

UNITED MINE WORKERS OF AMERICA  
CASH DEFERRED SAVINGS PLAN OF 1988

Effective May 1, 1988

As Amended and Restated  
July 1, 2011

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TABLE OF CONTENTS

Preamble

ARTICLE I

Definitions

1.01	Age.....	1
1.02	BCOA.....	1
1.03	Beneficiary.....	1
1.04	Calendar Quarter.....	1
1.05	Code.....	1
1.06	Compensation.....	2
1.07	Earnings.....	2
1.08	Employee.....	2
1.09	401(k) Contributions.....	2
1.10	401(k) Contributions Account.....	2
1.11	Employer Contributions.....	3
1.12	Employer Contributions Account.....	3
1.13	Participant Account.....	3
1.14	Employer.....	3
1.15	ERISA.....	3

1.16	Funds .....	4
1.17	Highly Compensated Employee .....	4
1.18	New Inexperienced Miners.....	4
1.19	Normal Retirement Date.....	4
1.20	Participant.....	5
1.21	Payday .....	5
1.22	Plan – Name Of .....	5
1.23	Plan Year .....	5
1.24	Regulations .....	5
1.25	Retirement Date .....	5
1.26	Terminated Participant .....	5
1.27	Trust Agreement.....	6
1.28	Trustee .....	6
1.29	Trust Fund.....	6
1.30	Union or UMWA.....	6
1.31	Wage Agreement.....	6
1.32	Masculine, Feminine, Singular and Plural.....	6

ARTICLE II

Requirements for Eligibility - Manner of Becoming Participant

2.01	Eligibility Requirements.....	7
2.02	Notification and Method of Becoming a Participant.....	7

ARTICLE III

Contributions

3.01	401(k) Contributions.....	8
3.02	Employer Contributions .....	11
3.03	Limitations on Amount to be Contributed.....	12
3.04	Rollovers.....	12
3.05	Retroactive Contributions .....	13

ARTICLE IV

Investment - Accounts - Trust Fund

4.01	Valuation Date.....	13
4.02	Participant Account .....	13
4.03	Investment Provisions.....	14
4.04	Determination of Participant's Equities .....	14
4.05	Method of Valuation.....	16

ARTICLE V

Retirement

5.01	Retirement .....	16
5.02	Deferred Retirement .....	16
5.03	Amounts and Methods of Payment .....	16
5.04	Commencement of Benefits .....	17
5.05	Direct Rollovers.....	18

ARTICLE VI

Death

6.01	Amount of Benefit .....	20
6.02	Beneficiary.....	20

ARTICLE VII

Termination of Employment

7.01	Termination of Employment .....	21
7.02	Vested Benefits.....	21
7.03	Notification of Benefits .....	21
7.04	Time and Manner of Payment of Interest.....	21
7.05	Rehiring Terminated Participant .....	21
7.06	Ineligible Participant.....	22
7.07	Transfer of Employment.....	22

ARTICLE VIII

Withdrawals - Suspension of Contributions

8.01	Withdrawals.....	23
8.02	Time of Payment .....	24
8.03	Suspension of 401(k) Contributions .....	24

ARTICLE IX

Trust Fund

Amendment and Termination of Plan

9.01	The Trust Fund .....	25
9.02	Amendment of Plan and Trust Agreement.....	25
9.03	Termination of Plan .....	26
9.04	Merger .....	26

9.05	Spin-Off.....	26
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ARTICLE X

Named Fiduciary - Plan Administrator

Duties of An Employer

10.01	Named Fiduciary - Plan Administrator .....	26
10.02	General Responsibilities .....	27
10.03	Record Keeping - Access Thereto .....	27
10.04	Expenses and Compensation .....	27
10.05	Prohibitions Against Persons Holding Positions .....	28
10.06	Employer's Duties.....	28
10.07	Claims Procedure.....	29

ARTICLE XI

Miscellaneous Provisions

11.01	Special Provisions Regarding Participation .....	30
11.02	Employees' Trust .....	30
11.03	General Undertaking - Agreement Binds Heirs, etc.....	31
11.04	Plan Not Contract of Employment .....	31
11.05	Spendthrift Clause .....	31
11.06	Invalidity of Certain Provisions.....	31
11.07	Law Governing .....	31
11.08	Withholding.....	32
11.09	Procedure for Missing Participants or Beneficiaries.....	32
11.10	All Copies of Plan Deemed Originals .....	32

CONCLUSION .....33

SIGNATURES .....33

## Preamble

Effective May 1, 1988, the United Mine Workers of America and the Bituminous Coal Operators' Association, Inc. established this profit sharing plan for the benefit of certain eligible employees pursuant to Article XXB of the National Bituminous Coal Wage Agreement of 1988. The Plan has since been amended and restated from time to time. The Plan is hereby amended and restated to incorporate amendments made to the Plan in the 2011 Wage Agreement. Unless otherwise provided, this Restatement is effective as of July 1, 2011.

## ARTICLE I

### Definitions

#### Section 1.01 - Age -

Shall mean age as of last birthday.

#### Section 1.02 - BCOA -

Shall mean the Bituminous Coal Operators' Association, Inc.

#### Section 1.03 - Beneficiary -

Shall mean, subject to the requirements of the second paragraph of Section 6.02, any one or more persons, corporations or trusts, last designated by the Participant to receive the death benefits provided the Participant under this Plan. If no designation is in effect when any death benefits payable under this Plan become due, the Beneficiary shall be the spouse of the Participant, if living; if not living, the Beneficiary shall be the deceased Participant's then living natural and adopted children in equal shares; and if none, it shall be either the father or mother of the deceased Participant, or both if both are living. If none of the above is living, it shall mean the estate of the deceased Participant.

#### Section 1.04 - Calendar Quarter -

Shall mean any period of three (3) successive months, beginning on the first day of any January, April, July or October.

#### Section 1.05 - Code -

Shall mean the Internal Revenue Code of 1986, as it may be amended from time to time. If a Code reference is changed by amendment of the Code, the Code reference includes the new Code reference.



Section 1.06 - Compensation -

Shall mean the total remuneration paid to an Employee by an Employer in a Plan Year. 401(k) Contributions under this Plan are intended to be included in the term "Compensation." Compensation will not include remuneration paid to an Employee before the Employee has elected to begin 401(k) Contributions pursuant to Section 3.01(a), and will not include Employer Contributions.

Compensation also will not mean Sickness and Accident Pay, Workers' Compensation Pay, Cash Equivalents or Non-Cash Awards.

For Plan Years beginning on or after January 1, 1989 (or such later date as may be prescribed by applicable law), the Compensation of each Employee that may be taken into account under the Plan shall not exceed the applicable dollar limitation for such Plan Year determined under Section 401(a)(17) of the Code, taking into consideration any statutory changes and cost of living adjustments which may affect such limitation in any Plan Year.

Section 1.07 - Earnings -

Shall mean income, if any, received on the Participant's 401(k) Contributions and, if applicable, Employer Contributions.

Section 1.08 - Employee -

Shall mean any individual who is employed in a classified job for an Employer; in no event, however, will any individual directly connected with the ownership, operation or management of an Employer participate in the Plan. An individual will be considered to be involved directly with the ownership of an Employer if he is a five percent (5%) or more owner of the Employer.

Section 1.09 - 401(k) Contributions -

Shall mean the salary deferral contributions made by an Employer on a Participant's behalf as permitted by Section 401(k) of the Code and as described under Section 3.01(a).

Section 1.10 - 401(k) Contributions Account -

Shall mean the Account of a Participant's 401(k) Contributions (and rollover contributions, if any), including their Earnings.

Section 1.11 – Employer Contributions –

Shall mean (i) the monthly Enhanced Premium Contributions (\$1.00 per hour worked from July 1, 2011 through December 31, 2013, and \$1.50 per hour worked during Calendar Years 2014, 2015 and 2016), required under Article XXB(d) 4 of the Wage Agreement, made by an Employer on behalf of a New Inexperienced Miner, (ii) the monthly Supplemental Pension Contributions (\$1.00 per hour worked in Calendar Years 2012 and 2013 and \$1.50 per hour worked in Calendar Years 2014, 2015 and 2016), required under Article XXB(d) 5, 6 and 7 of the Wage Agreement, made by an Employer on behalf of (a) a New Inexperienced Miner hired on or after January 1, 2012, (b) a Participant with 20 years of credited service under the UMWA 1974 Pension Plan, and (c) an Electing Miner who opts out of the UMWA 1974 Pension Plan under Article XXB (d) 7 of the Wage Agreement, and (iii) those other employer contributions permitted under Article XXB(e) 8 of the Wage Agreement.

Section 1.12 – Employer Contributions Account –

Shall mean the Account of a Participant's Employer Contributions, including their Earnings.

Section 1.13 – Participant Account –

Shall mean a Participant's 401(k) Contributions Account and a Participant's Employer Contributions Account.

Section 1.14 - Employer -

Shall mean an Employer who is signatory to the Wage Agreement; provided, however, that any action of the Employers which may or must be taken hereunder may be taken only by BCOA. In the event that BCOA ceases to exist, or in the event that more than 50% of the tonnage membership of BCOA on the Effective Date of the 2011 Wage Agreement has withdrawn prior to the time when BCOA is required or permitted to take action under this Article, then such action may be taken by a majority vote, based on tonnage, of existing Employers who were BCOA members on the Effective Date of the 2011 Wage Agreement.

The term "Employer" shall be used throughout this Plan to designate the respective Employer entities unless the context demands otherwise and each entity covering its Employees hereunder shall be deemed to be such only as to those Participants who are on its payroll, and, in each case, only to the extent of the Compensation which it pays to these Participants.

Section 1.15 - ERISA -

Shall mean the Employee Retirement Income Security Act of 1974 as it may be amended from time to time and any regulations or rulings issued thereunder.

Section 1.16 - Funds -

Shall mean the one (1) or more separate investment funds or other investment vehicles made available under the Plan.

Section 1.17 - Highly Compensated Employee -

- (a) Shall mean an Employee who:
  - (i) owned more than five percent (5%) of the Employer (including any ownership attributable from a related party under Code section 318) at any time during the determination year or the look-back year; or
  - (ii) had compensation in excess of \$80,000 (as adjusted pursuant to Code section 414(q)(1)).
- (b) The term “Highly Compensated Employee” shall also include an Employee who separated from service (or was deemed to have separated) prior to the determination year, and performs no service for the Employer during the determination year, but who was a Highly Compensated Employee as defined under Section 1.17(a) above for either the separation year or any determination year ending on or after such Employee’s 55<sup>th</sup> birthday.
- (c) For purposes of this Section 1.17, the following definitions and rules of interpretation shall apply:
  - (i) “Compensation is compensation as described under Section 3.01(c)(ii).
  - (ii) The “determination year” is the Plan Year for which the determination of who is highly compensated is being made.
  - (iii) The “look-back year” is the twelve (12) month period immediately preceding the determination year.

Section 1.18 – New Inexperienced Miner -

Shall mean a Participant who entered the bituminous coal mining industry for the first time on or after January 1, 2007, who does not have a State Miner’s Certificate dated prior to January 1, 2007, and who is not eligible for retiree medical benefits.

Section 1.19 – Normal Retirement Date -

Shall mean the Participant’s “Normal Retirement” as defined under the United Mine Workers of America 1974 Pension Plan. Notwithstanding the preceding sentence, for a Participant who is a New Inexperienced Miner hired on or after January 1, 2012, and solely for purposes of Article V of this Plan, “Normal Retirement Date” shall mean the later of the time the Participant attains age 62 or his last day of employment with an Employer.

Section 1.20 - Participant -

Shall mean an Employee who is eligible and becomes covered under this Plan as provided in Article II. A Participant's rights to benefits under this Plan shall be determined as of the date of his retirement, termination of employment or death, whichever is appropriate, unless specifically provided otherwise under the Plan. A Participant shall cease to be a Participant when all of his benefits under this Plan have been distributed.

Section 1.21 - Payday -

Shall mean the payday as set forth in Article XXII (m) of the Wage Agreement.

Section 1.22 - Plan - Name of -

Shall mean this Plan, as the same may be amended from time to time. The Plan shall be known as the "UNITED MINE WORKERS OF AMERICA CASH DEFERRED SAVINGS PLAN OF 1988."

Section 1.23 - Plan Year -

Shall mean the calendar year (January 1 to December 31).

Section 1.24 - Regulations -

Shall mean the applicable regulations issued under the Code, ERISA or any other applicable law by the Internal Revenue Service, the United States Department of Labor or any other governmental authority.

Section 1.25 - Retirement Date -

Shall mean the Participant's Normal, Early, or Disability Retirement Date as defined under the United Mine Workers of America 1974 Pension Plan. Notwithstanding the preceding sentence, for a Participant who is a New Inexperienced Miner hired on or after January 1, 2012, and solely for purposes of Article V of this Plan, a Participant's Retirement Date shall mean the later of the time the Participant attains age 62 or his last day of employment with an Employer.

Section 1.26 - Terminated Participant -

Shall mean any Participant who has terminated his employment with the Employer (or who is on layoff and has exhausted his entitlement to Employer-provided health benefits under the Wage Agreement) and who has not been reemployed by the Employer.

Section 1.27 - Trust Agreement -

Shall mean the Cash Deferred Savings Trust of 1988, which Agreement shall form a part of the Plan, and was established pursuant to the National Bituminous Coal Wage Agreement of 1988 to fund the Plan.

Section 1.28 - Trustees -

Shall mean the individuals who are the Trustees under the Trust Agreement under which the Trust Fund is held to provide the benefits called for by the terms of the Plan and their respective successors as such who may become Trustees under the Trust Agreement.

Section 1.29 - Trust Fund -

Shall mean the contributions at any time made to the Trustees for the purposes of the Plan, the assets resulting from the investment and reinvestment thereof, the accretions thereto and any and all income of any kind arising therefrom and less the losses thereon and less any payments made therefrom.

Section 1.30 - Union or UMWA -

Shall mean the United Mine Workers of America.

Section 1.31 - Wage Agreement -

Shall mean the National Bituminous Coal Wage Agreement of 2011, as amended from time to time, and any successor thereto. Any reference in the Plan to the Wage Agreement shall also refer, solely for the purposes of determining who is permitted to make 401(k) Contributions or Employer Contributions to, and receive benefits under the Plan, to any other collective bargaining contract entered into between the UMWA and any employer in the bituminous coal industry that provides that 401(k) Contributions and Employer Contributions may be made to the Plan and Trust.

Section 1.32 - Masculine, Feminine, Singular and Plural -

The masculine shall include the feminine, and the singular shall include the plural and the plural the singular, wherever the person or entity or context shall require.

## ARTICLE II

### Requirements for Eligibility - Manner of Becoming Participant

#### Section 2.01 - Eligibility Requirements -

(a) Participation Based on 401(k) Contributions -

Every Employee of an Employer shall be eligible to become a Participant on the date he is first employed in a classified job for an Employer.

(b) Participation Based on Employer Contributions -

Every Employee who is eligible for Employer Contributions shall automatically become a Participant on the first day for which he is eligible to receive such contributions. An Employee described in this Section 2.01(b) shall participate in this Plan regardless of whether he elects to make Compensation deferrals permitted under Section 2.02.

#### Section 2.02 - Notification and Method of Becoming a Participant Eligible to Begin 401(k) Contributions-

The Trustees (or their delegate) shall supply each Employee with a description of the Plan and an application for making 401(k) Compensation deferrals within a reasonable period after an Employee meets the eligibility requirements of Section 2.01.

Election by an Employee to participate in the Plan through 401(k) Contributions shall be signified by the execution and filing of a prior written application authorizing Compensation deferrals or deductions in accordance with Section 3.01, and directing the manner in which his 401(k) Contributions will be invested in accordance with Section 4.03. Participation for 401(k) Contributions by any Employee in the Plan shall be entirely voluntary.

The Trustees (or their delegate) and the Employer shall not be responsible to the Employee or to his beneficiaries or to his estate, or to any or all of them, for any incorrect information supplied by the Employee.

## ARTICLE III

### Contributions

#### Section 3.01 - 401(k) Contributions -

(a) Each Participant may authorize, subject to Section 3.03, Compensation deferrals under the Plan in an amount equal to any percentage of his Compensation up to twenty-five percent (25%) as he may choose. In addition, if at the end of any calendar year, an Employee has not exhausted the Personal or Sick Leave Days for which he is eligible, he may, within ten (10) working days, elect to have the pay in lieu of such leave at his regular classified straight time rate placed in the Plan, pursuant to Article IX(e) of the Wage Agreement. The maximum amount of Compensation deferrals under the Plan for any calendar year by a Participant shall be sixteen thousand five hundred dollars (\$16,500) for 2011 adjusted annually by the Secretary of the Treasury under Section 402(g)(4) of the Code. Notwithstanding the foregoing, effective January 1, 2011, each employee who is at least age 50 during a Plan year may contribute additional "catch-up" amounts during that and any subsequent Plan year, as permitted by law, in the amount of \$5,500 for 2011, adjusted annually by the Secretary of the Treasury under Section 414(v)(2)(C) of the Code.

A Participant's Compensation deferrals under the Plan shall be known as his 401(k) Contributions. Such Contributions will begin with the first pay processing of the Employer immediately following the receipt of the Trustees' notification of an Employee's participation. A Participant may elect to begin 401(k) Contributions subsequent to appropriate written notice by the Trustees (or their delegate) that deferrals may be made, but in no event may deferrals be made retroactively. The percentage of Compensation designated by a Participant to be deferred for 401(k) Contributions and to be held in his 401(k) Contributions Account under the Plan shall continue in effect, notwithstanding any change in his Compensation, until he elects to change such percentage. A Participant may change such percentage, as of the first pay day following January 1, April 1, July 1 or October 1, upon adequate advance written notice to the Trustees (or their delegate). The amounts deferred for 401(k) Contributions shall be remitted by the Employer to the Trustees in accordance with the requirements of Section 10.06; provided, however, that the Trustees (or their delegate) must notify the Employer of any change in the percentage of Compensation to be deferred in advance of the pay processing period for the Payday on which such change is to be effective. A Participant shall be entitled to have 401(k) Contributions made on his behalf to the Plan only through payroll transfers. No cash payments will be accepted, either in lieu of or in addition to payroll transfers. If, on any Payday, the amount of Compensation payable to a Participant is insufficient (after all legally required payroll deductions, including Union dues and/or other Union assessments or voluntary Union payments and any other voluntary payroll deduction authorized by the Employee) to permit the making of the full amount of his Compensation deferral for Contributions, such Participant's Compensation deferral for 401(k) Contributions shall be suspended until the next Payday on which sufficient funds are available. There shall be no makeup of the deferrals for 401(k) Contributions so suspended. The Trustees (or their delegate) may review the Compensation deferrals for 401(k) Contributions periodically to determine if the criteria set forth in subsection (b) are met. If those criteria are not met, the Trustees (or their delegate), in their absolute discretion, may determine that the provisions of subsection (d) will be applied. The Trustees (or their delegate) shall also have the authority exercised in

a consistent and nondiscriminatory manner and in accordance with Regulations to make other adjustments to meet the criteria specified in subsection (b), including the authority to reduce contributions made on behalf of Employees who are Highly Compensated Employees in accordance with Regulations prescribed under Section 401(k) of the Code. The Employer shall have the authority to cease payroll deductions for any Participant under this Plan if the Employer determines that the maximum amount of compensation deferrals of subsection (a) of this Section or the limitations of Section 3.03 have been met for the Plan Year.

(b) For each Plan Year, the actual deferral percentage for any Plan Year for the eligible Employees who are Highly Compensated Employees shall not exceed the greater of (i) or (ii) as follows:

(i) The actual deferral percentage for the Plan Year for the eligible Employees who are Non-Highly Compensated Employees, times one and twenty-five hundredths (1.25); or

(ii) The actual deferral percentage for the Plan Year for the eligible Employees who are Non-Highly Compensated Employees, times two (2); provided, however, that the actual deferral percentage for the eligible Employees who are Highly Compensated may not exceed the actual deferral percentage for the eligible Employees who are Non-Highly Compensated Employees by more than two (2) percentage points (or such lesser amount as the Secretary of the Treasury shall prescribe to prevent the multiple use of this alternative limitation with respect to any Highly Compensated Employee).

A Non-Highly Compensated Employee is an Employee who is not a Highly Compensated Employee.

(c) The actual deferral percentage for a specified group of Employees shall be the average of the ratios (calculated separately) for each Employee in such group of:

(i) The amount of 401(k) Contributions actually paid to the Plan on behalf of each such Employee for such Plan Year, to

(ii) The Employee's compensation for such Plan Year.

For purposes of the preceding sentence and the definition of Highly Compensated Employee under Section 1.17, the compensation of any Employee for a Plan Year shall be compensation paid or made available during such limitation year and shall include any elective deferral (as defined in Code section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Participant by reason of Code sections 125 or 457. For limitation years beginning after December 31, 2000, compensation shall include elective amounts that are not includible in gross income of the Participant by reason of Code section 132(f)(4). Such compensation shall be subject to the applicable dollar limitation determined under Section 401(a)(17) of the Code. If a Highly Compensated Employee is a participant in two (2) or more plans or arrangements described in Section 401(k) of the Code that are maintained by an Employer or an Affiliated Employer, the actual deferral percentage for such Highly Compensated Employee shall be determined as if all such arrangements are a single arrangement.



An Affiliated Employer shall mean any corporation which is a member of a controlled group of corporations (as defined Section 414(b) of the Code) which includes an Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Section 414(c) of the Code) with an Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Section 414(m) of the Code) which includes the aforesaid Employer.

For purposes of meeting the requirements of paragraph (b) and (c) hereof, all eligible Employees shall be considered as employed by a single Employer, unless otherwise provided within such paragraphs or by applicable law.

(d) If the actual deferral percentage for eligible Employees who are Highly Compensated Employees is more than the amount permitted under the above restrictions for any Plan Year, the amount of the Excess Contributions for such Plan Year (and, effective January 1, 2008, any income allocable to such contributions through the end of such year) shall be distributed before the close of the following Plan Year. However, the Trustees shall exert their best efforts to make such distribution before the close of the first two and one-half (2½) months of such following Plan Year to avoid the tax imposed on the Employer under Section 4979 of the Code. For this purpose, Excess Contribution means with respect to a Plan Year, the excess of (1) the aggregate amount of 401(k) Contributions actually paid over to the trust on behalf of Highly Compensated Employees for such Plan Year, over (2) the maximum amount of such 401(k) Contributions permitted under Section 3.01(b) (determined by reducing 401(k) Contributions made on behalf of Highly Compensated Employees in order of the actual deferral amounts beginning with the highest of such amounts). Any distribution of the Excess Contributions for any Plan Year shall be made to Highly Compensated Employees on the basis of their respective portions of the Excess Contributions attributable to each Highly Compensated Employee.

(e) If a Participant authorizes more than the maximum amount of Compensation deferrals permitted under the Plan for any calendar year (\$16,500 limit as of January 1, 2011 plus any catch-up contribution, if applicable), as set forth in Section 3.01(a), the excess deferral amounts and, effective January 1, 2008, any income allocable to such deferrals through the end of such year shall be distributed no later than April 15 of the next following year to Participants who, after receiving appropriate and timely notice from the Trustees, claim such deferral amounts. The Participant's claim shall be in writing and shall be submitted to the Trustees (or their delegate) no later than March 1 of the year following the year of the excess deferral. Such claim shall include the Participant's written statement that if such amounts are not distributed, the excess deferral amount exceeds the limit imposed under Section 402(g) of the Code. A Participant shall be deemed to have filed such a claim to the extent that the Participant has excess deferrals for a calendar year calculated by taking into account only the 401(k) Contributions made on his behalf under this Plan.

(f) The Trustees shall notify the Employer promptly of any distribution of an excess deferral to an Employee, of any amounts held in a suspense account pursuant to Section 3.03, and of any other information pertinent to the Employer's responsibility under the Code to report Compensation of its Employees.

(g) Notwithstanding anything in this Plan to the contrary, the Plan shall be designed to qualify as a profit sharing plan for purposes of Sections 401(a), 402, 412 and 417 of the Code.

Section 3.02 – Employer Contributions -

(a) Each Employer shall make Employer Contributions as defined in Section 1.11 for each Participant eligible for Employer Contributions pursuant to the Wage Agreement. A Participant shall at all times be fully vested in his Employer Contributions Account, subject to a reduction in such Account as provided in (b) and (c) below.

(b) The Trustees shall resolve all disputes between a Participant and an Employer regarding whether a Participant is described in Section 1.11. A Participant must submit any such dispute to the Trustees no later than one hundred twenty (120) days following the later of his date of employment in a classified job for the Employer and the date he receives adequate written notice from his Employer of his status under Section 1.11. Failure to submit a timely dispute will be treated as a waiver of the Participant's right to challenge his status under Section 1.11. The Trustees shall endeavor to resolve each dispute within 60 days of receipt. If an Employer makes Employer Contributions for a Participant who is determined not to be described in Section 1.11, such contributions shall be considered to have been made by mistake and shall be returned to the Employer as provided in Section 11.02. The Employer Contributions Account of a Participant determined not to be described in Section 1.11 shall be reduced to zero, and shall be deemed not to have been fully vested.

(c) Notwithstanding the above and any other provisions of this Plan, an Electing Miner described in Section 1.11(ii)(c) of this Plan shall not be not entitled to receive Supplemental Pension Contributions based on opting-out of the UMWA 1974 Pension Plan for any period that such Electing Miner is entitled to receive credited service under the UMWA 1974 Pension Plan. If an Employer makes Employer Contributions for an Electing Miner described in Section 1.11(ii)(c) of this Plan and it is subsequently determined that the Electing Miner was entitled to receive credited service under the UMWA 1974 Pension Plan during a period for which such Employer Contributions were made and thus the Electing Miner was not eligible for the Employer Contributions made during that period, the Employer Contributions (adjusted for Earnings) made to the Employer Contributions Account of a Participant for such period shall be deemed to have been made by mistake and the treatment thereof shall be as described in Section 11.02 of this Plan. Such Employer Contributions shall be deemed not to have been fully vested, and, as adjusted for Earnings, shall be removed from the Participant's Employer Contributions Account.

### Section 3.03 - Limitations on Amount to be Contributed -

Notwithstanding anything in the Plan to the contrary, the maximum amount that may be contributed to a Participant's Account under Section 3.01 and 3.02 shall not exceed the limitations set forth under Section 415 of the Code and Treasury Regulations Section 1.415(c)-1. Compensation within the meaning of Section 415(c)(3) of the Code shall mean compensation as defined in Treasury Regulation Section 1.415(c)-2(b), (c).

Notwithstanding anything in the Plan to the contrary, effective on and after, January 1, 2009, compensation as defined in Code Section 415(c)(3) and Treasury Regulation Section 1.415 (c)-2 shall include the amount of any differential wage payments paid by the Employer to a Participant in accordance with Code Section 3401(h) and Code Section 414(u)(12).

If as a result of a reasonable error in estimating a Participant's annual compensation, or under other limited facts and circumstances, the Annual Additions under the terms of this Plan and any other defined contribution plan maintained by the Employer for a particular Participant would cause the limitations of Section 415 of the Code applicable to that Participant for the Plan Year to be exceeded, the excess amounts shall not be deemed Annual Additions in that year, but shall be treated in accordance with the following:

(a) To the extent permissible under applicable law, the excess amounts attributable to 401(k) Contributions (and any income allocable to such contributions) made on the Participant's behalf shall be refunded to the Participant.

(b) Any other excess amounts in the Participant's accounts under this Plan shall be reallocated in accordance with Revenue Procedure 2008-50 or any successor thereto.

### Section 3.04 Rollovers and Transfers -

A Participant may contribute to the Plan a rollover of assets, as provided in Section 402(c) or 408(d)(3)(A)(ii) of the Code, received in an eligible rollover distribution from a defined contribution plan which has received a determination from the Internal Revenue Service that it is qualified under the pertinent provisions of the Code, or received from an Individual Retirement Account of the Participant, (a) if done on a timely basis and upon proper application to the Trustees (or their delegate), (b) if the Participant provides such evidence as the Trustees may require that the amount represents a rollover described in Section 402(c) or 408(d)(3)(A)(ii) of the Code, and (c) if the rollover consists of cash or of assets which the Trustees believe it would be prudent for the Plan to hold.

In the event that an Employer maintains a separate defined contribution plan qualified under Code Section 401(a), the Trustees may accept a direct plan-to-plan transfer of an Employee's accrued benefit from such plan in cash or in such other form as determined to be acceptable by the Trustees, provided such transfer can be accomplished consistent with Code Sections 411(d)(6), 414(l), and other applicable law, and provided that such transfer does not have a material adverse impact on the administrative costs of the Savings Plan. Any such amounts transferred shall be placed in the Employee's 401(k) Contributions

Account, Employer Contributions Account, or subaccounts thereof, or divided between the two Accounts (or subaccounts thereof), as determined to be appropriate by the Trustees. Notwithstanding any other provision herein, should an Employee's Employer Contributions Account include amounts transferred pursuant to this paragraph, Section 3.03 shall not apply to such transferred amounts.

#### Section 3.05 - Retroactive Contributions -

Effective October 13, 1996, if a Participant is in qualified military service, as defined under applicable federal law, and pursuant to such law, returns to employment with the Employer within ninety (90) days after the end of his military leave (or such longer period of time as his reemployment rights are protected by law), the Participant may make 401(k) Contributions to the Plan and designate them to a particular Plan Year, or Years, that he was on military leave. The Participant shall be entitled to make such contributions during the period beginning on the Participant's reemployment date and ending upon the earlier of: (a) the number of years from the date of reemployment equal to the product of three (3) and the number of years the Participant was engaged in qualified military service, or (b) five (5) years from the date of reemployment. Any Employer Contributions shall be made in accordance with the Uniformed Services and Reemployment Rights Act. 401(k) Contributions made pursuant to this Section 3.05 shall not be taken into account in the Plan Year during which the contributions are made for purposes of determining whether the limit under Section 402(g) of the Code is exceeded. Contributions shall be counted as elective deferrals in the Plan Year to which the Participant designated such contributions. Contributions pursuant to this Section 3.05 shall not be considered in determining the Actual Deferral Percentage or Actual Contribution Percentage of the Plan for any Plan Year and shall not be counted as annual additions during the Limitation Year when they are made for purposes of Section 3.03. Contributions shall be counted as annual additions for purposes of Section 3.03 in the Plan Year to which the contributions are designated.

### ARTICLE IV

#### Investment - Accounts - Trust Fund

##### Section 4.01 - Valuation Date -

The Trust Fund shall be valued by the Trustees as of the close of business on the last business day of each Calendar Quarter, which date shall be known as the Valuation Date. The Valuation Date may occur more often if permitted by the manager of the Funds, including, but not limited to, each day the New York Stock Exchange is open for trading.

##### Section 4.02 - Participant Account -

There shall be maintained for each Participant a Participant Account, showing the amount of his 401(k) Contributions, Employer Contributions, rollover contributions pursuant to Section 3.04, all Earnings on investment of such amounts, net of the amount of withdrawals and distributions by or to the Participant, if any, and net of any administrative expenses allocated to such Account, as described under Section 4.04(c).

#### Section 4.03 - Investment Provisions -

The Trust Fund is to consist of one or more separate and distinct investment Funds managed by the Trustees, bank, mutual fund sponsor or other person or entity in accordance with Participants' investment directions and pursuant to the terms of the Trust Agreement.

Effective July 1, 2008, each participant shall direct the Trustees (or their delegate) in writing, at the time he begins to participate in the Plan, the manner in which his Participant Account shall be allocated among the investment Funds. The allocation among Funds shall be subject to the methods of allocation permitted by the Trustees, bank, mutual fund sponsor or other person or entity managing the Funds. In the event that a Participant fails to provide the Trustees (or their delegate) with investment directions with respect to his Participant Account (or any portion of his Participant Account) at such time and in such manner as the Trustees shall prescribe, the Participant shall be deemed to have elected that his Participant Account (or the relevant portion of his Participant Account) be invested in the sole discretion of the Trustees (or their delegate) in an investment Fund designated by the Trustees (or their delegate) as a "Qualified Default Investment Alternative" ("QDIA") for purposes of section 404(c)(5) of ERISA.

Any investment direction given by a Participant shall continue in effect until changed by the Participant; provided, however, that a new investment direction shall be required if the Trustees, in their discretion, discontinue an investment Fund in which the Participant's Account is invested. A Participant may change his investment direction as to the accumulated balance of his Participant Account and/or future 401(k) Contributions or Employer Contributions with such frequency and in accordance with such procedures as established by the Trustees and applied in a uniform nondiscriminatory manner. Any such procedure shall be communicated to the Participants and designed with the intention of permitting the Participants to exercise control over the assets in their respective accounts within the meaning of Section 404(c) of ERISA and the regulations promulgated thereunder. The Trustees (or their delegate) shall be responsible for monitoring the investment directions of the Participants to assure compliance with Plan provisions and any rules issued by the Trustees (or their delegate).

#### Section 4.04 - Determination of Participant's Equities -

The proportionate equity of each Participant in each of the Funds in the Trust Fund as of each Valuation Date shall be determined as follows:

(a) The Trustees (or their delegate) shall maintain a separate account in each Fund in the Trust Fund covering each Participant under the Plan consisting of his interest in each of his Accounts. The opening entry in each Account shall be a dollars-and-cents credit in the amount of the Participant's 401(k) Contributions under Section 3.01(a) and Employer Contributions under Section 3.02 made as of the date following his entry into the Plan. As such subsequent Contributions are received, they also shall be credited.

(b) The Trustees shall value each Participant's Account subject to individual direction at least once each Calendar Quarter. The value of an Account shall be determined based on the investments of the Account. For purposes of computing and crediting investment results attributable to investments of Fund

assets since the preceding Valuation Date, the balance in the account as of the preceding Valuation Date shall be reduced by any amounts withdrawn or distributed from that Account since such prior Valuation Date.

(c) Administrative costs incurred after January 1, 2011 will be borne by the Employers, subject to the Memorandum of Understanding, dated July 1, 2011 entered into by the UMWA and BCOA regarding administrative costs, and subject to the terms of the Trust. The Trustees, in their discretion, may allocate any extraordinary, nonrecurring expense of the Plan and Trust over a period extending beyond a single Plan Year. With regard to administrative expenses incurred after January 1, 2011 that are not properly borne by the Employers, if any, the following provisions shall apply:

As of any Valuation Date, the Trustees (or their delegate) shall calculate the collective expenses incurred by the Trust Fund since the preceding Valuation Date and shall allocate such expenses among the Accounts of Participants in proportion to the balances in such Accounts as of the prior Valuation Date after reducing such prior Valuation Date balance by any amounts withdrawn or distributed from that Account since such prior Valuation Date. In the event that the Trustees determine in their discretion that a different allocation methodology among the accounts of Participants (such as a flat charge per account) would be more appropriate for a particular expense, the Trustees may apply such different allocation methodology to the expense. In addition to such allocations, the Trustees may pay recordkeeping and other administrative expenses not required to be paid by the Employers as charges against some or all of the Participants' Accounts and/or Participants' investment Funds. The Trustees may determine that collective expenses shall not include any identifiable separate expense attributable solely to the operation of a Participant's account. Such identifiable expense may be deducted from the Account to which it is attributable. Expenses attributable solely to an investment Fund described in Section 4.03 shall be allocated only to those accounts investing in such investment Fund. Notwithstanding the foregoing, effective July 1, 2013, the Trustees shall first use Trust assets held under any "Expense Reimbursement Account" to pay administrative expenses not properly borne by the Employers. An Expense Reimbursement Account shall contain assets provided to the Plan by a plan service provider and earnings, if any, thereon. Expense Reimbursement Account assets shall be used only to pay reasonable and necessary expenses of Plan administration.

(d) At least one time each Calendar Quarter, the Trustees shall advise each Participant, in writing, of the total amount of money which has been allocated to his credit and of the total amount of money which then stands to his credit in each of the Funds making up the Trust Fund.

(e) A Participant eligible to receive a distribution of his Account due to be made under this Plan, whether because of death, retirement or termination of employment, shall receive such distribution as soon as administratively practicable following such Participant's application for benefits, the value of such Account being determined as of the date such distribution commences. If any event described in the foregoing sentence occurs before a credit for a contribution has been made to the Accounts of the Participant, a Participant's Account distributed in accordance with this Section 4.04(e) also shall include the amount of such credit when made.

Section 4.05 - Method of Valuation -

The valuation of the Trust Fund shall be on the basis of fair market values as of the Valuation Date or on a date as near as possible to the Valuation Date as computed under the terms of each Fund. The value of any interest invested in a collective, common, pooled or mutual fund shall be the fair market value of the Fund units determined in accordance with generally recognized valuation procedures.

ARTICLE V

Retirement

Section 5.01 - Retirement -

Subject to Section 4.04(e), each Participant who ceases employment on his Retirement Date shall not have 401(k) Contributions or, if applicable, Employer Contributions made on his behalf after his Retirement Date or after the date he ceases employment. The Trustees (or their delegate) shall determine the value of his Accounts under the terms of this Plan, and the Participant shall have a one hundred percent (100%) vested interest therein. The time and manner of payment of the Participant's interest in his Accounts under the terms of this Plan shall be determined in accordance with Sections 5.03 and 5.04.

Not earlier than one hundred and eighty (180) days, but not later than thirty (30) days prior to distribution, the Plan shall provide a notice to a Participant who is eligible to receive a distribution under this Article V. The notice shall explain the Participant's right to request payment in the form of a direct rollover, and, if the value of the Participant's vested Participant Account exceeds \$1,000, to defer payment to a later date.

Section 5.02 - Deferred Retirement -

In the event a Participant remains in employment after his Retirement Date, he may continue his 401(k) Contributions and, if applicable, to receive Employer Contributions until his actual Retirement Date. Except as provided in this ARTICLE V and ARTICLE VIII, payment to the Participant of his Accounts shall not commence or be made, in such event, until the Participant actually retires from active employment. The time and manner of payment of the Participant's interest in his Accounts shall be determined in accordance with Sections 5.03 and 5.04.

Section 5.03 - Amounts and Methods of Payment -

For the purpose of any distribution, the rules in ARTICLE IV shall apply. A Participant, subject to the provisions of this Section and Section 5.04, may elect by delivering a written statement to the Trustees (or their delegate) a benefit which is one of the following: (a) payment in a lump sum; or (b) installment payments from the Trust Fund for a period of one hundred twenty (120) months. If a Participant does not file an election with the Trustees (or their delegate) within sixty (60) days after the Trustees are notified of the Participant's actual retirement, the Participant's benefit shall be distributed in the form of a lump sum. Payment shall commence in accordance with the provisions of Section 5.04.

Any method of payment selected on behalf of a Participant must be primarily to distribute benefits to the Participant and not to designated Beneficiaries or others. Accordingly, any method of payment placed into force for a Participant must be such that: (a) the present value of payments to be made to the Participant under the optional method of payment selected is more than fifty percent (50%) of the present value of the total payments to be made to the Participant and his beneficiaries; or (b) the payments to the Participant begin as of his retirement with a like, or lesser amount, payable to the Participant's spouse if the spouse survives the Participant or with a like, or lesser amount, payable to another for the lifetime of the spouse if the spouse survives the Participant. In addition, any method of payment selected by a Participant (other than a lump sum) must provide for the payment of benefits over a period not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and a designated beneficiary. These restrictions shall be interpreted in a manner consistent with the requirements of Section 401(a)(9) of the Code and the regulations thereunder.

Section 5.04 - Commencement of Benefits -

Except as otherwise provided herein, distribution of benefits under the Plan shall commence as soon as practicable following the Participant's Normal Retirement Date as defined in Section 1.19 of this Plan or, if later, the Participant's Retirement Date as defined in Section 1.25 of this Plan.

If a Participant terminates employment (for reasons other than death) before his Normal Retirement Date (as defined in Section 1.19 of this Plan) and the value of his Account as of the first Valuation Date coinciding with or next following such termination does not exceed one thousand dollars (\$1,000), distribution shall be made in a lump sum at any time before the end of the second Plan Year following the Plan Year in which the Participant terminated his employment without the consent of the Participant.

If a Participant terminates employment (for reasons other than death) and the value of his Account exceeds one thousand dollars (\$1,000), the Participant may elect to have the distribution commence as soon as practicable following such termination (but not later than the required beginning date under Section 401(a)(9) of the Code). A Participant's election to commence payment prior to his Normal Retirement Date (as defined in Section 1.19 of this Plan) must be made after he is furnished with written information relating to his right to defer payment until his Normal Retirement Date (as defined in Section 1.19 of this Plan), the modes of payment available to him, the relative values of each, and his right to make a direct rollover as described in Section 5.05. Such information shall be furnished by the Trustees (or their delegate) not less than thirty (30) and not more than one hundred and eighty (180) days prior to the benefit commencement date; provided, however, that payment may commence less than 30 days after the information is supplied if the Trustees (or their delegate) inform the Participant of his right to a period of at least thirty (30) days after receiving the information to consider the decision of whether or not to elect a distribution and a particular mode of payment and if the Participant, after receiving this notice, affirmatively elects a distribution.

Unless a Participant elects otherwise, the payment of any and all benefits under this Plan to the Participant shall begin not later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following occurs: (a) the Participant attains his Normal Retirement Date (as defined in



Section 1.19 of this Plan); (b) the tenth (10th) anniversary of the date on which the Participant commenced participation in the Plan; or (c) the termination of the Participant's service with the Employer.

In no event shall distributions commence later than April 1 of the calendar year following the later of (1) the calendar year in which the Participant attains age 70 ½, or (2) the calendar year in which the Participant retires. If the Participant owns more than 5 percent (5%) of the Employer, distributions must begin by April 1 of the calendar year following the year in which the Participant attains age 70 ½. Notwithstanding the foregoing, for Participants who attain age 70 ½ before January 1, 2001, distributions shall commence no later than April 1 of the calendar year following the calendar year in which such Participant attains age 70 ½.

Effective January 1, 2003, notwithstanding anything herein to the contrary, all distributions under the Plan shall be made in accordance with the minimum distribution requirements of Section 401(a)(9) of the Code, including the minimum distribution incidental death benefit rule of Section 401(a)(9)(G), and Treasury Regulations Sections 1.401(a)(9)-1 through 1.401(a)(9)-9 that were issued on April 17, 2002 and June 15, 2004.

If the amount of the payment which is required to commence on the date heretofore specified in this Section cannot be ascertained by such date, a payment retroactive to such date shall be made no later than sixty (60) days after the earliest date on which that amount can be ascertained under the terms of the Plan.

Notwithstanding the preceding, a Participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding Section 5.05 of this Plan, and solely for purposes of applying the direct rollover provisions of the plan, a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Section 401(a)(9)(H) of the Code.

#### Section 5.05 - Direct Rollovers -

This Section applies to distributions from the Plan made on or after July 1, 2011. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

For purposes of this Section 5.05, the following terms shall have the meanings indicated:

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

Effective January 1, 2002, an "eligible retirement plan" is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or a qualified trust described in Section 401(a) of the Code, that accepts the eligible rollover distribution. For purposes of the direct rollover provisions of the Plan, a portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code, or to a tax-sheltered annuity described in Section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Effective January 1, 2008, an eligible retirement plan includes a Roth IRA described in Section 408A of the Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e) of the Code. Effective January 1, 2010, in the case of an eligible rollover distribution to the designated beneficiary of the Participant who is not the surviving spouse of the Participant, an eligible retirement plan is an individual retirement account or individual retirement annuity.

"Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order (as defined in Section 414(p) of the Code) are distributees with regard to the interest of the spouse or former spouse. Effective January 1, 2010, a "distributee" includes an individual who is a designated beneficiary of the Participant and who is not the surviving spouse of the Participant, in accordance with the provisions of Section 402(c)(11) of the Code.

"Direct rollover" means a payment by the Plan to the eligible retirement plan specified by the distributee.

## ARTICLE VI

### Death

#### Section 6.01 - Amount of Benefit -

Upon the receipt of proof of death of a Participant for whom funds or assets are still held in Trust, the Trustees (or their delegate) shall take whatever action is necessary to make available to the Beneficiary of the deceased Participant in a lump sum payment the value of whatever may be to the credit of the deceased Participant's Account, increased by any credit for contributions as provided in Section 4.04(e).

#### Section 6.02 – Beneficiary -

Each Participant, upon becoming a Participant, shall have the right to designate his Beneficiary, including a contingent Beneficiary, and each Participant shall have the right at any time and from time to time to name and change his Beneficiary, including any contingent beneficiary. This right shall be exercised by a writing signed by the Participant and filed with the Trustees (or their delegate).

If a married Participant dies, the Beneficiary shall automatically be his surviving spouse, unless the surviving spouse consents in writing to the designation of another Beneficiary. Consent of a Participant's spouse must be witnessed by a Plan representative or notary public.

If no designation is made hereunder, the Beneficiary shall be determined in accordance with Section 1.03, except as provided in the second paragraph herein.

If a Participant dies before the distribution of benefits has commenced, the Participant's entire interest, subject to the exceptions described below, must be distributed to the Participant's Beneficiary within five (5) years after the Participant's death. However, the five (5) year distribution rule does not apply if (a) any portion of the Participant's benefit is payable to or for the benefit of a designated Beneficiary; (b) such portion will be distributed over the life of the Beneficiary over a period not extending beyond the life expectancy of the Beneficiary; and (c) the distributions commence not later than one (1) year after the date of death of the Participant (or such later date as the Secretary of the Treasury may allow by Regulations). If the designated Beneficiary is the Participant's surviving spouse, the portion of the Participant's benefit to which the surviving spouse is entitled shall be distributed over the life of the surviving spouse or a period not extending beyond the life expectancy of the surviving spouse and, regardless of the above, shall not be required to commence to be distributed until the date on which the Participant would have attained age seventy and one-half (70 1/2). If the surviving spouse dies before the distribution of benefits has commenced, then the distribution rules described above shall be applied as if the surviving spouse were the Participant.

If distributions have commenced to the Participant before the Participant's death, the balance of the Participant's benefit shall be distributed to the Participant's Beneficiary at least as rapidly as under the method of distribution in effect as of the date of the Participant's death.

Distributions made on account of a Participant's death shall be subject to the provisions of Section 5.05, relating to direct rollovers, if applicable.

## ARTICLE VII

### Termination of Employment

#### Section 7.01 - Termination of Employment -

If a Participant shall cease to be in the actual employment of the Employer, except at retirement or death, his interest and rights under the Plan shall be limited to those contained in the following Sections of this Article, and he shall become a Terminated Participant. Such Participant shall promptly notify the Trustees of his termination of employment. The Terminated Participant shall not have 401(k) Contributions or Employer Contributions made on his behalf from and after the date he terminated employment, except to the extent required by Section 4.04(e).

#### Section 7.02 - Vested Benefits -

Each Terminated Participant shall have a fully vested interest in his Participant Account, subject to a reduction in his Employer Contributions Account to zero and to his interest in such Account being deemed not to have been fully vested, as provided in Section 3.02(b).

#### Section 7.03 - Notification of Benefits -

The Trustees (or their delegate) shall promptly notify each Terminated Participant in writing delivered in person or sent by first-class mail to the last known address of such a Participant of the vested interest which he has and as to the time and manner of payment of same.

#### Section 7.04 - Time and Manner of Payment of Interest -

The distribution of a Terminated Participant's Account shall be made in accordance with Sections 5.03, 5.04 and 5.05. If, prior to the distribution of all of his vested interest, such Terminated Participant should die, then whatever amount should remain of such vested interest shall be paid as a death benefit to the Beneficiary of the deceased Participant as provided in ARTICLE VI.

#### Section 7.05 - Rehiring Terminated Participant -

A Terminated Participant who is rehired as an Employee shall be eligible to become a Participant as of his date of reemployment. A rehired Participant may not repay any prior distributions.

#### Section 7.06 - Ineligible Participant -

If a Participant shall cease to meet the definition of an Employee for purposes of this Plan although still in the employment of the Employer or an entity that is a member of the same controlled group as referred to in Section 414(b) and (c) of the Code as the Employer or the same affiliated service group as defined in Section 414(m) of the Code as the Employer, the Participant shall become an Ineligible Participant. Such Participant shall cease to have 401(k) Contributions and, if applicable, Employer Contributions made on his behalf as of the first day that he becomes an Ineligible Participant, except to the extent required by Section 4.04(e). The amounts held for the benefit of such a Participant under this Plan through the date of his becoming ineligible shall be retained hereunder for the benefit of an Ineligible Participant until the happening of a contingency calling for a disposition thereof at which time the applicable provisions of this Plan in effect at the time of disposition shall be applied with respect to such amounts or until he again meets the definition of Employee under this Plan.

Notwithstanding the foregoing, an ineligible Participant may submit a written request to the Trustees (or their delegate) to distribute his vested interest to another qualified plan of the Employer or an entity that is a member of the same controlled group (as referred to in Section 414(b) and (c) of the Code) as the Employer or the same affiliated service group (as defined in Section 414(m) of the Code) as the Employer, provided that the transferee plan provides for the acceptance of such a transfer and agrees to accept the transfer, and further provided that the transferee plan preserves all benefits and options protected under Section 411(d) of the Code with respect to such transfer, and further provided that the amounts so transferred remain subject to the distribution restrictions imposed by Section 401(k) of the Code.

In the event that an Ineligible Participant shall again meet the definition of an Employee for purposes of this Plan, he shall resume his eligibility for 401(k) Contributions and, if applicable, Employer Contributions on the date on which he again meets such definition.

#### Section 7.07 - Transfer of Employment -

The transfer of a Participant in whole or in part from the payroll of one of the Employers hereunder to the payroll of one or more of the other Employers hereunder shall not be construed as a termination of employment. Upon the occurrence of such an event, the liability of the Employers concerned as to the contributions to be made on behalf of such a Participant following such transfer shall be according to the source and amount of the Compensation thereafter paid to the Participant. The Participant, or if necessary the Employers, shall give all suitable directions to the Trustees (or their delegate) to accomplish any necessary changes in their records. The Trustees shall adopt reasonable rules to assure that a transfer of employment is not inadvertently treated as a termination of employment.

## ARTICLE VIII

### Withdrawals - Suspension of Contributions

#### Section 8.01 - Withdrawals -

Subject to a procedure adopted by the Trustees in compliance with the requirements of Section 401(k) of the Code and Regulations issued thereunder and, with respect to Employer Contributions and earnings thereon, Revenue Ruling 71-244, upon written request submitted to the Trustees (or their delegate) with adequate notice, a Participant who is in the employ of the Employer or an entity that is a member of the same controlled group as referred to in Section 414(b) and (c) of the Code as the Employer or the same affiliated service group as defined in Section 414(m) of the Code as the Employer, may withdraw part or all of the amount of his 401(k) Contributions Account and/or Employer Contributions Account in the event an immediate and heavy financial need exists that would create a severe financial hardship to the Participant if early withdrawal were not permitted, provided, however, that earnings attributable to 401(k) Contributions may not be withdrawn on account of hardship except to the extent credited to the Participant's 401(k) Contributions Account before January 1, 1989. The Trustees shall determine whether the withdrawal request specifies an immediate and heavy financial need. Such a need shall be deemed to exist if the withdrawal is requested on account of (a) expenses for medical care described in Section 213(d) of the Code previously incurred by the Participant, the Participant's spouse, or the Participant's dependents, or necessary for these persons to obtain such medical care; (b) purchase (excluding mortgage payments) of a principal residence for the Participant; (c) payment of tuition and related educational fees for the next twelve (12) months and post-secondary education for the Participant or the Participant's spouse, children or dependents; (d) the need to prevent eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage of the Participant's principal residence; (e) payment for expenses related to the burial or funeral for the Participant's deceased parent, spouse, children or dependents (as defined in Section 152 of the Code without regard to Section 152(d)(1)(B) of the Code); (f) payment for expenses attributable to the repair of damage to the Employee's principal residence that would qualify for the casualty deduction under Section 165 of the Code, but without regard to whether the loss exceeds 10% of adjusted gross income; or (g) any other condition determined by the Internal Revenue Service to constitute a "deemed" need. In all other cases, the Trustees shall determine whether an immediate and heavy financial need exists based on all relevant facts and circumstances. The Trustees shall also determine, based on all the facts and circumstances, whether the need may be satisfied from other resources reasonably available to the Participant, including assets of the Participant's spouse and minor children that are reasonably available. If reasonable to do so, the Trustees may rely on the Participant's representations that the need cannot reasonably be relieved through reimbursement or compensation by insurance or otherwise; by reasonable liquidation of assets; by cessation of 401(k) Contributions; or by other distributions or nontaxable (at the time of the loan) loans from plans maintained by the Employer by any other employer or by borrowing from commercial sources on reasonable terms in an amount sufficient to satisfy the need. The amount withdrawn may not exceed the actual expense incurred or to be incurred by the Participant on account of such need (taking into account any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution). A Participant may specify the Fund or Funds out of which a withdrawal is to be made. Unless specified otherwise, a withdrawal shall be made out of the Participant's interest in all of the Funds

in which his 401(k) Contributions Account and/or Employer Contributions Account, as applicable, is invested in the same proportion that the Participant's share in each of the Funds attributable to his 401(k) Contributions Account and/or Employer Contributions Account bears to his total share in all of the Funds. A withdrawal may not exceed the net value of the Account. A Participant shall be limited to one (1) such withdrawal in a Calendar quarter.

Withdrawals under this Section shall not be available to Participants who have retired or otherwise terminated employment.

A Participant who receives a distribution of 401(k) Contributions on account of a hardship deemed to exist under (a) through (g) above shall be prohibited from making 401(k) Contributions under the Plan for six months after receipt of the distribution.

Section 8.02. - Time of Payment -

Payment to a Participant pursuant to an election of withdrawal under Section 8.01 shall be made in cash as soon as practicable. Except as otherwise permissible under applicable law, no payment shall be made less than thirty (30) days after the Participant submits the request and receives any information required to be furnished by the Trustees (or their delegate).

Section 8.03 - Suspension of 401(k) Contributions and Employer Contributions-

(a) Voluntary Suspension -

A Participant may at any time voluntarily suspend his 401(k) Contributions, except for 401(k) Contributions which reflect Compensation already earned, effective as of the first Payday occurring after adequate advance written notice is given to the Trustees (or their delegate) and the Employer. Such suspension will continue until the Participant elects, by prior written request to the Trustees (or their delegate) and the Employer effective as of the first pay day of any subsequent Calendar Quarter coincident with or next following the passage of three (3) months from the effective date of the voluntary suspension. Notice to the Employer must be made in advance of the pay processing period for the Payday on which any election under this Section is to be effective.

(b) Automatic Suspension -

401(k) Contributions and, if applicable, Employer Contributions of a Participant will be suspended automatically for any period during which a Participant is on an approved leave of absence without pay.

## ARTICLE IX

### Trust Fund

#### Amendment and Termination of Plan

##### Section 9.01 - The Trust Fund -

The Employers and the UMWA have executed a Trust Agreement pursuant to which the Trustees manage and operate a Trust Fund and receive, hold, invest according to Participant's direction and disburse such contributions, interest and other income received by the Trustees for the Trust Fund to provide the retirement and other benefits payable in accordance with the Plan and the Wage Agreement. The Trustees shall establish one or more separate investment funds under the Trust. Such investment funds shall be selected pursuant to Section 404(c) of ERISA and Regulations issued thereunder. Included among such investment funds shall be at least two investment funds selected by the Trustees from a list prepared by the UMWA and at least two investment funds selected by the Trustees from a list prepared by the BCOA. In lieu of providing such list of investment funds, the UMWA and/or the BCOA may specify criteria by which the Trustees shall select such investment funds. The Trustees may appoint one or more Investment Managers with full investment and bookkeeping responsibilities for the Plan. The Trust Agreement is incorporated by this reference into the Plan.

##### Section 9.02 - Amendment of Plan and Trust Agreement -

The Employers and the UMWA, by joint action, reserve the right at any time and from time to time to modify or amend in whole or in part any or all of the provisions of the Plan and Trust Agreement or to terminate the Plan and Trust Agreement, without reopening or otherwise affecting the integrity of any other provision of the Wage Agreement, by a written agreement between the Employers and the UMWA; provided, however, that: (a) the Employers and the UMWA have delegated to the Trustees the authority and responsibility to make certain changes and amendments as set forth in Article XX of the Wage Agreement; (b) no amendment shall deprive any Participant or any Beneficiary of any of the benefits to which he is entitled under this Plan with respect to salary deferral contributions previously made, except as otherwise required or permitted under applicable law; (c) no amendment shall provide for the use of funds or assets held under this Plan other than for the benefit of Employees, and no funds contributed to this Plan or funds or assets of this Plan shall ever revert to or be used or enjoyed by any Employer, except as provided in Section 11.02; and (d) that no amendment shall reduce any Account or eliminate an optional form of distribution to which any Participant or any Beneficiary is entitled under this Plan, except as otherwise required or permitted under applicable law. In the event that the Trustees determine that an amendment is necessary in order to obtain an initial determination of qualification under the applicable provisions of the Code, they shall so advise the Employers and the UMWA, and no amendment shall be effective unless agreed to in writing by the Employers and the UMWA.



Section 9.03 - Termination of Plan -

Upon partial or complete termination of the Plan or upon complete discontinuance of participation or contributions to the Plan by an Employer, among other alternatives, the Trustees shall have the right to retain the assets under this Plan until the respective retirement or death or termination of employment of the Participants when the provisions of this Plan pertaining to the applicable contingency shall be followed; or, to the extent permissible under Section 401(k) of the Code and other applicable law, the Trustees may distribute the assets to Participants in any form permitted under Section 5.03 at any time after the termination of the Plan and prior to death, termination of employment or retirement. As to the assets held for the benefit of a retired Participant or of a Terminated Participant, or of any Beneficiaries of a deceased Participant, however, the same shall be made available immediately to them.

Section 9.04 - Merger -

In the event of any merger or consolidation with, or transfer of assets and liabilities to, any other qualified pension or retirement plan, the benefit to which each affected Participant is entitled, immediately after such merger, consolidation, or transfer, assuming the Plan then terminated, must be at least equal to or greater than the benefit to which he was entitled immediately prior to such merger, consolidation or transfer, assuming the Plan then terminated.

Section 9.05 – Spin-Off -

The accrued benefits (assets and liabilities) associated with Participants currently or formerly employed by a current or former Employer may be spun off from the Plan and transferred to a new defined contribution plan or a separate defined contribution plan maintained by the Employer, in each case provided that the new or transferee plan is qualified under Code section 401(a), the transfer is permitted or authorized by the transferee plan, the spin-off can be accomplished consistent with Code Sections 411(d)(6), 414(l), and other applicable law, and provided that such transfer does not have a material adverse impact on the administrative costs of the Plan. In making such a transfer, the Trustees may rely upon the representations made by the fiduciaries of the transferee plan.

ARTICLE X

Named Fiduciary - Plan Administrator

Duties of An Employer

Section 10.01 - Named Fiduciary - Plan Administrator -

The Trustees shall be the named fiduciaries pursuant to Section 402 of ERISA and the plan administrator as that term is defined under ERISA; provided, however, that the Trust may be amended to designate other or additional named fiduciaries under the Plan and Trust; and provided, further that in the event the Trustees enter into an arrangement with a third party for the purpose of administering, operating and/or maintaining any or all portions of the Plan and/or the Trust, the administrator designated under

such arrangement shall be a named fiduciary under the Plan and Trust and the plan administrator for purposes of ERISA. The named fiduciaries of the Plan may designate persons other than named fiduciaries to carry out fiduciary responsibilities (as permitted under Section 405(c)(1) of ERISA) under the Plan, provided that such designation is made and accepted in writing. Service of legal process may be made upon the Plan by delivery of the same upon the Trustees.

#### Section 10.02 - General Responsibilities -

The Trustees (or their delegate) shall use the ordinary care and reasonable diligence of a prudent man in the performance of their duties under this Plan and they shall not be liable for any loss sustained by reason of any decision which does not violate their fiduciary duties, is in good faith and is in accordance with the provisions hereof. The Trustees' (or their delegate's) powers, duties, rights, and obligations shall be those expressly conferred or imposed upon them by this Plan, the Trust, or by ERISA or by any other law.

No Trustee or other fiduciary, as that term is defined under the law, shall be liable for breaches of fiduciary duty regarding this Plan if such breach was committed before he became a fiduciary or after he ceased to be one.

#### Section 10.03 - Record Keeping - Access Thereto -

The Trustees (or their delegate) shall keep complete records which shall show their actions under this Plan. Any Participant may demand a copy of such records with respect to his participation for which the Participant may be assessed a reasonable charge, but he shall have no right to inquire with respect to other Participants.

#### Section 10.04 - Expenses and Compensation -

The reasonable expenses incident to the operation of the Plan incurred after January 1, 2011, including the reasonable compensation of the Trustees, accountant, attorney, investment advisors or managers, administrators, and such other technical and clerical assistance as may be required, shall be paid for by the Employers, subject to the Memorandum of Understanding, dated July 1, 2011, entered into by the UMWA and BCOA regarding administrative costs, and subject to the terms of the Trust; provided that the amount of administrative costs to be borne by the Employers shall be limited to a maximum amount that does not exceed annually (beginning January 1, 2011), the lesser of 42 basis points applied to the assets of the Trust or \$370,000 in 2011, which maximum amount shall be increased to \$375,000 in 2012, \$380,000 in 2013, \$385,000 in 2014, \$390,000 in 2015 and \$395,000 in 2016. Any unused contributions remaining at the end of a year may be carried forward into following years and may be used to pay administrative costs incurred by the Savings Plan over and above the maximum amounts established above for a particular year. Under no circumstances shall the annual contributions made hereunder exceed the actual administrative costs of the Trust. Administrative expenses incurred after January 1, 2011 that are not properly borne by the Employers shall be paid from the Trust. Effective July 1, 2013, the Trustees shall first use Trust assets held under any "Expense

Reimbursement Account" to pay such administrative expenses. An Expense Reimbursement Account shall contain assets provided to the Plan by a plan service provider and earnings, if any, thereon. Expense Reimbursement Account assets shall be used only to pay reasonable and necessary expenses of Plan administration. Remaining administrative expenses, if any, shall be paid from the Trust by allocating the costs to Participants' Accounts or as charges against Participants' Accounts or investment Funds in the manner described under Section 4.04.

Section 10.05 - Prohibition Against Persons Holding Positions -

No person shall serve or be permitted to serve as a plan administrator, named fiduciary, Trustee, custodian, counsel, agent or consultant to the Plan, who has been prohibited from serving in one of the above positions under Section 411 of ERISA.

Section 10.06 - Employer's Duties -

An Employer shall make payroll deductions each payday for each of its Employees who is participating in the Plan and receiving Compensation from such Employer, in the percentage designated by each Employee. An Employer shall remit such amount as 401(k) Contributions to the Trustees (or their delegate) on the earliest date on which such contributions can reasonably be segregated from the Employer's general assets, and in no event later than the 10th day of the month following the month of the payroll deduction, using a reporting form accepted by the Trustees for that purpose. An Employer shall have no obligations with respect to 401(k) Contributions under this Section until it receives from the Trustees an Employee-signed authorization for payroll deductions and information establishing that an account has been opened for such Employee under the Plan.

Any Employer required to make Employer Contributions shall remit such Employer Contributions on the 10th of the month for hours worked in the preceding month and shall provide to the Trustees by the 10th of the month the hours worked in the preceding month for each Participant for whom Employer Contributions are being made in a reporting form designated by the Trustees. Notwithstanding the foregoing, the initial contribution made by an Employer on behalf of any individual Participant who becomes eligible for Employer Contributions, and the initial report to the Trustees of hours worked for any such Participant, shall be considered timely if the Employer's initial contribution or initial report is made after the Trustees inform the Employer that it is obligated to make Employer Contributions on behalf of such Participant and within 30 days after the 10th of the month on which the contribution and report otherwise are due (as set forth above).

Notwithstanding the foregoing and any other provision of the Plan, (i) an Employee who becomes an Electing Miner by opting out of the UMWA 1974 Pension Plan under Article XXB (d) 7 of the Wage Agreement shall become eligible for Employer Contributions on hours worked on or after the first day of the month following the month in which the Electing Miner completes the UMWA 1974 Pension Plan's opt-out application process (unless the Electing Miner completes the Special Election Opportunity UMWA 1974 Pension Plan Opt-Out Election Form ("Special Election Form") prior to July 1, 2012, in which case such Electing Miner shall become eligible for Employer Contributions on hours worked on or after the first day of the month following the month designated and selected by such Electing Miner on his

Special Election Form), and (ii) an Employee who attains 20 years of credited service under the UMWA 1974 Pension Plan shall become eligible for Employer Contributions on hours worked on or after the first day of the month following the month in which the Employee attains 20 years of credited service.

An Employer shall provide to the Trustees (or their delegate) a complete list of names, addresses, and social security numbers of all eligible Employees no later than thirty (30) days after receipt of a written request by the Trustees, and of all new Employees no later than two (2) weeks after their hire. Thereafter, the Trustees (or their delegate) shall be responsible for updating any relevant information, except that the Employer shall notify the Trustees of the termination of employment of any Employee. The Trustees (or their delegate) may require that the Employees be responsible for informing the Trustees as to any changes in information.

An Employer shall provide to the Trustees (or their delegate), no later than January 31 of each Plan Year, a list of all eligible Employees (whether or not they are Participants) and the Compensation each Employee received from the Employer during the immediately preceding Plan Year. In addition to or as indicated on such list, the Employer shall provide the Trustees (or their delegate) with the name and Compensation of each Employee who is a Highly Compensated Employee (or shall state the amount of Compensation which would make an Employee a Highly Compensated Employee) and shall certify that such information is correct. The Trustees (or their delegate) shall rely on the accuracy of the information provided by an Employer for purposes of complying with the provisions of the Plan and the Code.

Any information required to be provided by the Employer to the Trustees may be provided in hard copy or electronic format.

Pursuant to the terms of Article XXB of the Wage Agreement, all Employers signatory thereto shall make contributions to the Trust at the rate and on the basis set forth therein. All such contributions shall be separately accounted for hereunder.

An Employer, in its sole discretion, shall have the right to make a contribution to the Plan prior to the date(s) on which corresponding amounts are withheld from Participants' earnings through salary reduction, but after the Participant has performed the services related to such earnings. If made, such advance contributions shall be allocated to Participants' accounts as soon as practicable after the date(s) on which the corresponding amounts are actually withheld from Participants' earnings through salary reduction.

#### Section 10.07 - Claims Procedure -

If the Trustees decide that a Participant's or Beneficiary's claim for benefits shall be denied, the Trustees shall give the Participant or Beneficiary adequate written notice of the denial. The Trustees shall set up a review procedure for claims which have been denied which shall be consistent and practiced in a nondiscriminatory manner. The written notice described shall contain the specific reasons for the denial, description of the review procedure, and instructions on how to apply for review. Such notice shall be written in a manner calculated to be understood by all Participants and Beneficiaries.

## ARTICLE XI

### Miscellaneous Provisions

#### Section 11.01. Special Provision Regarding Participation -

Notwithstanding any other provision of this Plan, the Trustees may accept 401(k) Contributions and/or Employer Contributions from an Employer that is obligated to pay for administrative costs as set forth under Article XXB(c)(3) of the Wage Agreement, provided that the acceptance does not have a material adverse impact on the administrative costs of the Plan.

#### Section 11.02 - Employees' Trust -

This Plan is created for the exclusive benefit of the Employees and their Beneficiaries, and shall be interpreted in a manner consistent with its being an employees' trust, as defined in Section 401(a) of the Code, or any subsequent sections of the Code of like intent or purpose. Therefore, except as provided herein, under no circumstances shall any funds contributed to this Plan or any assets of this Plan and Trust ever revert to, or be used or enjoyed by, the Employer, nor shall any such funds or assets ever be used other than for the benefit of the Participants or their Beneficiaries.

Regardless of the above, a contribution shall be returned to the Employer where the contribution was made by the Employer in whole or in any part because of a mistake of fact or law (other than a mistake relating to whether the Plan is described in Section 401(a) of the Code, or the Trust is exempt from taxation under Section 501(a) of the Code), including, but not limited to, a contribution made pursuant to Section 3.02 on behalf of an Employee who is later determined not to be subject to, or described in, Section 1.11, and the return of the amount of the contribution or the part thereof made by mistake is done within six months from the date the Trustees determine that the contribution was made by such a mistake. To the extent that such amount has reduced a Participant's wages, the Employer shall return it to the Participant. Except as provided below, in the case of a mistaken contribution made pursuant to Section 3.02, all amounts in the Employer Contributions Account of the Employee that are attributable to the mistaken contribution shall be returned to the Employer, and the Employer shall not be entitled to a return of any additional amounts. Notwithstanding the above, mistaken Employer Contributions as described in Section 3.02(c) of this Plan with respect to an Electing Miner as described in Section 1.11(ii)(c) of this Plan for a period in which the Electing Miner was entitled to receive credited service under the UMWA 1974 Pension Plan shall be credited to a subaccount of the Trust for the contributing Employer and used to offset that Employer's future Employer Contribution obligations; provided, any such amounts credited to the Trust's subaccount of an Employer will be returned to the contributing Employer if not applied to the Employer's Contribution obligations by the first calendar quarter of the year following the year in which the contributions were made to the Plan.

Section 11.03 - General Undertaking - Agreement Binds Heirs, etc. -

All parties to this Plan and all persons claiming any interest whatsoever hereunder agree to perform any and all acts and execute any and all documents and papers which may be necessary or desirable for the carrying out of this Plan or any of its provisions. This Plan shall be binding upon the heirs, executors, administrators, successors and assigns, as such terms shall apply, of any and all parties hereto, present and future.

Section 11.04 - Plan Not Contract of Employment -

This Plan shall not be construed as creating or changing any contract of employment between an Employer and its Employees, whether Participants hereunder or not; and each Employer retains the right to deal with its Employees, whether Participants hereunder or not to the same extent as though this Plan had not been created.

Section 11.05 - Spendthrift Clause -

No Participant shall have the right to alienate or assign benefits provided under this Plan. If any Participant shall attempt to alienate or assign his benefits or should his benefits be attempted to be made subject to attachment, execution, garnishment or other legal or equitable process, such action shall be void, unless his benefits are subject to a Qualified Domestic Relations Order (as defined in Section 414(p) of the Code), in which case payment shall be made in accordance with the applicable requirements of such qualified Domestic Relations Order. If a domestic relations order fails to satisfy the requirements of a Qualified Domestic Relations Order solely because it requires payment to an alternative payee at a time prior to the time that the Participant could receive a distribution under the Plan, then the Plan shall make payment to the alternate payee in compliance with the terms of the aforementioned domestic relations order and otherwise treat the order as a Qualified Domestic Relations Order.

Section 11.06 - Invalidity of Certain Provisions -

If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Plan shall be construed and enforced as if such provisions had not been included.

Section 11.07 - Law Governing -

This Plan shall be construed and enforced according to the laws of the United States of America, and where not preempted by or inconsistent with federal law, the laws of the District of Columbia.

Section 11.08 - Withholding -

Payments to or distributions from this Plan shall be subject to withholding as shall be required under any income tax or other law, whether of the United States or any other jurisdiction.

Section 11.09 – Procedure for Missing Participants or Beneficiaries -

If a Participant or Beneficiary cannot be found when eligible for a distribution under the Plan, his benefit will be reinstated upon submission of an appropriate claim.

In the event the Plan is terminated, payments shall be made in a manner that protects the benefit rights of a Participant or Beneficiary. Benefit rights shall be deemed to be protected if the amount in a Participant's or Beneficiary's Participant Account is placed into an individual retirement account, used to purchase an annuity contract, or transferred to another qualified retirement plan. Benefit rights need not, however, be protected if a Participant Account becomes subject to state escheat laws or if a payment is made to satisfy Section 401(a)(9) of the Code.

Section 11.10 - All Copies of Plan Deemed Originals -

This Plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Employers and the Union, pursuant to proper authority, have caused this Plan, as amended and restated, to be signed on this 26<sup>th</sup> day of February, 2014.

UNITED MINE WORKERS OF AMERICA

*Cecil E. Roberts*

International President

BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.

*Michael M. Kow*

President

Accepted by:

Dated: Feb 26, 2014

*Michael M. Kow*

Trustee

Dated: \_\_\_\_\_

Trustee

Dated: \_\_\_\_\_

Trustee

Dated: \_\_\_\_\_

Trustee