distribution requested does not exceed the value of the Individual Account at the time the distribution is made.

**7.10 ROLLOVER DISTRIBUTIONS.** Subject to and in accordance with such rules as the Trustees may prescribe, a Distributee may elect to have any portion of an Eligible Rollover Distribution paid in a Direct Rollover to an Eligible Retirement Plan specified by the Distributee.

## ARTICLE VIII

### GENERAL PROVISIONS

8.01 **AMENDMENT.** This Plan may be amended at any time by the Trustees, consistent with the provisions of the Trust Agreement. However, no amendment or modification may reduce any benefits which have been approved for payment prior to the amendment, so long as funds are available for payment of such benefits (nor may any amendment or modification reduce the Employee's Individual Account other than for losses in the Trust Fund).

8.02 **TERMINATION.** In the event of the termination of the Plan, or in the event of the complete discontinuance of contributions, each Employee will have nonforfeitable rights, and the assets then remaining after providing for the expenses of the Plan and for the payment of any Accumulated Share theretofore approved, shall be distributed among the employees. Each Employee shall receive that part of the total remaining assets in the same ratio as his Accumulated Share bears to the aggregate amount of the Accumulated Shares of all Employees. No part of the assets shall be returned to any Employer or inure to the benefit of any Employer or the Union. In the event that an Employee cannot be located and no claim is made for him for payment of his or her Accumulated Share within six months following the sending of notice by registered mail to the Employee's last known address, the Employee's Accumulated Share shall be forfeited and redistributed on a uniform basis among the Employees to whom payments have been or can be made.

In the event the liquidation value of the assets on the date of termination is less than the total of all Accumulated Shares plus expenses, the Trustees shall have the option of paying all Accumulated Shares to Employees over a period not to exceed ten years to the extent permitted by the assets available.

8.03 **MERGERS.** In the case of a merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Employee shall be entitled to a benefit 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.

8.04 **EFFECTIVE DATE OF DISCONTINUANCE OF WAGE REDUCTION CONTRIBUTIONS.** Employee Contributions will no longer be accepted by the Plan for hours worked after the later of (a) September 1, 2002, or such later date as may be established by the Union and the Association, and (b) the third calendar month following the calendar month in which the Plan is approved and qualified by the Internal Revenue Service as a money purchase or profitsharing plan meeting the requirements of IRC Section 401(a), and Sections 1.24, 1.38, 2.03, 2.05 and 2.06 hereof shall thereafter no longer be applicable to the Plan and the Trust Fund. The Plan will continue, however, to maintain and preserve each Participant's Employee Account.

8.05 **PLAN OPERATION.** The Trustees shall be in charge of the operation and administration of the Plan and shall have all powers necessary to carry out its terms. The Trustees

shall interpret and administer this Plan in accordance with its terms and in a manner consistent with the requirements of the IRC, ERISA and the regulations issued thereunder. All interpretations of the Plan and questions concerning its administration and application shall be determined by the Trustees and such determination shall be binding on all persons.

**8.06 EXAMINATIONS; DISPUTES BETWEEN CLAIMANTS.** Authorization is hereby granted to the Trustees to conduct such examinations as may be necessary to determine the validity of a claim by a Participant, former Participant or Beneficiary, and to take such steps as may be necessary to facilitate the payment of any benefits to which the Participant, former Participant or Beneficiary may be entitled under the terms of this Plan. In the event that any claim hereunder is denied because of any dispute as to the proper recipient of any payment, the Trustees may withhold such payment until the dispute shall have been settled by the parties concerned or shall have been determined by a court of competent jurisdiction.

**8.07 NON-REVERSION.** The Plan and the Trust Fund have been established by the Trustees for the exclusive benefit of the Participants and their Beneficiaries. Under no circumstances shall any funds contributed hereunder or income therefrom at any time revert to or be used by any Employer, nor shall any such funds or assets of any kind be used other than for the benefit of the Participants or their Beneficiaries.

**8.08 REFERENCE TO THE IRC AND ERISA.** Any reference herein to any section of the IRC, ERISA, or to any other statute or law shall be deemed to include any successor law of similar import.

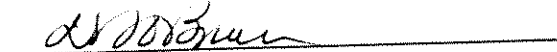
**8.09 GOVERNING LAW.** The Plan shall be governed and construed in accordance with federal law and, where federal law is inapplicable, the laws of the State of California.

**8.10 COMPLIANCE WITH THE IRC AND ERISA.** This Plan is intended to comply with all requirements for qualification under the IRC and ERISA, and if any provision hereof is subject to more than one construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with the Plan being so qualified. If any provision of the Plan is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions, and this Plan shall be construed and enforced as if such provision had not been included.

**8.11 LIMITATION ON TRUSTEE LIABILITY.** Nothing in this Plan shall be construed to prevent any Trustee from receiving any benefit to which he may be entitled as a Participant or Beneficiary in this Plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of this Plan as applied to all other Participants and Beneficiaries. Nor shall this Plan be interpreted to prevent any Trustee from receiving reimbursement of expenses properly and actually incurred in the performance of his or her duties with the Plan.

The undersigned Chairman and Secretary of the Board of Trustees of the Airconditioning and Refrigeration Industry Defined Contribution Retirement Plan do hereby certify that the foregoing Rules and Regulations of the Defined Contribution Plan was duly adopted by the Board of Trustees at a meeting duly called and held on December 7, 2001.

  
Chairman

  
Secretary