

**IRON WORKERS LOCALS 40, 361 AND 417**

**Topping Out Fund**

**SUMMARY PLAN DESCRIPTION**

**AND**

**RULES AND REGULATIONS**



## Iron Workers Locals 40, 361 and 417 Topping Out Fund

451 Park Avenue South  
New York, NY 10016  
212-684-1586

### BOARD OF TRUSTEES

<b>Employer Trustees</b>	<b>Union Trustees</b>
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Jake Bidosky Keystone Management Association, Inc. PO Box 274 Mountainville, NY 10953	Matthew Chartrand Iron Workers Local 361 89-19 97 <sup>th</sup> Avenue Ozone Park, NY 11416
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#### **Fund Manager**

Brian J. Sabbagh

#### **Legal Counsel**

Colleran, O'Hara and Mills  
Steven Davi, P.L.L.C.

#### **Consultants and Actuaries**

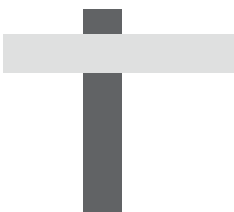
The Segal Group

#### **Auditor**

Grassi & Co.



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January 1, 2022

Dear Plan Member:

We are pleased to provide you with this booklet summarizing the provisions of the Iron Workers Locals 40, 361 and 417 Topping Out Fund (the “Plan”). The Plan is a health and welfare plan with individual accounts for each participant.

This booklet describes the main features of the Plan and is called a Summary Plan Description or “SPD.” As you look through it, you will learn how you become a participant in the Plan, the forms of benefits available under the Plan and when they are payable.

To make this information as clear as possible, every effort has been made to write this SPD in a plain, straightforward manner. Please read this SPD carefully and show it to your family. It is important for your family to be aware of the benefits available to you under the Plan.

Please remember: this is only a summary of the Plan, not a substitute for the actual Plan. A full copy of the Plan document is included with this SPD. If there are any discrepancies between this SPD and the Plan document, the language of the Plan is controlling in all cases.

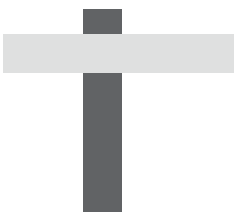
You may direct any questions you may have about your benefits to the Fund Office.

Sincerely,

**Board of Trustees**



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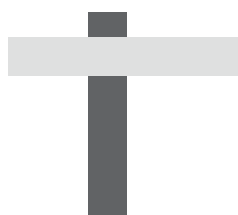
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## **HOW DO YOU BECOME A PARTICIPANT IN THE TOPPING OUT PLAN?**

You are eligible to become a participant of the Plan if you are working for an employer who is required to make contributions on your behalf according to a collective bargaining agreement or some other written instrument with the Union.

## **HOW DOES YOUR ACCOUNT GROW?**

On each valuation date, contributions made by your employer to the Plan on your behalf are credited to an Individual Account established in your name. The valuation dates are March 31, June 30, September 30 and

December 31. If you become a Plan participant after the valuation date, an Individual Account will be set up for you as of the last date of the fiscal year.

## **HOW IS THE VALUE OF YOUR ACCOUNT DETERMINED?**

The amount in your Individual Account is determined at the end of each year by adding together:

The amount of your Individual Account is determined on each Valuation Date by adding together

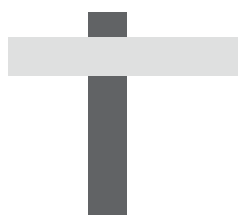
- The amount in your Individual Account as of the last Valuation Date
- Plus** Any new contributions made on your behalf
- Less** Any withdrawals which you may have made from your Account since the last Valuation Date
- Less** Your share of the Plan's administrative expenses for the year
- Plus** Your share of the Plan's investment earnings for the year

## **WHAT ARE THE BENEFITS OFFERED BY THE PLAN?**

### **When Are You Eligible for Benefits?**

You are eligible to collect benefits from this Plan under any of the following circumstances:

- You become unemployed or disabled.
- You die.
- You have unreimbursed medical expenses for you or your eligible dependents.



### How Are Benefits Paid?

Benefits from your Individual Account are paid differently depending upon which of the three reasons for withdrawal applies to you. You can continue to collect benefits as long as you meet the eligibility rules for at least one of the benefits, and as long as you have a balance in your Account.

If you elect to receive payment of your benefit in a lump sum of 80% or more of your Accumulated Share prior to your account being credited with the net investment yield for the period ending with the most recent valuation date, you will be subject to a 20% withholding pending the Plan's determination as to whether it has experienced a positive or negative return. The difference between any actual investment loss and the 20% withheld will be paid to you as soon as practicable after the Plan determines its investment return.

**Additional Unemployment Benefit:** This benefit may be paid no more frequently than once every two months. The benefit payment for a period for which you are entitled to benefits will be equal to the amount you received under the New York State Unemployment Law, the New York State Disability Law, or the New York State Workers' Compensation Law for the same period, whichever is applicable. If you have permanently left the industry, you will receive the balance remaining in your Individual Account.

**Additional Death Benefit:** When you die, your designated beneficiary will receive a lump sum equal to the amount in your Individual Account at the time of your death.

**Additional Hospitalization and Medical Benefits:** If you or an eligible dependent incur expenses for hospitalization, medical, surgical or dental bills which are not reimbursed or reimbursable from the Iron Workers Local Union Nos. 40, 361 and 417 Health Plan, or some other health insurance plan, you can receive benefits from the Fund equal to the amount which is not reimbursed.

The Trustees require that a formal written application be made on a Topping Out Fund claim form. Claim forms are available from the Fund Office.

All benefits paid from the Fund may be subject to federal withholding and applicable state and local income taxes, as well as FICA and federal and state unemployment taxes. The Fund will automatically withhold 20% of the amount being withdrawn as federal withholding. You will receive a Form 1099 MISC at the end of each year indicating the dollar amount paid to you during the year.



## **HOW DO YOU DESIGNATE A BENEFICIARY?**

When you become a participant under the Plan, you can name someone to receive your benefit if you should die after becoming a participant and before you become eligible for benefit payments. The Trustees require that a formal designation of beneficiary be made on the appropriate Topping Out Fund form.

## **WILL I BE NOTIFIED EACH YEAR AS TO THE STATUS OF MY INDIVIDUAL ACCOUNT?**

Yes. You will receive a statement prepared by the Fund Office annually which will tell you how much you have in your Topping Out Fund Individual Account at the end of the fiscal year. This statement will provide you with the details of how much has been contributed for you during the year, interest earned, and any other charges or credits which affect the amount in your Individual Account.

## **RIGHT OF APPEAL**

You or your beneficiary have the right to appeal any denial of an application for benefits under the Plan. If your claim for benefits is denied, in whole or in part, the Trustees will provide

you with a written explanation of the reasons for the denial within 90 days from the date your application is received.

Any notice to you or your beneficiary that your claim has been denied shall include the following:

- The specific reason(s) for the denial;
- Specific reference to the Plan provisions on which the denial is based;
- If applicable, a description of any additional material or information necessary to complete the claim and an explanation of why the material or information is necessary; and
- A description of the steps which should be taken by you or your beneficiary to appeal the denial of benefits.

Special circumstances may require more than 90 days to process your claim and make a determination. In such a case, a notice of the extension will be mailed to you within 90 days from the date your claim was received and the extension notice will indicate the special circumstances which required the extension of time and the date by which the Plan expects to render the final decision. In such cases, if your claim is denied, notice of the denial will be sent to you within 180 days from the date your claim was received. If you do not receive notice of the denial, or a notice of the extension, within 90 days (or 180 days if a notice of extension was issued) from the date your

claim was received, the claim shall be deemed denied and you may proceed to the review stage and file a request for appeal.

You will have 60 days from the date you receive the notice of denial of your claim (or the aforementioned 90- or 180-day period) to file a request for an appeal of a denial of benefits. The request must be made in writing to the Trustees. In preparing for your appeal, you or your authorized representative may, upon request, review documents pertinent to the claim and submit issues and comments in writing.

The Trustees (or an appropriate committee thereof) shall render all decisions on appeal within 60 days of receipt of request for a review.

The decision on review shall be made in writing and shall include the specific reasons for the decision and refer to the specific provisions of the Plan on which the decision was based.

## **PLAN AMENDMENT AND TERMINATION**

Amendments may be made in writing by and become effective on the approval of the Trustees, or on such other date as may be specified in the document amending the Plan. The Plan or any coverage under it may be terminated by the Trustees and new coverage may also be added by its Trustees. Upon termination of the Plan, the Trustees will apply the monies of the Fund to provide benefits or otherwise to carry out the purposes of the Plan in an equitable manner until the entire remainder of the Fund has been disbursed.

## **ADMINISTRATIVE INFORMATION**

The following additional information concerning your Plan is being provided to you in accordance with government regulations:

The Plan is a health and welfare plan. A joint Board of Trustees, consisting of Employer representatives and Union representatives, is the Plan Administrator. The Board of Trustees has been designated as the agent for the service of legal process. Service of legal process may be made upon any individual Trustee or the Board of Trustees of Iron Workers Locals 40, 361 and 417 Topping Out Fund at 451 Park Avenue South, New York, New York 10016.

### **Plan Name**

Iron Workers  
Locals 40, 361 and 417  
Topping Out Fund

### **Plan Administrator**

Board of Trustees  
Iron Workers  
Locals 40, 361 and 417  
Topping Out Fund  
451 Park Avenue South  
New York, NY 10016

### **Employer Identification Number**

13-3156507

### **Plan Number**

001

### **Fiscal Year End**

December 31

### **Plan Year**

January 1 – December 31



All contributions to the Plan are made by Employers in accordance with their collective bargaining agreements or other written agreements with the Union. The collective bargaining agreements or other written agreements require contributions to the Plan at fixed dollar amounts. The Fund Office will provide you, upon written request, with information as to whether a particular Employer is contributing to this Plan on behalf of its employees.

Benefits are provided from the Plan's assets, which are accumulated under the provisions of the collective bargaining agreement or other written agreement and held in a trust fund for the purpose of providing benefits to covered participants and defraying reasonable administrative expenses.

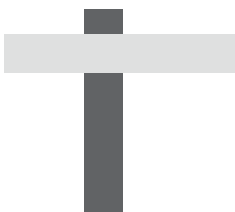
The Plan's assets are held by the Trustees and invested by professional investment managers.

The Plan shall be administered and operated by the Plan Administrator, in its sole and absolute discretion. The Plan Administrator, and any duly authorized delegate thereof, shall have the complete authority to administer, apply and interpret the Plan (and any related documents) and to decide all matters arising in connection with the operation or administration of the Plan. All determinations made by the Plan Administrator with respect to any matter arising under the Plan (and any other Plan document) shall be final and binding on all parties, subject to every participant's rights under law and under the provisions of the Plan.

### **YOUR RIGHTS UNDER ERISA**

As a participant in the Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). ERISA provides that all Plan participants are entitled to:

- Examine, without charge, at the Fund Office and at other specified locations such as work sites and union halls, all Plan documents, including insurance contracts, collective bargaining agreements and copies of all documents filed by the Plan with the U.S. Department of Labor, such as detailed annual reports and Plan descriptions.
- Obtain copies of all Plan Documents and other Plan information upon written request to the Fund Manager. The Fund Manager may make a reasonable charge for the copies.
- Receive a summary of the Plan's annual financial report. The Fund Manager is required by law to furnish each participant with a copy of this summary annual report.



In addition to creating rights for Plan participants, ERISA imposes duties upon the people who have the responsibility for the operation of the benefit Plan. The people who operate your Plan, called “fiduciaries” of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your Employer, your Union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a pension benefit or exercising your rights under ERISA.

If your claim for a benefit is denied, in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the Plan review and reconsider your claim.

Under ERISA there are steps you can take to enforce the above rights. For instance, if you request materials from the Plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Fund Manager to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Fund Manager.

If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that the Plan fiduciaries misuse Plan money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim frivolous.

If you have any questions about your Plan, you should contact the Fund Manager. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest area office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the Publications Hotline of the Employee Benefits Security Administration.



## **RULES AND REGULATIONS — TOPPING OUT FUND**

### **SECTION 1: Definitions**

#### **1.1 Trust Agreement.**

The term “Trust Agreement” as used herein shall mean the Agreement and Declaration of Trust entered into as of October 12, 1982 by and between the individual Trustees, the Association and the Unions establishing the Iron Workers Locals 40, 361 and 417 Topping Out Fund or as the same may hereafter be amended.

#### **1.2 Trust Fund.**

The term “Fund” means Iron Workers Locals 40, 361 and 417 Topping Out Fund established by the Trust Agreement.

#### **Plan.**

The term “Plan” as used herein shall mean the rules and regulations set forth herein.

#### **Collective Bargaining Agreement.**

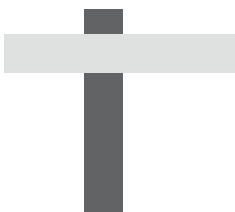
The term “Collective Bargaining Agreement” or Agreement means a written contract between the Union and an Employer which requires contributions to the Fund.

#### **Contributing Employer.**

The term “Contributing Employer” or “Employer” means an employer signatory to a Collective Bargaining Agreement with the Union requiring contributions to this Fund, and an employer signatory to any other agreement requiring contributions to this Fund and the affiliated Funds under the terms of the Agreement or similar documents, and shall also include the Iron Workers Local Union Nos. 40, 361 and 417 and the Iron Workers Local Union Nos. 40, 361 and 417 Pension, Health, Annuity, Vacation, Topping Out and Apprenticeship and Training Funds.

#### **Employee.**

The term “Employee” means a person who is an employee of an Employer and who is covered by a Collective Bargaining Agreement or any written agreement that may from time to time be entered into by the Trustees of this Fund requiring Employer contributions on his or her behalf. It may also include employees of the Unions and the affiliated Funds who are not represented for bargaining purposes by another union.





**Covered Employment.**

The term “Covered Employment” means employment of an Employee by an Employer for which the Employer is or has been required to make contributions.

**Individual Account.**

The term “Individual Account” means the account established for each Employee, pursuant to Section 2 of the Plan.

**Valuation Date.**

The term “Valuation Date” means March 31, June 30, September 30 and December 31.

**Contributions.**

The term “Contributions” means the payments required to be made to the Fund by a Contributing Employer.

**Market Value.**

The term “Market Value” means the value of the assets which takes into account fair market value.

**Beneficiary.**

The term “Beneficiary” means a person, other than an Employee, who is receiving or entitled to receive benefits from the Plan, because of designation for such benefits by an Employee or because of the provisions of the Plan.

**Fiscal Year.**

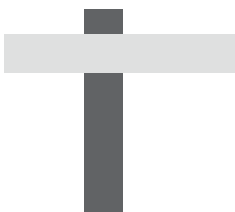
The term “Fiscal Year” means any period from January 1 through December 31.

**SECTION 2: Individual Accounts**

- 2.1** Following the adoption of this Plan, on the last day of the fiscal year an Individual Account shall be established for each Employee for whom contributions have been made up to the close of that fiscal year. Thereafter, on the last day of each subsequent fiscal year, an Individual Account shall be established for each Employee for whom contributions are first received in the succeeding year. Individual Accounts with zero or negative amounts shall be closed on the Valuation Date such amount is so determined.



- 2.2** As soon as practicable after each Valuation Date, the Trustees shall determine and fix the amount in each Individual Account. The amount in each such Individual Account shall be determined as follows:
- (1) The value of each Individual Account as of the last preceding Valuation Date.
  - (2) Ascertain the amount of Contributions actually made on behalf of each Employee to his Individual Account between the two Valuation Dates.
  - (3) Determine the amount of withdrawals made from each Employee's Individual Account between the two Valuation Dates.
  - (4) Determine the total of all expenses incurred by the Fund between the two Valuation Dates.
  - (5) Divide (4) by the number of Individual Accounts which were in existence on the Valuation Date.
  - (6) The amount in each Individual Account as of the new Valuation Date prior to the crediting of any earnings is determined by adding items (1) and (2) and subtracting items (3) and (5).
  - (7) Take the result in item (6) and multiply this amount by the earnings factor which is to be determined at the sole discretion of the Trustees. The result is the amount in each Individual Account as of the New Valuation Date.
- 2.3** In no event on any Valuation Date shall the total amounts in all Individual Accounts, plus amounts established for expenses and reserves at that time, exceed the amortized cost of the total net assets of the Fund, and if such an event should occur, then all existing Individual Accounts shall automatically be proportionately adjusted so that the total of all Individual Accounts plus amounts established for expenses and reserves is not more than the total net assets.
- 2.4** The fact that Individual Accounts are established and valued as of each Valuation Date shall not give any Employee or others any rights, title or interest in the Fund or its assets, or in the Individual Account, except at the time or times and upon the terms and conditions herein provided.



### **SECTION 3: Benefits**

- 3.1** Additional Unemployment (including Compensation and/or Disability) Benefits. In the event that any Employee becomes unemployed, the Trustees, to the extent that funds are available in the Employee's Individual Account, shall authorize the weekly payment of an amount equal to that being received from New York State for the same period during which such Employee receives payment under the New York State Unemployment Insurance Law, the New York State Disability Law or the New York State Workers' Compensation Law for such Unemployment.

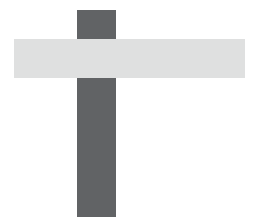
Notwithstanding the above, in the event any Employee has permanently left the industry, he will receive the balance remaining in his Individual Account.

- 3.2** Additional Death Benefits. In the event that any Employee should die, the Trustees, to the extent that funds are available in the Employee's Individual Account, shall authorize a payment of the amount in the Individual Account as a death benefit in a lump sum to the designated Beneficiary of such deceased Employee or to his Estate as the case may be.

Notwithstanding the above, in the event any employee has permanently left the industry, he will receive the balance remaining in his Individual Account subject to the provisions in Section 3.5 below.

- 3.3** Additional Hospitalization and Medical Benefits. If any Employee requires economic assistance to pay hospitalization, medical, surgical or dental bills for himself or his dependents, the Trustees, to the extent that funds are available in the Employee's Individual Account, shall make payment to said Employee for the actual amount of out-of-pocket expenses not reimbursed or reimbursable by the Iron Workers Local Union Nos. 40, 361 and 417 Health Fund or some other health insurance plan.

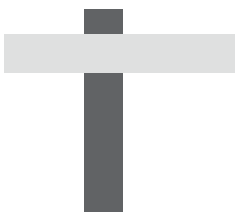
- 3.4** The foregoing benefits are subject upon payment to the Employee or the Beneficiary to such income tax withholding as may be required by law and the appropriate regulations and are subject to FICA and federal and state unemployment insurance taxes as may be required by law and the appropriate regulations.



- 3.5** If the Participant elects to receive his benefit in a lump sum of 80% or more of his Individual Account (prior to his Individual Account having been credited with net investment yield for the period ending with the most recent Valuation Date) the Plan will pay the Participant 80% of his Accumulated Share and 20% will be withheld pending the Plan's determination as to whether it has experienced a positive or negative investment return. The difference between any actual investment loss and the 20% withheld will be paid to the Participant as soon as practicable after the Plan determines its investment return.

**SECTION 4: General Provisions**

- 4.1** As a condition to payment of any benefit, an application for such benefit must be made in writing in a form and manner prescribed by the Trustees. No benefits shall be paid prior to the establishment and crediting of Individual Accounts or prior to the receipt of written confirmation from the Internal Revenue Service of the United States that the Trust is an exempt trust and that the Plan is a qualified plan under the provisions of the Internal Revenue Code, whichever is later.
- 4.2** Every Employee or Beneficiary shall furnish, at the request of the Trustees, any information or proof reasonably required for the administration of the Plan or for the determination of any matter that the Trustees may legitimately have before them. Failure to furnish such information or proof promptly and in good faith shall be sufficient reason for the denial, suspensions or discontinuance of benefits to such Employee or Beneficiary. The falsity of any statement material to an application or the furnishing of fraudulent information or proof shall be sufficient reason for denial, suspension or discontinuance of benefits under this Plan and in any such case, the Trustees shall have the right to recover any benefit payments made in reliance thereon.
- 4.3** The Trustees shall be the sole judges of the standard of proof required in any case. In the application and interpretation of any of the provisions of this Plan, the decisions of the Trustees shall be final and binding on all parties including Employees, Employers, the Unions, and the Beneficiaries.
- 4.4** An Employee may designate a Beneficiary in a form provided by the Trustees and delivered to the Trustees before death. An Employee may change his Beneficiary (without the consent of the Beneficiary) in the same manner. Payment of the benefit due as the result of the death of such an Employee shall be made to the designated Beneficiary of such deceased Employee or his Estate, as the case may be.



- 4.5** In the event it is determined to the satisfaction of the Trustees that an Employee or Beneficiary is unable to care for his affairs because of mental or physical incapacity, any payment due may be applied, in the discretion of the Trustees, to the maintenance and support of such Employee or Beneficiary or to such person as the Trustees, in their sole discretion, find to be an object to the natural bounty of the Employee or Beneficiary in the manner decided by the Trustees, unless, prior to such payment, claim shall have been made for such payment by a legally appointed guardian, committee, or other legal representative appropriate to receive such payments on behalf of the Employee or Beneficiary. Any such payment shall be a complete discharge of any liability therefore under the Plan.
- 4.6** No Employee, Beneficiary or other person entitled to any benefits from the Plan shall have the right to assign, alienate, transfer, encumber, pledge, mortgage, hypothecate, anticipate, or impair in any manner his legal or beneficial interest, or any interest in assets of the Trust, or benefits of this Plan. Neither the Trust nor any of the assets thereof, shall be liable for the debts of any Employee or Beneficiary entitled to any benefits under this Plan.
- 4.7** An Employee whose application for benefits under this Plan has been denied, in whole or in part, is to be provided with adequate notice in writing setting forth the specific reasons for such denial, and shall have the right to appeal the decision, by written request filed with the Trustees within 60 days after receipt of such notice. The appeal shall be considered by a person or committee designated by the Trustees. The Trustees, after reviewing the basis of the appeal, shall thereafter make a final decision which shall be transmitted in writing to the claimant or beneficiary within 60 days after receipt of such verification or authentication of any data or documents presented to them or which they may request.
- 4.8** No benefits of any nature shall be provided unless they are expressly enumerated in this Plan.

### **SECTION 5: Amendment**

- 5.1** In order that the Trustees may carry out their obligation to maintain within the limits of the funds available to them a sound and economic program dedicated to providing the maximum benefits for Employees as a whole, the Trustees expressly reserve the right in their sole discretion, but upon a non-discriminatory basis, to amend this Plan in any manner in which they deem necessary irrespective of its retroactivity.