
**SUMMARY PLAN DESCRIPTION FOR
PLASTERERS & CEMENT MASONS
LOCAL 109 PENSION PLAN**

**AS AMENDED AND RESTATED
EFFECTIVE MAY 1, 2000***

**FINAL DRAFT
7/10/00**

*** Unless otherwise stated herein**

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INTRODUCTION

The Pension Plan of the Plasterers & Cement Masons Local 109 (hereinafter referred to as the “Plan”) has been amended and restated effective May 1, 2000.

The purpose of the Plan continues to be to reward eligible Employees for long and loyal service. It may also provide certain benefits in the event of death, disability, or other termination of employment. The Plan is for the exclusive benefit of the eligible Employees and their Beneficiaries.

Upon retirement, an eligible Employee will be entitled to receive a monthly pension. Each year between now and retirement, your Employer will contribute to a trust fund an amount necessary to fund your benefits. Since there are no Employee contributions required, the cost of the Plan is paid by your Employer.

Benefits under this Plan are insured by the Pension Benefit Guaranty Corporation (PBGC) if the Plan terminates. Generally, the PBGC guarantees most vested normal retirement benefits, early retirement benefits, and certain disability and survivor’s pensions. However, the PBGC does not guarantee all types of benefits under covered plans, and the amount of benefits protection is subject to certain limitations.

The PBGC guarantees vested benefits at the level in effect on the date of plan termination. However, if a plan has been in effect less than 5 years before it terminates, or if benefits have been increased within the 5 years before plan termination, the whole amount of the plan’s vested benefits or the benefit increase may not be guaranteed. In addition, there is a ceiling on the amount of monthly benefit that PBGC guarantees, which is adjusted periodically.

For more information on the PBGC insurance protection and its limitations, ask the Board of Trustees (“Board”) or the PBGC. Inquiries to the PBGC should be addressed to the Office of

Communications, PBGC, 2020 K Street, N.W., Washington, D.C. 20006. The PBGC Office of Communications may also be reached by calling (202) 254-4817.

This summary is a brief description of the Plan and Trust Agreement (the “Plan”). It is not meant to interpret, extend, or change the Plan in any way. The provisions of the Plan can only be determined accurately by consulting the Plan itself. A copy of the Plan is on file at the Fund/Board of Trustees’ office and may be read by any Employee at any reasonable time. Participants and Beneficiaries may obtain a copy of the Plan Document for a reasonable charge by contacting the Board of Trustees.

DEFINITIONS

1. **“Covered Service”** means the Service with an Employer or Employers maintaining the Plan, within a job classification or class of Employees covered under the Plan that compensation is paid for or is entitled to payment for, in accordance with the Collective Bargaining Agreement.

2. **“Employee”** means any employee represented for the purpose of collective bargaining by the Union and for whom Employers make contributions to the Trust Fund in accordance with the Collective Bargaining Agreement. “Employee” also means employees of other Employers who participate as otherwise permitted by the terms of the Plan and make contributions to the Trust Fund on behalf of said employees.

3. **“Employer”** means the Plastering Contractors of Akron, Ohio and Vicinity and the Akron Division of the Associated General Contractors of Ohio. “Employer” also means other individual(s), firm(s), association(s), partnership(s) or corporation(s) who are performing work in the plastering and cement masonry trade and who are bound by a Collective Bargaining Agreement with the Union and agrees to participate in and contribute to the Trust Fund. The term Employer may also include the Union and its affiliated Local Unions or other unions participating in the Plan.

4. **“Union”** means the Operative Plasterers & Cement Masons International Association of the United States and Canada, Local No. 109, who has in effect with an Employer, Collective Bargaining Agreements or other agreements providing for the establishment of a Pension Plan and Trust Fund and for the payment of contributions to such Fund. “Union” also means any other Local Union affiliated with the Operative Plasterers & Cement Masons International Association who become parties to Collective Bargaining Agreements requiring contributions by the Employer into

this Fund and have been accepted for participation in the Fund by the Trustees on terms which, in their absolute discretion, they shall determine.

I. PLAN ADMINISTRATION

1.1 Plan Name and Address:

Plasterers & Cement Masons
Local 109 Pension Plan
Post Office Box 230
Niles, Ohio 44446

1.2 Plan Identification Numbers:

The Employer Identification Number assigned to the Board of Trustees is 34-6622619. The Plan is further identified as Plan Number 001.

1.3 Plan Administrators and Fiduciaries:

The Board of Trustees of the Plasterers & Cement Masons Local 109 Pension Plan, functioning in its capacity as Trustees under the terms and conditions of the Agreement and Trust, is the “Named Fiduciary” of the Plan. The Board of Trustees consists of the following members:

Union Trustees

David Bakita
3653 Brookside
Norton, Ohio 44203

Robert Hahn
279 Woodland Avenue
Wadsworth, Ohio 44281

Roger Hahn
3494 Valley Drive
Norton, Ohio 44203

Vincent A. Randazzo
3801 Eaton Drive, NW
Canton, Ohio 44708

Employer Trustees

James Dougherty
Builders Exchange of Akron
494 Wolf Ledges Parkway
Akron, Ohio 44311

Alan Moore
176 Ascot Ct.
Powell, Ohio 43065

David C. Olivo
451 Bastogne Drive
Akron, Ohio 44303

Jack Williams
2825 Rush Road
Norton, Ohio 44203

1.4 Administration of Plan:

The Board of Trustees is responsible for the overall administration of the Plan. The day-to-day administration of the Plan has been delegated to Compensation Programs of Ohio, Inc., P.O. Box 230, Niles, Ohio 44446 and may be reached at (800) 435-2388.

1.5 Plan Sponsor:

The Plan Sponsor is the Employer designated in Paragraph 3 of the Definitions Section (See, Page 3).

1.6 Legal Service:

Service of legal papers may be made on a Plan Trustee or the Plan Administrator designated below:

Plasterers & Cement Masons Local 109 Pension Plan
Board of Trustees
P.O. Box 230
Niles, Ohio 44446
(330) 652-9821

The Fund's Legal Counsel is:

Ronald G. Macala
GREEN, HAINES, SGAMBATI, MURPHY & MACALA CO., L.P.A.
4150 Belden Village St., Suite 604
P.O. Box 35186
Canton, Ohio 44735
Telephone: (330) 493-1570

1.7 Type of Pension Plan: The Plasters and Cement Masons Local 109 Pension Plan is referred to as a defined benefit plan. This means that the dollar amount of benefits provided is based on years of service and the amount of contributions paid on behalf of the Participant.

The exact dollar amount of the contribution is determined by collective bargaining between the Union(s) and the Employer(s). The level of benefits is determined actuarially considering contribution income, mortality rates, turnover of employees, general economic conditions and other factors affecting fund income and costs. Actuarial valuations are performed by the enrolled actuaries retained by the Trustees on the Participant's behalf. Cost projections and determinations of benefit levels are done in consultation with the actuary. Although the Trustees and professional advisors make every effort to fix benefit levels accurately, benefit levels are subject to adjustments depending on changes in economic conditions, results of collective bargaining and other necessary changes related to actuarial assumptions.

1.8 Collective Bargaining Agreement:

The Union has executed Collective Bargaining Agreements requiring Employers to make contributions into the Pension Fund. Copies of the Collective Bargaining Agreements may be obtained from the Union at its offices or upon written request to the Plan Administrator. The Collective Bargaining Agreement is also available for examination by Participant, or Beneficiaries at a meeting hall or the office of each union local in which there are at least 50 Participants covered under the Plan.

1.9 Funding Medium for the Accumulation of Plan Assets: Assets are accumulated and benefits are provided by the Trust Fund. Some Plan assets are invested. These investments are made only after consultation with professional investment managers employed by the Trust.

1.10 Plan Year and Financial Reports:

The Plan maintains its financial records on a fiscal year basis, commencing each May 1 and ending on April 30 (“Plan Year”). All governmental filings of a financial nature are reported on a Plan Year basis.

1.11 Plan Effective Dates:

The Plan was originally effective May 1, 1965. The most recent amendment and restatement of the Plan was effective May 1, 2000.

1.12 Reciprocity:

The Board of Trustees has signed reciprocal agreements with several other Plasterers or Cement Masons pension plans. If you work in another jurisdiction, you should check with the Fund Office to determine if the pension plan in the other jurisdiction has signed a reciprocal agreement with the Plasterers and Cement Masons Local No. 109 Pension Plan. If so, you should ask at the Union hall or at the Pension Fund office in the other jurisdiction what steps you must take to have employer contributions returned to the Plasterers and Cement Masons Local No. 109 Pension Plan. IT IS IMPORTANT THAT YOU ASK ABOUT RECIPROCITY WHEN YOU BEGIN WORK IN ANOTHER JURISDICTION. Reciprocity transfers can be made only with your written consent. However, many reciprocity agreements have time restrictions on transferring money received before you make a written transfer request. Therefore, if you delay too long in requesting a transfer, benefits could be lost.

II. PARTICIPATION & ELIGIBILITY

2.1 Who may participate in the Plan?

Each eligible Employee of an Employer may participate in the Plan.

2.2 **When do I become a Participant in the Plan?**

(A) You become a Participant following your completion of 400 hours worked during an eligibility computation period or by May 1, whichever is earlier. The eligibility computation period begins on the first day of your first payroll period and ends on the anniversary of the last day of that pay period.

(B) If you cease to be an eligible Employee but you are still employed by a participating Employer, you will continue to be credited with Service for determining your vested interest but will not accrue any further Service for determining your benefits.

III. DETERMINATION OF SERVICE

3.1 **What is the purpose of calculating Service?**

Service is calculated to determine the vested portion of your Accrued Pension and the amount of pension you are entitled to receive.

3.2 **What is Service (or Year of Service)?**

Service shall be the total of your Past Service computed under question 3.3 and your Future Service computed under question 3.4.

3.3 **What is Past Service?**

(A) Generally, Past Service is credit toward vesting based upon the Participant's Years of Service within the jurisdiction of the Local Union prior to the time the Plan began or the Local Union participated in the Plan, to a maximum of ten (10) years. Past service credit for participating Local Unions shall be as follows:

- (1) For Participants who are members of Local Union 109, Past Service shall be granted to an Employee who worked in the jurisdiction of the Local Union on or before May 1, 1965.

One (1) year of Past Service shall be granted to an Employee for each Plan Year that the Employee worked in the jurisdiction of Local Union 109 during the period May 1, 1955 to May 1, 1965. The Past Service Benefit shall also include a benefit of \$16.00 if you were working within the jurisdiction of Local No. 109 as of May 1, 1955.

- (2) For former members of Local Union 131, Past Service shall mean the Participant's Years of Service within the jurisdiction of the Local Union prior to July 1, 1975, to a maximum of 10 years, provided the Participant has worked at least 400 hours during the 12 month period from July 1, 1975 through June 30, 1976.
- (3) For former members of Local Union 232, Past Service shall mean the Participant's Years of Service within the jurisdiction of the Local Union prior to June 1, 1977, to a maximum of 10 years, provided the Participant has worked at least 400 hours during the 12 month period from June 1, 1977 through May 31, 1978.
- (4) For former members of Local Union 140, Past Service shall mean the Participant's Years of Service within the jurisdiction of the Local Union prior to July 1, 1987, to a maximum of 10 years, provided the Participant has worked at least 400 hours during the 12 month period from July 1, 1987 through June 30, 1988.
- (5) For members of Local Union 39, Past Service shall mean the Participant's Years of Service within the jurisdiction of the local union prior to July 1, 1989, with a maximum of ten (10) years, provided the participant has worked at least 400 hours during the twelve (12) month period from July 1, 1989 through June 30, 1990.
- (6) For members of any other Local Union who become Participants in the Plasterers & Cement Masons Local 109 Pension Plan through the State Heavy & Highway Agreement, Past Service shall mean the Participant's Years of Service within the jurisdiction of the Local Union 109 prior to June 6, 1977. Past Service Credit for these Participants will be used solely to determine vesting rights by this Plan.

3.4 **What is Future Service?**

Generally Future Service is credit toward vesting based upon participation in the Plan following the commencement of contributions to the Plan. One Year of Future Service shall be granted to a Participant for each Plan Year during which he has completed at least 400 hours of Work with an Employer, beginning with the Plan Year which includes the first anniversary date.

3.5 **What if I am rehired after I was entitled to a Retirement Benefit?**

If you are a Former Participant and you again become employed by an Employer as an eligible Employee after a termination of employment and after having been found to be entitled to a retirement benefit under the Plan as then in effect, you shall immediately become an active Participant on the first day on which you have an Hour of Work as an eligible Employee and shall be credited with all past Years of Service.

3.6 **What is a Break in Service?**

(A) A Break in Service occurs when, during any Plan Year, you are not credited with more than 400 hours worked with an Employer. A Break in Service does not occur for certain maternity or paternity leaves or because of an accident or illness or services in the armed forces, provided the Administrator is notified of such circumstances on a form satisfactory to the Trustees. In the case of service in the armed forces, at a minimum, you must notify the Administrator prior to such service and within sixty (60) days of completion of such service, as further outlined below.

(B) Effective December 12, 1994, you shall be credited with Hours of Service for each hour for which you are absent from work due to military service in the Armed Forces of the United States, as defined herein, for the sole purpose of determining whether a Break in Service has occurred. Hours of Service shall be credited only to the extent they would have been credited but for

such absence, or if such number of Hours of Service cannot be determined, at the rate of eight Hours of Service per day of absence. In no event, however, shall the number of Hours of Service credited exceed the minimum number of Hours of Service needed to prevent the occurrence of a Break in Service in the Plan Year such absence begins. However, if in the Plan Year such absence begins, you had earned a sufficient number of Hours of Service to prevent the occurrence of a Break in Service without regard to any leave for military service you shall be credited with the minimum number of Hours of Service needed to prevent the occurrence of a Break in Service during the Plan Year which immediately follows the Plan Year in which your absence begins. However, no Hours of Service shall be credited under this subparagraph unless you were in the active service of an Employer prior to such an absence due to military service, such absence did not exceed five (5) years and you fulfill the notice requirements which are more fully described in Section (E) below.

(C) “Military Service” means any absence from work by reason of active duty in the Armed Forces of the United States. A Participant shall be given full credit for benefit accrual, hours of service, participation, vesting, and years of vesting service for time periods, not to exceed five (5) years, in which he or she was absent from work due to military service.

(D) Contributions shall be made for the above military leave of absence by the Pension Fund, or as otherwise determined at the discretion of the Board of Trustees of the Fund, in compliance with federal law.

(E) In order for you to receive continuing benefits as outlined above you must notify the respective Employer with advance written or verbal notice of such service. Upon the completion of a period of service in the uniformed services, you shall notify the Employer, of your intent to return to a position of employment with such Employer as follows:

- (1) In the case of a Participant whose period of service in the uniformed services was less than 31 days, by reporting to the Employer:
 - (a) not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and expiration of eight hours after a period allowing for the safe transportation of the Participant from the place of that service to the employee's residence; or
 - (b) as soon as possible after the expiration of the eight-hour period referred to in clause (E)(a) reporting within the period referred to in such clause is impossible or unreasonable through no fault of the person.
- (2) In the case of a Participant who is absent from a position of employment for a period of any length for the purposes of an examination to determine the Employee's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in subparagraph (E)(1)(a) above.
- (3) In the case of a Participant whose period of service in the uniformed services was for more than 30 days but less than 181 days, by submitting an application for reemployment with the Employer not later than 14 days after the completion of the period of service or if submitting such application within such period is impossible or unreasonable through no fault of the Participant, the next first full calendar day when submission of such application becomes possible.
- (4) In the case of a Participant whose period of service in the uniformed services for more than 180 days, by submitting an application for reemployment with the Employer not later than 90 days after the completion of the period of service.

(F) Furthermore, in order to restore the above pension rights, you must notify the

Fund Office in writing, within sixty (60) days of his discharge, of your intent to return to work.

(G) Upon your honorable discharge from military service your eligibility status under the Plan will be restored to the status that existed when he entered military service, provided you fulfill the notice and documentation requirements outlined above. In addition to said notice, you shall also supply the Fund Office with copies of your discharge papers showing the date of your induction or enlistment in military service and the date of your discharge. Failure on your part to file such documentation with the Fund Office and/or provide the above notice may be deemed an indication that you do not wish to restore your eligibility status under the Plan.

(H) A person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to the person's Employer (in the case of person described in subparagraphs (E)(1) or (E)(2) above) or submit an application for reemployment with such Employer (in the case of a person described in subparagraphs (E)(3) or (E)(4) above). Except as provided below, such period of recovery may not exceed two years. Such two-year period shall be extended by the minimum time period to accommodate the circumstances beyond such person's control which make reporting within the period specified in subparagraph (E)(1) impossible or unreasonable.

3.7 **What if I am rehired before I was entitled to a Retirement Benefit?**

(A) If you have a termination of employment at a time when you are not entitled to a retirement or vested benefit under the terms of the Plan in effect on your date of termination of employment, your Years of Service shall be cancelled at such time as your number of consecutive 1-year Breaks in Service prior to your rehire are equal to or greater than the larger of:

- (1) five (5) consecutive one (1) year Breaks in Service; or

- (2) the number of Years of Service to which you were entitled determined as of the date of your termination of employment.

(B) In the event your number of years of consecutive one (1) Year Breaks in Service is less than (A)(1) or (2) above, you shall have all of your Years of Service to which you were entitled as of the date of your most recent termination of employment reinstated.

(C) The Board of Trustees is required to credit you with no more than 401 Hours of Vesting Service for a maternity or paternity leave of absence or services in the armed forces, if necessary to avoid incurring a Break in Service in one Plan Year. Generally, maternity or paternity leaves are taken on account of pregnancy, birth or adoption of your child. The Board may require you to furnish it with proof that a leave of absence qualifies as a maternity or paternity leave.

3.8 What is an Hour of Service or Hours Worked?

Hours Worked/Hours of Service will be credited for:

- (A) each hour that you are directly or indirectly paid or entitled to payments by the Employer for services which you perform,
- (B) each hour that you are directly or indirectly paid or entitled to payment by the Employer for periods of time other than for the performance of services (such as vacation, holidays, sickness, jury duty, disability, layoff, military duty or authorized leaves of absence) and,
- (C) each hour for back pay awarded or agreed to by the Employer without regards to mitigation of damages.

IV. BENEFIT FORMULA

The Employee Retirement Income Security Act of 1974 (ERISA) established maximum amounts for monthly income plans. The maximums are relatively high and you will be advised if your individual benefit is restricted by the ERISA limits. The amount of the retirement

benefit described below will be provided on your retirement date from available funds held under this Plan to be paid to you monthly in accordance with the normal form of income. This benefit, when effective, will provide monthly income payments to you for the rest of your life.

4.1 What will be the amount of my Normal Retirement Benefit?

(A) Unless you are a terminated vested Participant, your monthly retirement income at your Normal Retirement Date will be equal to the sum of your Past Service Benefit and your Future Service Benefit:

- (1) **Past Service Benefit:** If you are a member of Local No. 109, the Past Service Benefit is equal to your Years of Service for each Plan Year that you worked in the jurisdiction of Local No. 109 between May 1, 1955 and May 1, 1965 times \$1.60. The Past Service Benefit shall also include a benefit of \$16.00 if you were working within the jurisdiction of Local No. 109 as of May 1, 1955.

If you are a former member of Local Union No. 131, 140, 232 or a member of Local Union No. 39 and that local is affiliated with the Local 109 Pension Plan, your Past Service Benefit will be equal to \$1.60 times your Years of Past Service as defined in Question 3.3.

- (2) **Future Service Benefit:** The Future Service Benefit for active Participants shall be equal to 5% of all Employer Contributions made to the Trust Fund on your behalf prior to May 1, 1999 and 4% of all Employer Contributions made to the Trust Fund on your behalf on or subsequent to May 1, 1999.

If you are a terminated vested Participant, your Future Service Benefit will be calculated in accordance with the benefit formula that was in effect at the time you attained terminated vested status.

V. RETIREMENT DATES AND BENEFITS

Generally there are three (3) types of retirement benefits under the Pension Plan: Normal Retirement, Early Retirement, and Disability Retirement. See Section VIII for Vested Deferred Benefits under the Plan.

5.1 NORMAL RETIREMENT

(A) When is my Normal Retirement Date?

Your Normal Retirement Date will be the date you retire from employment with all Employers and you have reached your Normal Retirement Age. Your Normal Retirement Age is age 65 with Ten (10) Years of Service prior to May 1, 1997 or Five (5) Years of Service with at least One (1) Hour of Service completed on or after May 1, 1997 or at least age 55 with 30 Years of Service under the Plan.

(B) What will be the amount of my Normal Retirement Benefits?

Your Normal Retirement Benefit will be the amount equal to the benefit provided for in the Benefit Formula (see “Benefit Formula” at Section IV).

5.2 EARLY RETIREMENT

(A) When will I be eligible for Early Retirement?

Your Early Retirement Date will be the date you retire from employment with all Employers and you have reached your Early Retirement Age. Your Early Retirement Age is at least age 55 with Ten (10) Years of Service.

(B) What is the amount of my Early Retirement Benefit?

If you retire early, your monthly benefit will be equal to your Normal Retirement Benefit as described in Section IV, reduced by 4/10 of 1% for each month you are younger than 65 when your benefit begins.

5.3 DISABILITY RETIREMENT**(A) What are the requirements for a Disability Retirement Benefit?**

If you have not forfeited your service you shall be eligible to receive a Total and Permanent Disability Benefit provided:

- (1) You are totally and permanently disabled as defined below:
- (2) You have at least Ten (10) Years of Service; and
- (3) You have elected and applied for a Total and Permanent disability Benefit on a form described by the Trustees, and the Trustees have approved the application.

(B) What is considered to be a Permanent and Total Disability? A Participant shall be considered permanently and totally disabled if the Participant has applied for permanent disability benefits from the Social Security Administration and the application has been finally approved. If a Participant's application for permanent disability benefits from the Social Security Administration has not been approved, or if no application has been made, the Trustees may deem a Participant permanently and totally disabled if, in their sole and exclusive discretion, they find that, on the basis of reasonable medical evidence, the Participant suffers from a physical or mental condition which prohibits the Participant from engaging in any in the same trade or same craft for wage or profit for the remainder of his working life; and, that the Participant earns no more than Twelve Thousand Dollars (\$12,000.00) per year as a result of his engaging in an occupation for wage

or profit, as verified by the Participant's federal income tax returns. Notwithstanding any other provision of this section, a Participant shall not be deemed to be totally and permanently disabled under this Plan if the disability was contracted, suffered or incurred while the Participant was engaged, directly or indirectly, in a criminal activity, or resulted from an intentionally self-inflicted injury, or from an injury, wound, or disability suffered or arising out of the Participant's involvement in military or war time activities. The Trustees shall have the power to require you to be examined by a physician or clinic chosen by the Trustee, or to require you to submit evidence of your Social Security Disability Award as, in their discretion, they deem appropriate. Provided, however, the Trustees will not normally require more frequent examination than twice in any twelve (12) month period.

(C) **What if my Disability involves chronic alcoholism?** In the event your Total and Permanent Disability is occasioned by chronic alcoholism, your right to receive a monthly Total and Permanent Disability Benefit shall terminate with the twelfth (12th) monthly payment. To receive any additional monthly Total and Permanent Disability Benefits, you must reapply for same and submit evidence satisfactory to the Trustees that he has, in fact, made reasonable efforts at rehabilitation. Such re-application shall be required at the end of each twelve (12) month period and said evidence must be submitted with each such re-application.

(D) **What is the amount of my Total and Permanent Disability Benefits?** Your Total and Permanent Disability Benefit shall be a monthly benefit equal to your accrued benefit as of the date you are determined to be totally and permanently disabled. Unless the Participant and his Spouse elect otherwise, or the Participant has no Surviving Spouse, the Total and Permanent Disability Benefit shall be paid as a Joint & Survivor Benefit.

(E) **When will my Total and Permanent Disability Benefits begin?** A Participant who meets the eligibility requirements for Total and Permanent Disability Benefits, shall become entitled to a Total and Permanent Disability Benefit as of the first day of the month next following the date the Participant was considered to be totally and permanently disabled, but no earlier than twelve (12) months preceding the receipt of the application and providing the Participant was considered to be totally and permanently disabled as of that date.

Your disability benefits will be terminated if:

- (1) You are not longer considered to be Totally and Permanently Disabled or the Trustees determine that you have sufficiently recovered to resume work within the same industry, trade or craft; or
- (2) You refuse to undergo a medical examination requested by the Trustees [this cannot be required more than twice in a 12 month period].

Such termination of disability Benefits will no way prejudice you from receiving other benefits as provided in the Plan.

(F) **What if a Participant is Re-employed After Termination of Total and Permanent Disability Benefits.** In the event Total and Permanent Disability Benefits under this Plan are terminated, and a Participant re-retires in the future, the reinstated benefits shall be determined as follows:

- (1) Disability Benefits - The new Disability Benefits shall be equal to the amount the Participant was previously receiving, plus any additional service earned after re-employment.
- (2) Early Retirement - The Early Retiree who had previously received Total and Permanent Disability benefits will have his benefits determined on the basis of the amount of his Accrued Benefit prior to his receiving disability benefits, plus any additional benefit earned

after re-employment, the sum of which will be reduced by his early retirement reduction factor.

- (3) Normal Retirement - The Normal Retirement Benefit will be the same benefit he was receiving under the disability benefit plus any additional benefit earned after re-employment.

5.4 SPECIAL DISABILITY BENEFIT

What are the requirements for a Special Disability Benefit? A Participant who is eligible for an early retirement benefit, and who has pending on the date of his application for an early retirement benefit an application for permanent disability benefits from the Social Security Administration, shall be entitled to a regular Disability Benefit under this Plan if the Social Security Administration finds the Participant to be permanently and totally disabled under his application. Upon such approval by the Social Security Administration, the Participant shall be entitled to a regular disability benefit retroactive to the date of his application for an early retirement benefit under this Plan. In order to be eligible for the benefit provided by this Section, the Participant must supply the Plan Administrator with a copy of his application for permanent disability benefits from the Social Security Administration at the time the Participant makes application for his early retirement benefit; and, the Participant must supply the Administrator, within thirty (30) days of his issuance, with a copy of the decision by the Social Security Administration finding the Participant to be totally and permanently disabled.

VI. PAYMENT OF BENEFITS

6.1 What is the normal form of benefit for single Participants?

The normal form of benefit is a guaranteed amount payable monthly for as long as you live. In the event your death occurs before the end of the first 60 monthly payments, payments will be continued to your beneficiary for the balance of the 60 month period.

6.2 What is the normal form of benefit for married Participants?

The automatic form of pension benefit for married Participants is a Qualified Joint and Survivor Annuity. You shall have a 90 day period prior to the date on which your benefits are to commence to elect out of this form of payment. Your election out of this form of payment must be consented to by your Spouse and witnessed by a Plan Representative or a notary public. If proper election is made to waive this payment form, distribution may be made in accordance with any of the optional forms provided by the Plan.

6.3 What is a Qualified Joint and Survivor Annuity?

A Qualified Joint and Survivor Annuity provides a monthly income for as long as you live, and upon your death, the benefit payments continue to your Spouse. The monthly amount of benefit payment to your surviving Spouse is an amount equal to 50%, 75%, or 100% (as elected by you) of the monthly benefit you were receiving when your death occurred.

Under the Qualified Joint and Survivor Annuity, your monthly benefit will be adjusted to provide benefits to your surviving Spouse. Prior to your Normal Retirement Date, the Plan Administrator will provide you with more detailed information regarding the financial effect of the Qualified Joint and Survivor Annuity.

Effective May 1, 1998, if your Spouse dies before you, after your application for and/or entitlement to a Joint and Survivor Annuity benefit, you may apply for a life annuity in the form of a monthly benefit which shall commence on the date of your Spouse's death or the date that your original Joint and Survivor benefits were to begin whichever is later. This benefit will be equal to the monthly benefit you would have received had the Joint and Survivor Annuity benefit been waived by you or if you had no Spouse at the time of your retirement.

Effective May 1, 1998 a Qualified Joint and Survivor Annuity benefit will be available in the form of a Ten Year Certain benefit. This benefit provides that at least 10 years of full benefit payments will be paid. If you do not live for ten years, then your Spouse will receive full payments for the rest of the 10 year period, and then the benefit will be reduced by fifty percent (50%) if the benefit is paid under a Joint and 50% Survivor benefit form, be reduced by twenty-five percent (25%) if the benefit is paid under a Joint and 75% Survivor benefit form or the benefit will continue to be paid in full if it is based on the Joint & 100% Survivor benefit form (as elected by you and/or your Spouse). If both you and your Spouse do not live for 10 years, then the remainder of the 10 years of payments will be made to your Beneficiary or Beneficiaries.

6.4 May I choose between different forms of retirement payments when I retire?

(A) Yes. The optional forms shall be actuarial equivalents to the normal form of benefit payment. The amount of benefit may be more or less than the amount payable under the normal form of benefit payment, depending on the option elected. A full explanation of these options will be made at the time you wish to make an election.

(B) **Life Annuity Form.** This option provides a monthly income for you as long as you live. No further benefits are provided after your death.

(C) **Ten-Year Certain Form.** This option provides a monthly income for you as long as you live. In the event your death occurs before the end of the 120 monthly payments, payments will be continued to your Beneficiary for the balance of the 10 year period.

6.5 When are my Retirement Benefits paid to me?

Normal Retirement Benefits are payable to you on the first day of the month following receipt of your application by the Trustees. Early Retirement Benefit or Disability Benefits will normally begin on the first day of the month following your submission of completed application forms. You may, with certain restrictions, defer payment of your benefit to a later date.

6.6 How are my benefit payments taxable to me?

Your distribution will be taxed to you each year as ordinary income.

6.7 May my retirement benefits be suspended for any reason once they have begun?

Certain retirement benefits may be suspended for re-employment for 40 hours or more per calendar month if you work beyond any Retirement Age under the Plan within the same geographical area covered by the Fund. For the specific rules regarding the above as well as required notices, presumptions, reinstatement rights, advance determinations, and offset rules, you should contact the Board of Trustees.

6.8 What if my retirement benefits exceed the limits provided by law?

If your benefit payments exceed the limits imposed by the Internal Revenue Code (Section 415) your excess benefits shall be paid by through the Operative Plasterers & Cement Masons Local 109 Excess Benefit Plan. This Plan is a nonqualified benefit plan which was created by the Board of Trustees so your benefits would not be reduced by the benefit limits imposed by law. Therefore, you will be able to receive your full benefit.

VII. DEATH BENEFITS

7.1 What is the Plan's Pre-Retirement Death Benefit for married Participants?

(A) If your death should occur after you have completed ten (10) Years of Service, prior to May 1, 1997, or Five (5) Years of Service with at least One (1) Hour of Service completed on or after May 1, 1997, whether or not your employment with an Employer has terminated and you were married at the time of your death, your surviving Spouse will be entitled to receive a 100% Survivor Benefit payable for the remainder of his/her lifetime. Payment of the 100% Survivor Benefit may begin to your Spouse on what would have been your earliest retirement date and shall be a paid in the form of a Ten Year Certain benefit. The amount of the Spouse's monthly 100% Survivor's Benefit is calculated as follows:

- (1) Your Accrued Benefit as of your date of death is calculated,
- (2) Your Accrued Benefit is actuarially reduced for payment on what would have been your earliest retirement date (if you were eligible for Normal Retirement, no reduction is necessary),
- (3) The benefit in item 2 is converted to an actuarial equivalent annuity calculated as if you had retired and elected a Joint and 100% Survivor Annuity,
- (4) The resulting benefit in item (3) is multiplied by 100%.

(B) You have the right to waive out of the Pre-Retirement Survivor Annuity benefit and designate all of your death benefits to be paid to a Beneficiary of your choice in the benefit form described in Question 7.2. However, your Spouse must consent to this waiver. Your Spouse's signature must be witnessed by a Plan representative or notary public on a form to be supplied by the Plan Administrator. If the actuarial lump sum value of any death benefit described in this Question

7.1 or Question 7.2, is not greater than \$5,000, the Trustees may pay such benefit in one single lump sum payment to the Spouse or Beneficiary.

7.2 What is the Plan's Pre-Retirement Death Benefit for non-married Participants?

If your death should occur after you have completed ten (10) Years of Service prior to May 1, 1997 or five (5) Years of Service with at least One (1) Hour of Service completed on or after May 1, 1997, whether or not your employment with an Employer has terminated and you are not married, your beneficiary will be entitled to a monthly benefit equal to your Accrued Benefit as of your date of death. The monthly payments shall begin as of the first day of the month following the month in which your death occurred and shall be paid each month thereafter, for a total of 60 months. If your beneficiary dies prior to receiving 60 payments, the remainder of the payments shall be paid to your Beneficiary's Estate. However, the Trustees may decide to pay the remainder of the payments in an equivalent lump sum amount.

7.3 What other Pre-Retirement Death Benefits are available?

If you have not lost credit for your prior Years of Service (as described in Question 3.7) and you die prior to obtaining ten (10) Years of Service, or Five (5) Years of Service with at least One (1) Hour of Service completed on or after May 1, 1997, your Beneficiary shall be entitled to 100% of the Employer contributions made on your behalf, up to a maximum of \$20,000.00.

7.4 Designation of Beneficiary.

Subject to the spousal consent restrictions of Section 7.1, you may name any beneficiary you choose to receive death benefits and may change your beneficiary at any time on forms provided by the Fund Office. You should notify the Plan Administrator of any change in your

marital status since your Spouse has certain rights to the waiver of the Pre-Retirement Survivor Annuity benefit.

7.5 Benefit Reductions That Occur Because of IRS Regulations.

IRS regulations may require a reduction in your monthly retirement benefit if the amount of that benefit exceeds certain limits established by the IRS. In order to avoid this benefit reduction, the Trustees have established an Excess Benefit Plan. If your monthly benefit is reduced as a result of IRS regulations, the amount of the benefit that you have lost will be paid to you under the provisions of the Excess Benefit Plan. For example, if your monthly retirement benefit is \$500.00, and IRS regulations permit you to receive a maximum monthly benefit of \$450.00, the \$50.00 benefit that you otherwise would lose will be paid to you under the Excess Benefit Plan. If IRS regulations are changed in the future, and benefit reductions are eliminated, you will then receive your full benefit under the Local 109 Pension Plan. If you have any questions about the operation or administration of the Excess Benefit Plan, including the process for making application for benefits under that Plan, please contact the Plan Administrator's office.

VIII. VESTED DEFERRED BENEFITS

8.1 What does a “vested deferred benefit” mean?

A “vested deferred benefit” means that you are entitled to the benefit without the requirement of continuing your employment. Once your benefits have vested, they are “non-forfeitable”, that is, they can never be taken away from you. Although you might not receive payment of it until a later date, you are absolutely entitled to it at such time as it is payable.

8.2 What will be the amount of my Vested Deferred Normal Retirement Benefit?

(A) Your monthly retirement income at your Normal Retirement Date will be equal to the sum of your Past Service Benefit and your Future Service Benefit:

(1) **Past Service Benefit:** If you are a member of Local No. 109, the Past Service Benefit is equal to your Years of Service for each Plan Year that you worked in the jurisdiction of Local No. 109 between May 1, 1955 and May 1, 1965 times \$1.60. The Past Service Benefit shall also include a benefit of \$16.00 if you were working within the jurisdiction of Local No. 109 as of May 1, 1955. If you are a former member of Local Union No. 131, 140, or a member of Local Union No. 39 or 232 and that local is affiliated with the Local 109 Pension Plan, your Past Service Benefit will be equal to \$1.60 times your Years of Past Service as defined in Question 3.3.

(2) **Future Service Benefit:** The Future Service Benefit for active Participants shall be equal to the greater of the following:

5% of all Employer Contributions made to the Trust Fund on your behalf prior to May 1, 1999 and 4% of all Employer Contributions made to the Trust Fund on your behalf on or after to May 1, 1999.

8.3 What is the amount of my Vested Deferred Early Retirement Benefit?

If you retire early, your monthly benefit will be equal to your Normal Retirement Benefit as described in Section IV, reduced by 4/10 of 1% for each month you are younger than 65 when your benefit begins.

8.4 How are my vested benefits determined?

The vested amount of your Accrued Benefit is a percentage based upon the number of Years of Service for which you are given credit. Your Vested Percentage is determined according to the following schedule:

<u>Years of Service</u>	<u>Percentage of Accrued Benefit Vested</u>
Less than 10 (for service prior to May 1, 1997)	0%
Less than 5 and do not have at least one (1) Hour of Service after May 1, 1997)	0%
More than 10 (for service prior to May 1, 1997) or more than 5 (and have at least one Hour of Service after May 1, 1997)	100%

8.5 If I terminate employment for reasons other than retirement, when will payment of my vested deferred benefit begin?

If you terminate employment for reasons other than retirement, payment of your vested benefit will be deferred to your earliest eligible Retirement Date. The amount of your benefit will be based on your Accrued Benefit, less any required reduction, on your termination date.

IX. MISCELLANEOUS PROVISIONS

9.1 Can my Accrued Benefit be assigned?

A Participant's interest in his Accrued Benefit, including his "Vested" interest, may not be alienated, that is sold, used as collateral for a loan, given away, or otherwise transferred. Also, a Participant's creditors may not attach, garnish or otherwise interfere with a Participant's Accrued Benefit. However, the Board may be required by law to recognize obligations as a result of court ordered child support or alimony. The Board must honor a "Qualified Domestic Relations Order", which is defined as a decree or order issued by a court that obligates you to pay child support or alimony, or otherwise allocates a portion of your assets in the Plan to your Spouse, former Spouse, children, or other dependents. If such an order is received by the Board, all or a portion of your

benefits may be used to satisfy the obligation. The Board shall determine the validity of any domestic relations order it receives.

However, a Participant's accrued benefit in this Plan also may be paid to the Plan if the Participant is ordered or required to pay the Plan and if:

(A) The order or requirement to pay arises under a judgment, order, decree, or settlement stemming from certain crimes or violations of ERISA as follows:

(i) A judgment of conviction for a crime involving the Plan (Code Sec. 401(a)(13)(C)(i)(I));

(ii) A civil judgment (including a consent order or decree) entered by a Court in an action brought in connection with a violation (or an alleged violation) of ERISA's fiduciary responsibility provisions (Code Sec. 401(A)(13)(C)(i)(II)); or

(iii) A settlement agreement between IRS and the Participant or a Settlement Agreement between the Pension Benefit Guarantee Corporation (PBGC) and the Participant, in connection with the violation (or alleged violation) or ERISA's fiduciary responsibility provisions by a fiduciary or any other person (Code Sec. 401(a)(13)(C)(i)(III));

(B) The judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the Plan against the Participant's plan benefits; and

(C) Where the Qualified Joint and Survivor Annuity and/or Qualified Pre-Retirement Survivor Annuity requirements apply to Plan distributions to the Participant (under Code Sec. 401(A)(11)), the rights of the Participant's Spouse to survivor benefits must be preserved. If the Participant has a Spouse at the time at which an offset is made against the Participant's Plan benefits

and the Qualified Joint and Survivor Annuity and/or Qualified Pre-Retirement Survivor Annuity requirements apply; then:

(i) either (a) the Spouse must consent in writing to the offset, and the consent must be witnessed by a Notary Public or Plan Representative (or it is established there is no Spouse, the Spouse cannot be located, etc.); or (b) an election to waive the Spouse's right to a Qualified Joint Survivor Annuity (QJSA) or a Qualified Pre-Retirement Annuity (QPSA) is in effect; or

(ii) the Spouse must have been ordered or required in the judgment, order, decree, or Settlement to pay an amount to the Plan in connection with the violation of fiduciary duty; or

(iii) In the judgment, order, decree, or settlement, the Spouse must retain the right to receive the Survivor Annuity under a QJSA and under a QPSA.

9.2 **How do I make a claim for Benefits?**

In anticipation of retirement or at termination of employment for any other reason, a Participant or his Beneficiary should make an application for any Plan benefits to which he is entitled on a written form provided by the Trustees who will act on such application.

Such request shall be considered a claim and shall be subject to a full and fair review. If a claim is wholly or partially denied, the claim may be appealed in accordance with the claims review procedure below.

Claims for benefits under the Plan may be filed with the Administrator on forms supplied by the Board of Trustees. Written notice of the disposition of a claim shall be furnished the claimant within 60 days after the application is filed. In the event the claim is denied, the reasons or the

provisions of the Plan shall be cited and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. Any Employee, former Employee, or Beneficiary of either, who has been denied a benefit shall be entitled, upon request to the Board of Trustees, to appeal the denial of his claim. If the claimant wishes further consideration of his position, he may obtain a form from the Board on which to request a hearing with it or, alternatively, the Review Committee. Such form, together with a written statement of the claimant's position, shall be filed with the Board no later than 60 days after receipt of the written notification. The Board shall schedule an opportunity for a full and fair hearing of the issue and decide on the appeal within 60 days after receipt of the written notification (unless there has been an extension of 60 days due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the 60 day period). The Trustees' or Committees' decision shall be communicated in writing to the claimant and shall advise the claimant if he has any right to further appeal the decision.

X. STATEMENT OF ERISA RIGHTS

As a Participant in the Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to:

(A) Examine, without charge, at the Board of Trustees'/Funds' office and at other specified locations, such a work sites and Union halls, where at least fifty individuals are employed, all Plan documents, including insurance contracts, Collective Bargaining Agreements and copies of all documents filed by the Plan with the U.S. Department of Labor, such as detailed annual reports and plan descriptions.

(B) Obtain copies of all Plan documents and other Plan information upon written request to the Board of Trustees. The Board may make a reasonable charge for the copies.

(C) A complete list of the employers and employee organizations sponsoring the plan may be obtained by Participants and Beneficiaries upon written request to the Plan Administrator, and is available for examination by Participants and Beneficiaries at the Plan Administrator's office or your union hall. Information as to whether a particular Employer or Employee organization upon written request of the Plan Administrator is a sponsor of the plan and, if the Employer or Employee organization is a plan sponsor and the sponsor's address.

(D) The Plan is maintained pursuant to one or more Collective Bargaining Agreements and a copy of any such agreement(s) may be obtained by you upon written request of the Plan Administrator, and is available for examination by Participants or Beneficiaries at the Union hall.

(E) Receive a summary of the Plan's annual financial report. The Board of Trustees is required by law to furnish each Participant with a copy of this summary annual report.

(F) Obtain a statement telling you whether you have a right to receive a pension at normal retirement age and if so, what your benefits would be at normal retirement age if you stop working under the Plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to obtain a right to a pension. This statement must be requested in writing and is not required to be given more than once a year. The Plan must provide the statement free of charge.

(G) In addition to creating rights for Plan participants, ERISA imposes duties upon the individuals who are responsible for the operation of the employee benefit plan. The individuals

who operate your Plan, called “fiduciaries” of the Plan, have a duty to do so prudently and in the interest of you and other Plan Participants and Beneficiaries. No one, including your Employer, your Union or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your rights under ERISA. If your claim for a benefit is denied in whole or in part you must receive a written explanation of the reason for the denial. You have the right to have the Plan review and reconsider you claim.

(H) Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the Plan and do not receive the within 30 days, you may file suit in a federal court. In such a case, the court may require the Board of Trustees to provide the materials and pay you up to \$110.00 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Board of Trustees. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that plan fiduciaries misuse the Plan’s money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the individuals you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous. If you have any questions about your Plan, you should contact the Board of Trustees.

(I) If you have any questions about this statement or about your rights under ERISA, you should contact the nearest Area Office of the U.S. Labor-Management Services Administration, Department of Labor or at the Pension and Welfare Benefit Administration Office located as follows:

U.S. Department of Labor
Pension & Welfare Benefits Administration
1730 K Street
Suite 556
Washington, DC 20006
(202) 254-7013

or

U.S. Department of Labor
Pension & Welfare Benefits Administration
1885 Dixie Highway
Suite 210
Ft. Wright, KY 41011-2664
(859) 578-4680