

**SUMMARY PLAN DESCRIPTION**  
**FOR THE**  
**OPERATIVE PLASTERERS AND CEMENT MASONS**  
**PROFIT SHARING ANNUITY PLAN**

**BOARD OF TRUSTEES**

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**OPERATIVE PLASTERERS AND CEMENT MASONS  
PROFIT SHARING ANNUITY PLAN**

November 2002

To All Annuity Plan Participants:

We are pleased to present you with this new book describing the current provisions of the Operative Plasterers and Cement Masons Profit Sharing Annuity Plan. This book includes Annuity Plan provisions which have been adopted through October 31, 2002.

We urge you to read this book carefully in order to become familiar with the provisions of the Annuity Plan.

Please understand that this is a general explanation only and that it does not cover all of the details of the Annuity Plan. This explanation does not change or expand or otherwise interpret the terms of the Annuity Plan. Your rights can be determined only by referring to the full text of the Annuity Plan.

Only the full Board of Trustees is authorized to interpret the Annuity Plan. No other individual or organization, such as your union or employer, nor any employee or representative of any individual or organization is authorized to interpret this Plan nor act as an agent of the Board of Trustees. Should you have any questions regarding the Annuity Plan, please direct them to the Plan's administrative manager at the Fund office.

We suggest that you share this book with your family since they may have an interest in the Annuity Plan. You should keep this book with your other important papers and let members of your family know where it is being kept.

Sincerely,

THE BOARD OF TRUSTEES

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## I. INTRODUCTION.

This pamphlet, distributed in November 2002, is designed to describe the benefits available to you under the **OPERATIVE PLASTERERS AND CEMENT MASONS PROFIT SHARING ANNUITY PLAN**. It is intended that this information will satisfy the requirements of the Employee Retirement Income Security Act of 1974 for a Summary Plan Description (hereinafter "Summary"). **Every effort has been made to avoid any conflict between this Summary and the text of the Plan itself; however, if there is a conflict between what is contained in this Summary and what is contained in the Plan itself, the terms of the Plan will govern.**

This Annuity Plan is maintained pursuant to various collective bargaining agreements between Local Unions of the OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION and various Employers which are bound to these collective bargaining agreements. Copies of the agreements are available for your examination at your Union Hall, and Participants and their Beneficiaries may also obtain a copy of the collective bargaining agreements for a reasonable charge by writing to Compensation Programs of Ohio, P.O. Box 230, Niles, Ohio 44446.

### **SPECIAL NOTICE!**

It is extremely important that you keep the Fund office informed of any changes in address, marital status or any desired change in beneficiary. This is your obligation and failure to fulfill this obligation could jeopardize your eligibility for benefits.

The importance of a current, correct address on file in the Fund office cannot be overstated! It is the **ONLY** way the Trustees can keep in touch with you regarding Plan changes and other developments affecting your interests under the Plan.



**II. ADMINISTRATIVE.**

**A. What Is The Name Of The Plan?**

The formal name of the Plan is the "OPERATIVE PLASTERERS AND CEMENT MASONS PROFIT SHARING ANNUITY PLAN."

**B. What Are The Names And Addresses Of The Employers?**

This is a multiemployer plan as that term is defined in the Employee Retirement Income Security Act of 1974, and numerous Employers contribute to it. It would not be practical to list them all here; however, upon written request to the Administrator of the Annuity Plan, you will receive information as to whether a particular Employer or Union is contributing to the Annuity Plan, and if so, its address.

**C. What Is The Name And Address Of The Administrator?**

Board of Trustees  
Operative Plasterers and Cement Masons Profit Sharing Annuity Plan  
P.O. Box 230  
Niles, Ohio 44446

**D. Who is the Administrative Manager and Handles the Day-to-Day Operations of this Plan?**

Compensation Programs of Ohio, Inc.  
P.O. Box 230  
Niles, Ohio 44446  
Ph. (800) 435-2388

**E. What Numbers Are Assigned To The Plan?**

The Employer Identification Number (EIN) assigned by the Internal Revenue Service to the Board of Trustees is 34-1736454, and the Plan number for purposes of identification is 001.

**F. What Type Of Plan Is This?**

The Annuity Plan is a profit sharing plan which is a type of defined contribution plan. The Annuity Plan is a defined contribution plan because an Employer makes contributions to the Annuity Plan based upon the hourly rate set forth in the Collective Bargaining Agreement in effect at the time the contribution is due. The amount contributed by an Employer is credited to your Credit Account (also referred to as your "Participant Account").

**G. What Is The Plan Year?**

The Plan Year means a twelve (12) month period beginning July 1 and ending June 30.

**H. What Type Of Administration Is Used For The Plan Assets?**

The principal and income of this Plan are to be used for the exclusive benefit of Participating Employees, their Beneficiaries and for defraying the proper expenses of administering the Plan.

**I. Who Administers The Plan?**

The Trust Fund is administered by a Board of Trustees presently consisting of twelve (12) Trustees, six (6) of whom shall be designated by the Employers (Employer Trustees), and six (6) of whom shall be designated by the Unions (Union Trustees). Four alternate Trustees may also be appointed. It is anticipated additional unions and employers may elect to participate in the Plan. If this occurs, the Board of Trustees may elect to expand the number of Trustees comprising the Board of Trustees. At the present time, they are:

UNION TRUSTEES

Daniel Owens  
Raymond Parr  
Carl J. Carcioppolo  
Robert Hahn  
Russell Maglionico  
Thomas R. Blevins  
Mark C. Smithson (Alternate)

EMPLOYER TRUSTEES

John V. Arsena  
James M. Butler  
Randy Fox  
Mark Potnick  
Russel C. School  
Robert J. Dalrymple  
Terry Lavorini (Alternate)

Correspondence can be made to the Board of Trustees at Operative Plasterers and Cement Masons Profit Sharing Annuity Plan, P.O. Box 230, Niles, Ohio 44446.

**J. Who Is The Agent For Service Of Process?**

Allotta and Farley Co., L.P.A.  
2222 Centennial Road  
Toledo, Ohio 43617

In addition, service of process may be made upon the Plan Administrator.

**K. Who Is The Investment Manager For The Plan?**

Manning & Napier Advisors, Inc.

6099 Riverside Drive  
Dublin, Ohio 43017

**L. Effective Date When Plan Began.**

May 1, 1993.

**M. Effective Date Of Summary Plan Description.**

This Summary Plan Description reflects Annuity Plan provisions which have been adopted through June 30, 2002.

**N. Who Pays The Cost Of The Fund?**

The benefits provided by the Fund are funded solely by Employer contributions required either by the collective bargaining agreement between your Employer and the Union or by a participation agreement between your Employer and the Fund. You are not required to make contributions to the Plan. At the present time, the Plan does not allow voluntary employee contributions, except for Rollover and Transfer Contributions from other qualified pension plans as defined in the Plan.

**III. PARTICIPATION.**

**A. Who Is Eligible To Participate In This Plan?**

You are eligible to participate in and receive benefits of the Plan if you work for an Employer who has been accepted as a Contributing Employer to the Plan by the Trustees and, you are:

1. An individual covered by a collective bargaining agreement between your Employer and the Union; or
2. An individual who is not covered within a bargaining unit but is a member of a class of employees that has been accepted for participation in the Plan, including eligible Alumni employees as defined in the Plan; or
3. An employee of the Union and/or the Board of Trustees.

**B. When Do I Become A Participant?**

You will become a Participant in the Plan as of the first day of the month following your completion one (1) Hour of Work in any Plan Year for an Employer who is bound to a collective bargaining agreement or other written agreement with the Union

requiring contributions to the Plan. Generally speaking, an Hour of Work is each hour of work for which you are paid by your Employer.

**C. How May My Participation In The Plan Be Terminated?**

Your participation in the Plan will cease upon the earliest of the following:

1. Your death; or
2. Your retirement from the trade jurisdiction of the Union; or
3. Your Total and Permanent Disability; or
4. Your failure to perform at least one (1) Hour of Work during a Plan Year; or
5. When you no longer have a balance in your Credit Account.

**D. If My Participation In The Plan Is Terminated, May My Participation In The Plan Be Restarted?**

If your participation in the Plan is terminated for any reason and you subsequently return to the employ of an Employer, your participation in the Plan will begin again when you have satisfied the requirements to participate described in Subsection B of Article III.

**E. Does This Plan Permit An Employer To Elect Coverage Of Its "Alumni" Employees ?**

Yes.

1. Any Employer who has agreed to contribute to the Annuity Plan on behalf of employees in the bargaining unit as defined in an agreement between an Employer and a participating Local Union of the Operative Plasterers and Cement Masons International Association may contribute on behalf of each and every Non-Bargaining Unit Employee who meets the following conditions:
  - (a) the employee is a Vested Participant; and
  - (b) during the current plan year or a prior plan year, at least one-half (1/2) of the employee's total hours of service for that year with any and all Employers were performed in a Union bargaining unit (AAAlumni Coverage=); and

- (c) the employee is not included in another unit of employees covered by a collective bargaining agreement with any other local union.
2. For Alumni Coverage to be permitted, the Employer must meet the following conditions:
- (a) execute a written Participation Agreement as required by the Trustees which binds the Employer to the terms of the Plan and any Rules and Regulations promulgated therein and, thereby, specifies the detailed basis upon which the contributions are to be made to the Plan; and
  - (b) specify in its written Participation Agreement that such Employer is electing coverage of its "alumni" employees; and
  - (c) certify in a manner acceptable to the Trustees that it is, in fact, covering all of its Alumni employees, except those that may be excluded under 1(b) above; and
  - (d) execute such documents as may be required by the Internal Revenue Service, or reasonably required by the Trustees, to enable the Plan to secure a determination letter of federal tax exemption or to support its tax exemption and/or qualified plan status.

In administering the "alumni coverage," the Trustees shall not permit any coverage inclusions or exclusions which would contravene the non-discrimination requirements of the Internal Revenue Code and federal tax regulations. The total number of Alumni employees participating in the Plan shall never exceed five percent (5%) of the total number of Employee Participants.

#### **IV. BENEFITS.**

##### **A. When Can I Retire?**

You may retire on the first day of the month which coincides with or immediately follows your Normal Retirement Date. Your Normal Retirement Date is the date you reach the age of sixty (60). You may also retire prior to the age of sixty (60) if you are receiving a pension benefit from a qualified defined benefit plan, such as the Cement Masons= Local 886-404 Pension Fund.

##### **B. May I Work Beyond My Normal Retirement Date?**

Yes, and you will continue to be credited with Employer contributions and investment earnings of the Plan until your actual retirement date. You will not be entitled to receive benefits until your actual retirement.

**C. What Is My Normal Retirement Benefit?**

When you reach your Normal Retirement Date and retire, you are entitled to the full value of your Credit Account.

**D. When Do My Benefits Become Vested?**

You are always "**vested**" in your Credit Account in the Plan. This means that the total value of your Credit Account belongs to you, although you may not be entitled to receive payment of the amount in your Credit Account until a later date, such as your retirement.

**E. What If I Leave Before I Retire?**

If you have been a vested Participant for twenty-four (24) months and your employment is terminated with an Employer for reasons other than retirement or disability, and you do not engage in any work within the trade jurisdiction as defined in the current Constitution of the Operative Plasterers and Cement Masons' International Association, within the geographical jurisdiction of the Union, as that jurisdiction is defined in the current Collective Bargaining Agreement for a period of twenty-four (24) consecutive months, and you have no right to any other form of benefit under the Plan, then you are entitled to the full value of your Credit Account. The Trustees have the sole discretion to make all determinations regarding whether you qualify for a distribution based upon your termination of employment.

**F. What If I Become Permanently Disabled?**

In the event you become totally and permanently disabled in accordance with the provisions of the Plan, you are entitled to the full value of your Credit Account. This will be determined by the Board of Trustees in their sole discretion. If you apply for Plan benefits due to total and permanent disability, you will be required to submit appropriate medical evidence to the Trustees for their review. You may also be required to submit to a medical examination. The Trustees have the sole discretion to make all determinations regarding whether you qualify for a Total and Permanent Disability Retirement Benefit.

In the event the Trustees determine that you qualify for a Total and Permanent Disability Retirement Benefit, you shall be entitled to the value of your Credit Account as of the latter of (a) the date which is six (6) months following the date the total and permanent disability was incurred; or (b) the expiration of payments made to you due

to your total and permanent disability from any wage continuation program maintained by the Union or your Employer. (If it is determined based upon satisfactory medical evidence, that you have a terminal or life-threatening disability, the Trustees may authorize an immediate distribution of the full value of your Credit Account). Such benefits shall continue until the earliest of (a) the date you recover from said permanent and total disability prior to the Normal Retirement Age; (b) your death; or (c) the date your Credit Account has been completely exhausted.

**G. How Is Total And Permanent Disability Defined?**

You are considered totally and permanently disabled if, in the opinion of the Trustees, you have a disability caused by an accident or an illness, has lasted or can be expected to last for a continuous period of not less than twelve (12) months and it is shown by medical evidence that it is likely to prevent you from performing duties as an Employee. The Trustees have the sole discretion to make all determinations regarding whether you qualify for a Total and Permanent Disability Retirement Benefit.

**H. What if My Claim for Benefits Due to Disability is Denied?**

In the event your claim for benefits due to disability is denied, you will be notified in writing by the Administrative Manager the reasons why your claim was denied.

The decision of the Administrative Manager shall: (1) set forth specific reasons for the adverse determination; (2) the plan provisions on which the determination was based; (3) a description of any additional information necessary for the claim to be granted and an explanation of why such information is necessary; (4) a description of the voluntary appeal procedures offered by the Plan; and (5) a statement regarding the your right to bring a civil action under ERISA §502(a) following an adverse benefit determination on appeal. Notification of an adverse decision shall occur within forty-five (45) days of the receipt of your claim by the Administrative Manager. If the Administrative Manager determines that more time is needed to process the claim due to matters beyond his/her control, the Administrative Manager will notify you of a thirty (30) day extension. If a second extension is needed, again due to matters beyond his/her control, the Administrative Manager will again notify you of a final thirty (30) day extension. No further extensions shall occur.

In the event your claim for benefits due to disability is denied, you may, by written notice received by the Administrative Manager within one hundred and eighty (180) days of your receipt of the notice denying your claim for benefits, appeal the decision. The written notice should state your name, address and the reasons why you are appealing from the decision of the Administrative Manager, giving the date of the decision appealed from.

The Board of Trustees shall consider the appeal no later than its next regularly scheduled meeting, which immediately follows the receipt of the notice of appeal unless such notice was filed within thirty (30) days prior to the next regularly scheduled meeting, then the Board of Trustees may consider the appeal at the second



meeting following the receipt of the notice of appeal. If special circumstances require an extension of time for processing, then the Board of Trustees may consider the appeal no later than the third meeting following the receipt of the notice of appeal.

After consideration of the appeal as above, the Board of Trustees shall advise you of its decision in writing within five (5) days following the meeting at which the appeal was considered. The decision of the Board of Trustees shall: (1) set forth specific reasons for their conclusions; (2) the plan provisions on which the determination was based; (3) a statement that you are entitled to receive upon request and free of charge, access to and copies of all documents and information relevant to the claim; (4) a description of the voluntary appeal procedures offered by the Plan; (5) a statement regarding your right to bring a civil action under ERISA §502(a) following an adverse benefit determination on appeal; and (6) a statement apprising you that "You or your plan may have other voluntary dispute resolution option, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your state insurance regulatory agency." The Board of Trustees shall have full authority to interpret the provisions of this Plan and it is within the sole and absolute discretion of the Trustees to determine if you are entitled to receive a benefit and the amount of the benefit. The decision shall be final and binding.

## **V. DISTRIBUTION OF BENEFITS.**

### **A. How Are My Retirement Benefits Paid To Me?**

#### **1. Married Participants.**

If you are married on the date payment of benefits begins, the amount in your Credit Account will be used to purchase a Joint and Survivor Annuity from an insurance company for you and your spouse. A Joint and Survivor Annuity is a monthly benefit which is paid to you while you are alive, with a survivor's annuity being paid to your spouse upon your death. The survivor's annuity paid to your spouse is equal to one-half (2) of the monthly benefit you received when you were alive. Payment of the survivor's annuity continues for the duration of your spouse's life. A written explanation of the Joint and Survivor Annuity will be provided by the Fund Office to you at least 30 days before the annuity starting date.

However, you and your spouse shall have a period of ninety (90) days before benefit payments begin during which to waive the Joint and Survivor Annuity. The waiver of the Joint and Survivor Annuity shall not be effective unless signed by you and your spouse indicating that your spouse consents to the waiver and to an optional form of payment. Your spouse's consent must acknowledge the effect of the waiver and be witnessed by a Plan representative or notary public.

If your spouse waives the Joint and Survivor Annuity, then you may select one of the optional forms of benefits available to Single Participants described below.

However, if your total Credit Account balance does not exceed \$5,000.00, the Trustees may distribute the total amount in your Credit Account to you in a single lump sum payment without your or your spouse=s consent.

## **2. Single Participants.**

If you are not legally married on the date you are entitled to commence benefit payments, you (and your spouse, if married on the date benefits are to begin and your spouse consents, as explained above) may elect to receive benefits in one of two optional forms of payment:

- (a) a lump sum distribution; or
- (b) substantially equal periodic installments (either monthly or annually) for a period not to exceed ten (10) years with the balance remaining in the Participant=s Credit Account receiving a pro rata distribution of the Fund=s earnings.

In the event you choose to receive benefits under option number 1 above, the Administrative Manager will notify you that (a) the lump sum distribution will not be taxed currently to the extent transferred to another qualified pension plan or Individual Retirement Account (IRA), and (b) the transfer must be made within 60 days of receipt in order to qualify for this tax-free rollover treatment.

In the event you choose to receive benefits under option number 2 above, you may request the Board of Trustees to accelerate the payments. The request must be in writing, be signed, and must give the reason for the requested acceleration of payment. The Trustees may, for good cause shown, authorize the accelerated payment.

If you have terminated employment with an Employer for reasons other than retirement or disability, and you do not engage in any work within the trade jurisdiction as defined in the current Constitution of the Operative Plasterers and Cement Masons' International Association, within the geographical jurisdiction of the Union, as that jurisdiction is defined in the current Collective Bargaining Agreement for a period of twenty-four (24) consecutive months as defined in Article IV, Section D of this Summary, then you may only receive benefits in the form of a lump sum under option number 1 above.

If your total Credit Account balance does not exceed \$5,000.00, the Trustees may distribute the total amount in your Credit Account to you in a single lump sum payment without your or your beneficiary=s consent.

## **B. When Are My Retirement Benefits Paid To Me?**

Normally, the Plan Administrator will commence making benefit payments to you within a reasonable time after you notify the Administrative Manager of your intent to retire and after you have completed the retirement election forms.

**C. When I Make An Application For Benefits, How And When Is My Credit Account Valued?**

The entire Fund's assets and each Participant's Credit Account are valued on an annual basis. The valuation is determined by the Fund's certified public accountant and is normally completed by September 30 for the Plan Year ending June 30. When you make an application for benefits, your Credit Account will be valued based upon the **last** valuation regardless of what has occurred in the financial markets after the last valuation was conducted.

**D. Will I Receive The Full Amount Of the Value Of My Credit Account?**

Normally you will receive the full value of your Credit Account based upon the last valuation except if your application for benefits is processed between July 1 and when the valuation is completed. During this time period you will receive 80% of the value of your Credit Account; the remainder will be paid to you after the valuation is completed and will be based upon that valuation.

**VI. BENEFITS PAYABLE AT DEATH.**

**A. In The Event Of My Death, Who Will Be Entitled To The Benefits In My Credit Account?**

Upon becoming a Participant, you may designate, on a form provided by the Trustees, the name of your Beneficiary. If you are married, the Beneficiary shall be your spouse unless your spouse has executed a legal waiver. Upon your death, all benefits in the Credit Account will automatically be paid to your spouse, unless your spouse has executed a waiver to said benefits. If you are not married, all benefits in the Credit Account will be paid to your designated Beneficiary. You should be sure that you have a current Beneficiary designation on file at the Fund Office to insure that the value of your Credit Account will be paid to the person of your choice in the event of your death.

If you are not survived by a spouse, or if you failed to designate a Beneficiary, then the value of your Credit Account shall be paid in a lump sum to the person or persons in the first of the following classes of successive deemed Beneficiaries then surviving: your (a) children (per stirpes); or (b) executor or administrator. (If no executor or administrator has been appointed for your estate within six (6) months following the date of your death, any death benefits payable to the executor or administrator may be paid in equal shares to the person or persons who would be entitled under the intestate succession laws of the state of your domicile to receive your personal estate.)

If the Beneficiary is living at the time of your death but such person dies prior to receiving the death benefit, such death benefit shall be paid to the estate of such deceased Beneficiary in one lump sum. In any case, such lump sum shall be distributed within five years after your death.

**B. What Death Benefits Are Payable If I Should Die After Commencing My Benefit Payments?**

If you die after the distribution of your Credit Account has commenced, the distribution will continue or cease, as appropriate, in accordance with the manner in which your Credit Account was being distributed.

For example, if you are married and did not waive the Joint and Survivor Annuity, your spouse will receive a monthly benefit which is equal to fifty percent (50%) of the monthly benefit you were receiving while you were alive. If you had waived the Joint and Survivor Annuity and were receiving benefit payments in the form of monthly installment payments, then your beneficiary will receive the remaining balance in your Credit Account in a lump sum payment. If you had received your benefit in the form of a lump sum distribution in the entire amount of your Credit Account balance, then your beneficiary will not receive any death benefits because there is no balance remaining in your Credit Account.

**C. What Death Benefits Are Payable If I Should Die Prior To My Commencing Benefit Payments?**

**1. Married Participants.**

If you are married at the time of your death, and you die before the distribution of your benefits has commenced, the Plan Administrator shall purchase from the amount in your Credit Account a monthly annuity from an insurance company for the life of your spouse. This annuity will provide your spouse with a monthly benefit for the rest of his or her life. However, your spouse may waive this form of benefit distribution and elect to receive the amount in your Credit Account in one lump sum. In order to receive distribution of your Credit Account in one lump sum, your spouse must designate his or her request in writing. The designation must be witnessed by a Plan representative or notary public.

Without regard to whether you are married, if the amount in your Credit Account is \$5,000.00 or less, the Plan Administrator may distribute the amount to your beneficiary in one lump sum.

**2. Single Participants.**

If you are not married on the date of your death, the amount in your Credit Account will be distributed to your Beneficiary in one lump sum payment. At the option of your Beneficiary, the distribution may occur at any time within five (5) years from the date of your death.

## **VII. CONTRIBUTIONS AND ALLOCATIONS.**

### **A. Who Makes Contributions To My Credit Account?**

Your Employer makes contributions to your Credit Account based upon the hourly rate set forth in the Collective Bargaining Agreement at the time the contribution is due. You are not required, nor in fact permitted, to make contributions to your Credit Account.

Employer contributions shall be suspended while you are absent from employment because of an authorized leave of absence or military leave or layoff, until the day you work at least one (1) hour for the Employer, at which time Employer contributions on your behalf will automatically resume. Contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code or pursuant to the Plan's Rules and Regulations provided said Rules and Regulations are not inconsistent with Section 414(u) of the Internal Revenue Code.

### **B. What Happens If The Employer That I Work For Does Not Make Contributions To The Fund For The Hours I Worked?**

You will receive credit for the hours you were employed for purposes of vesting and participation in the Plan, even if your Employer did not make the contributions to the Fund for the hours that you worked. However, you will not receive credit for the amount of money that the Employer did not contribute since the Fund did not receive the money. Therefore, your Credit Account will only reflect the amount of contributions made by the Employer which have been received by the Fund.

You should report promptly any unpaid contributions to the Administrative Manager of the Plan or to your bargaining unit representative. The Plan Trustees have the power to demand, collect and receive Employers' contributions to the Fund, including the right to commence legal proceedings to collect the amount of unpaid contributions.

### **C. Can An Employer Ever Recover A Contribution It Has Made?**

No, except for contributions made in error. Under the terms of your Plan, all contributions made by the Employer must be used for the benefit of the Plan's Participants and their Beneficiaries. Under no circumstances can an Employer or other persons use such funds for purposes other than the exclusive benefit of the Plan Participants or Beneficiaries.

**D. How Is The Value Of My Credit Account Determined?**

The value in your Credit Account will be determined by the amount of Employer contributions to your Credit Account plus any pro rata net earnings less your pro rata share of administrative expenses. The administrative expenses include record keeping, collection of employer contributions, insurance, professional fees such as legal services, accounting services and consulting services, printing, postage and other normal operating expenses.

**E. Can My Payment Be Directly Rolled Over Into An Individual Retirement Account Or Another Employer Plan?**

Yes, if you are eligible, you may elect to have any portion of your payment directly rolled over, within 60 days after you elect to do so, directly into an individual retirement plan (IRA) or to another tax qualified plan. These transfers are referred to as Adirect rollovers. In a direct rollover, the eligible rollover payment is made directly from the Plan to an IRA or another employer plan that accepts rollovers. If you elect a direct rollover, you are not taxed on the amount rolled over until you later take it out of the IRA or the employer plan. The Administrative Manager will be able to assist you in processing a direct rollover.

**F. May I Make A Rollover Contribution To My Credit Account?**

You are permitted to transfer funds directly from another qualified, collectively bargained multiemployer defined contribution plan to your Credit Account, provided the trust from which the funds are transferred permits such a transfer, and the amount to be rolled over is at least \$200. This means that if you work in the jurisdiction of another local union that makes contributions on your behalf into a qualified collectively bargained multiemployer defined contribution plan (such as an annuity plan), then after you complete working in the jurisdiction of that local union you may contact the Administrator of the other plan and request to transfer your vested account balance directly to your Credit Account in the Operative Plasterers and Cement Masons Profit Sharing Annuity Plan. The Administrative Manager will be able to assist you in processing a direct rollover contribution. The Trustees have the sole discretion to determine whether to accept a Rollover Contribution, and their decision shall be final.

**VIII. HARDSHIP WITHDRAWALS.**

**A. What Is A Hardship Withdrawal?**

In the case of hardship you may apply for withdrawal of an appropriate portion of your Credit Account. A withdrawal will be deemed by the Trustees to be on account of hardship if the withdrawal is necessary in light of your immediate and large

financial needs. A withdrawal based upon financial hardship cannot exceed the amount reasonably required to meet your immediate financial need created by the hardship and not available from other resources reasonably accessible to you. Your resources shall be deemed to include those assets of your spouse and minor children which are reasonably available to you.

**B. Who Makes The Determination Of Financial Hardship?**

The Trustees in their sole discretion, by a majority vote of the then duly elected Trustees, shall make all determinations as to the existence of financial hardship and the amount required to meet the need created by the financial hardship considering all relevant facts and circumstances. Your request for a hardship withdrawal must be in writing to the Board of Trustees. If you are married, then your spouse must consent to the hardship withdrawal in writing and your spouse's signature must be witnessed by a plan representative or notary public. You may request a hardship withdrawal prior to attaining age fifty-nine and one-half (59½). If you have not attained age fifty-nine and one-half (59½), you may be subject to a federal income tax penalty.

You must submit proof of the financial hardship and the lack of other resources available to provide for such hardship, including representation by you that the financial need cannot be relieved through (i) reimbursement or compensation by insurance or otherwise; (ii) reasonable liquidation of your assets, to the extent such liquidation would not itself cause an immediate and heavy financial need; or (iii) other distributions or nontaxable loans from other plans maintained by an Employer, or by borrowing from commercial sources on reasonable commercial terms. The Trustees' decision as to the nature and adequacy of such proof shall be final and binding upon all concerned parties. Within a reasonable time after your request for a hardship withdrawal, the Administrative Manager will be able to tell you what portion, if any, from your Credit Account may be withdrawn for hardship.

**C. When Am I Eligible To Apply For A Hardship Withdrawal?**

You may not apply for a hardship withdrawal prior to obtaining a balance of at least \$2,000.00 in your Credit Account and the amount of the hardship withdrawal may not exceed 50% of the total amount of your Credit Account balance. You may not apply for a hardship withdrawal unless the amount required to meet the need created by the financial hardship is \$1,000.00 or more.

You may only request a hardship distribution once every twenty-four (24) months regardless of the number of years you have been in the Plan. In addition, the administrative expenses incurred in the processing of the hardship withdrawal will be charged to your Credit Account.

**D. What Are Valid Reasons To Obtain A Hardship Withdrawal?**

The determination of the existence of financial hardship and the amount required to meet the need created will be made on a uniform and nondiscriminatory basis by the Trustees based on the standards set forth herein and considering all relevant facts and circumstances. The Trustees in their discretion may permit hardship withdrawals with respect to only the following:

1. Medical expenses incurred by you, your spouse, children and other dependents, to the extent not subject to reimbursement through insurance or other coverage; or
2. The purchase (excluding mortgage payments) of your principal residence; or
3. Payment of tuition for the next quarter or semester of post-secondary education for you, your spouse, children or other dependents; or
4. The need to prevent eviction from or a foreclosure on the mortgage of, your principal residence.

The decision of the Trustees whether to permit a hardship withdrawal shall be final and binding and conclusive. The Trustees reserve the right to (a) add to, modify or change the terms or conditions for hardship withdrawals, or (b) eliminate hardship withdrawals from the Plan at their sole discretion at any time and for any reason.

## **IX. DOMESTIC RELATIONS ORDER.**

### **A. What Is A Qualified Domestic Relations Order?**

Your Plan, in accordance with law, must recognize a Qualified Domestic Relations Order. A "domestic relations order" is a judgment, decree or order (including approval of a property settlement agreement) entered by a court or administrative agency of competent jurisdiction that:

1. Relates to the provision of child support, alimony payments or marital property rights of a spouse, former spouse, child or other dependent of a Participant; and
2. Is made pursuant to a state domestic relations law.

A "domestic relations order" is a "Qualified Domestic Relations Order" (QDRO) if it creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable to a Participant under a plan, specifies required information, and does not alter the amount or form of plan benefits.



An "alternate payee" is a spouse, former spouse, child or other dependent of a Participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits under a plan with respect to the Participant. Thus, if a Qualified Domestic Relations Order requires the distribution of all or part of your benefits under the Plan to an alternate payee, the Trustees are required to comply with the order.

**X. CLAIMS PROCEDURE.**

**A. How Do I Make A Claim For Benefits?**

You make a claim for benefits by obtaining a benefit application form by writing to the Fund Office, OPERATIVE PLASTERERS AND CEMENT MASONS PROFIT SHARING ANNUITY PLAN, P.O. Box 230, Niles, Ohio 44446 or by calling the Fund Office, (800) 435-2388. The Fund Office will send you the necessary application forms and an explanation of the Joint and Survivor Benefit and the spousal consent requirements. Complete the application and return it along with any proof required by the Administrative Manager to determine your Benefit rights to the Fund Office.

In the event the Administrative Manager denies your application for benefits, you are entitled to appeal the decision in accordance with the appeal procedure established by the Trustees. If the denial of benefits by the Administrative Manager is not timely appealed as herein provided, then the decision of the Administrative Manager shall be final, binding and conclusive.

**B. When Will I Be Notified About My Application?**

Within ninety (90) days after receipt of your application and all necessary documents, the Administrative Manager will notify you in writing whether your application has been approved or disapproved.

**C. What Information Will Be Contained In My Notice?**

In the event your application is approved, you will be informed of the approval and the amount and duration of the Benefits granted together with all restrictions, conditions and limitations upon your receipt of Benefits, if any.

**D. What Information Will I Receive If My Benefits Are Denied?**

In the event of denial, your notice will state specifically the reasons for rejecting your application and will indicate those specific portions of the Plan and/or rules and regulations upon which the decision is based, and will also contain any other information required by law. Further, any denial or restricted acceptance will be

accompanied by an explanation of your rights to and procedure for further appealing the decision of the Administrative Manager to the Board of Trustees. Any benefits provided or administered by an insurance company will be subject to the insurance company's claims review procedure.

**E. How May I Appeal An Adverse Decision By The Administrative Manager To The Board Of Trustees?**

You may appeal an adverse decision of the Administrative Manager to the Board of Trustees within sixty (60) days of receipt of the notice specified in Sections B and D above. To appeal the denial of a claim, you must file a **written** request for review addressed to the Board of Trustees at the following address: OPERATIVE PLASTERERS AND CEMENT MASONS PROFIT SHARING ANNUITY PLAN, P.O. Box 230, Niles, Ohio 44446. This request must include:

1. Your name;
2. Your social security number;
3. Your address;
4. Your telephone number;
5. The date you filed your claim;
6. The type of claim you are making, for example, retirement, disability, termination;
7. The reason or reasons you disagree with the decision on your claim; and
8. The decision you are appealing.

You and your representative (designated by you in writing) may review relevant documents and submit a written statement to support your position. The Plan will not pay the fees of your representative, however.

**F. When Will I Receive a Decision from the Board?**

The Trustees shall consider the appeal no later than its next regular meeting which immediately follows the receipt of the notice of appeal, unless such notice was filed within thirty (30) days prior to the next regular meeting, then the Board of Trustees may consider the appeal at the second regular meeting following the receipt of the notice of appeal. If special circumstances require an extension of time for processing, then the Board of Trustees may consider the appeal no later than the third meeting following the receipt of the notice of appeal.

After consideration of the appeal as above, the Board of Trustees shall advise you of its decision in writing within five (5) days following the meeting at which the appeal was considered. The decision of the Board of Trustees shall: (1) set forth specific reasons for their conclusions; (2) the plan provisions on which the determination was based; (3) a statement that you are entitled to receive upon request and free of charge,

access to and copies of all documents and information relevant to the claim; (4) a description of the voluntary appeal procedures offered by the Plan; and (5) a statement regarding the your right to bring a civil action under ERISA §502(a) following an adverse benefit determination on appeal. The notice of decision shall be written in a manner calculated to be understood by you and shall make references to the pertinent Plan provisions upon which the decision is based. The Trustees shall have full authority to interpret the provisions of this Plan and it is within the sole discretion of the Trustees to determine if you are entitled to receive a benefit and the amount of the benefit. The decision shall be final and binding upon you unless appealed as herein provided.

You may, by written notice received by the Board of Trustees within fifteen (15) days of the mailing of the decision of the Trustees specified in the preceding paragraph, request a full hearing before the Board of Trustees. The written notice need only state your name, address, and the fact that you are requesting a full hearing before the Board of Trustees, giving the date of the decision of the Trustees.

After receipt of the notice specified in the preceding paragraph, the Board of Trustees will notify you in writing of the date, time and place set for a full hearing on your application by regular mail addressed to your address as shown on the notice of appeal. In no event will the date for the hearing be set for a time longer than the third regular meeting of the Board of Trustees following the receipt of the notice of appeal.

The time and place for the appeal hearing will be convenient and accessible to you, and you may, but need not, be represented by an attorney of your choice. At any time prior to the hearing, the Board of Trustees, at your written request, will reveal to you all sources of information outside of the application itself upon which the rejection or restriction was based, and allow you to examine all documents and records relating to the rejection or restriction then in the possession of the Board of Trustees.

**G. What Procedures Are Followed At The Hearing?**

A full written record shall be kept of the proceedings of the hearing.

1. In conducting the hearing, the Board of Trustees shall not be bound by the usual common law or statutory rules of evidence.
2. You and/or your attorney, if you have one, will have the right to review the written record of the hearing, make a copy of it, and file objections to it.

3. Copies of all documents and records introduced at the hearing will be attached to the record of the hearing and made a part of it.

All information upon which the Board of Trustees based their original decision will be disclosed to you at the hearing. In the event additional evidence is introduced by the Trustees which was not made available to you prior to the hearing, you will be granted a continuance not to exceed thirty (30) days, if you so request it. For purposes of this Section, evidence discovered upon examination of your witnesses shall not be considered Anew evidence.≡

You will be afforded the opportunity of presenting any evidence in your behalf. If you offer new evidence, the hearing may be adjourned for a period of not more than thirty (30) days so the Board of Trustees may, if it chooses, investigate and determine whether additional evidence or the accuracy of your new evidence should be introduced.

#### **H. When Will I Receive A Decision From The Board?**

Within thirty (30) days after the conclusion of the hearing, you will be mailed written findings of fact and the determination of the Board of Trustees. The decision of the Board of Trustees shall be final, binding and conclusive.

### **XI. MISCELLANEOUS PROVISIONS.**

#### **A. Is My Credit Account Protected From Creditors or Assignment?**

Your benefits under the Plan (before they are paid to you) may not be sold, used as collateral for a loan, given away or transferred in any other way. Further, your creditors may not attach, garnish or otherwise interfere with your benefits (before they are paid to you) except to the extent specifically provided by, or consistent with, applicable Federal law.

An example of a situation where all, or a part, of your benefits might be attached would be a situation where a Court ordered the Plan Administrator to pay some, or all, of your benefits to your spouse, former spouse, child or dependent on account of a marital separation, dissolution of marriage or divorce. Before this could happen, however, the terms of the court order would have to be presented to the Plan Administrator in a specific, legally-required format and the order would have to contain specific, legally-required information. (This type of order is known as a Qualified Domestic Relations Order, commonly referred to as a AQDRO,≡ and the person in

whose behalf benefits would be attached is called an Alternate Payee. See Section IX for additional information on QDRO's). The Plan Administrator will determine if a court order is a Qualified Domestic Relations Order.

**B. May The Terms Of The Plan Be Amended?**

The terms of the Plan can be amended. However, the Plan will never change in any way which will affect your right to benefits you have already earned. If the terms of the Plan are changed, the changes will only affect your rights to future benefits under the Plan. In addition to the right at any time to amend the Plan and Trust Agreement, the Board of Trustees shall also have the sole right at any time to merge or consolidate with, transfer the assets and liabilities of the Plan and Trust Fund to any other qualified plan and trust fund or receive the assets and liabilities of any other qualified plan and trust fund. Once again, such action by the Board of Trustees will not affect your right to benefits you have already earned.

**C. What Are My Rights In The Event That The Plan Is Either Totally Or Partially Terminated?**

Although it is not the intention of the Participating Employers, the Participating Unions or the Association to terminate the Plan, if the Plan ever is terminated, or if there is a partial termination affecting you, the amount which has been set aside for you in your Credit Account will not be subject to forfeiture.

The Trustees shall have the right at any time to terminate the Plan. Upon such termination, contributions made on your behalf will cease. The Trustees may direct that either benefits be distributed to you and all other Participants in one lump sum payment as soon as practicable, or the Trust be continued and benefits be distributed at the same time and in the same manner as if the Plan had not been terminated.

**D. May The Board Of Trustees Enter Into Reciprocal Agreements?**

The Board of Trustees may enter into Reciprocal Agreements with other qualified plans. If you have any questions about Reciprocal Agreements, please contact the Administrative Manager.

**E. Are The Benefits Of The Plan Insured?**

No. There is no need to insure your Credit Account. Since the Annuity Plan is a defined contribution plan, contributions are credited right into your own account. Since you are always 100% vested in your Credit Account, insurance protection is not necessary because there is no risk of forfeiture. Recognizing this, the government exempts defined contribution plans from buying termination insurance. Thus, Annuity plans (such as the Plan) are not permitted to purchase termination insurance.

## **XII. ERISA RIGHTS.**

### **A. What Rights Do I Have Under The Employee Retirement Income Security Act?**

As a Participant in the Operative Plasterers and Cement Masons Profit Sharing Annuity Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974. ERISA provides that all Plan Participants are entitled to:

1. Examine, without charge, at the Plan Administrator's office and at other locations (certain worksites and the Union Hall), 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 annual reports and Plan descriptions.
2. Obtain copies of all Plan documents and other Plan information upon written request to the Plan Administrator. The Administrator may make a reasonable charge for the copies, not to exceed 25¢ per copy.
3. Receive a summary of the Plan's Annual Report (Form 5500). The Plan Administrator is required by law to furnish each Participant with a copy of this summary financial report.
4. Obtain, once a year, a statement of the total pension benefits accrued and nonforfeitable, if any, or the earliest date on which benefits will become nonforfeitable. The Plan may require a written request for this statement but it must provide the statement free of charge.
5. Receive a written explanation from the Plan Administrator if your claim for a benefit is denied in whole or in part. You have the right to have your claim reviewed and reconsidered.
6. Not be discharged or discriminated against to prevent you from obtaining a benefit or for exercising your ERISA rights.

In addition to creating rights for Plan Participants, ERISA imposes obligations upon the persons who are responsible for the operation of an employee benefit plan. These persons are referred to as Fiduciaries in the law. Fiduciaries must act solely in the interest of the Plan Participants and they must exercise prudence in the

performance of their Plan duties. Fiduciaries who violate ERISA may be removed and required to make good any losses they have caused the Plan.

Under certain circumstances, outside assistance may be necessary to resolve disputes between you and Plan officials. For example:

1. If you are improperly denied a pension benefit in full or in part, you have a right to file suit in a federal or state court.
2. If Plan fiduciaries are misusing the Plan's money, or if you are discriminated against for pursuing a benefit or exercising your ERISA rights, you have a right to file suit in a federal court or request assistance from the U.S. Department of Labor. If you are successful in your lawsuit, the court may, if it so decides, require the other party to pay your legal costs, including attorney's fees. If you lost your suit, the court may order you to pay the costs and fees if, for example, the court decides your suit was frivolous.
3. If any materials requested are not received, you may file suit in a federal court, unless the materials were not sent because of matters beyond the control of the Plan Administrator.

If you have any questions about this Summary or your rights under ERISA, you should contact the Administrative Manager at (800) 435-2388 or the nearest Area Office of the Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The nearest Area Office of the Pension and Welfare Benefits Administration is the Cincinnati Regional Office, 1885 Dixie Highway, Suite 210, Fort Wright, Kentucky 41011 at (606) 578-4680.

**BOARD OF TRUSTEES OF THE OPERATIVE  
PLASTERERS AND CEMENT MASONS PROFIT  
SHARING ANNUITY PLAN**