

Agreement and Declaration of Trust



LABORERS' INTERNATIONAL UNION OF NORTH AMERICA NATIONAL (INDUSTRIAL) PENSION FUND

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BOARD OF TRUSTEES

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Michael F. Sabitoni
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FUND ADMINISTRATOR
Brian Kaniewski

Agreement and Declaration of Trust

THIS AGREEMENT AND DECLARATION OF TRUST is made and entered into as of the 1st day of February 1967 in the City of Washington, District of Columbia by and between the Laborers' International Union of North America (hereinafter referred to as the "International" or the "Union" and various employers of members of the International or Union who are or may become parties to this Agreement as hereinafter defined (hereinafter referred to as "Employers").

WITNESSETH:

WHEREAS, the Union and Employers have entered into or expect to enter into collective bargaining agreements which provide, among other things, for the establishment of a Pension Fund and prescribe the contributions to be made by the Employers to such Fund, and

WHEREAS, the said Pension Fund is to be known as the "Laborers' International Union of North America National Pension Fund", and

WHEREAS, it is desired to set forth the terms and conditions under which the said Pension Fund is to be established, and

WHEREAS, it has been agreed that the Pension Fund shall be administered by Trustees and it is desired to define who shall serve as the Trustees, the powers and duties of the Trustees, the nature of benefits to be provided, the basis for financing of the plan, and other details concerning the operation and administration of the Pension Fund.

NOW, THEREFORE, in consideration of the premises, it is mutually understood and agreed as follows:

ARTICLE I DEFINITIONS

Unless the context or subject matter otherwise requires, the following definitions shall govern in this Agreement:

Section 1. **INTERNATIONAL.** The term "International" shall mean the Laborers' International Union of North America.

Section 2. **EMPLOYER.** The term "Employer" shall mean any Employer who now or hereafter has a collective bargaining agreement with the Union requiring periodic contributions to the Pension Fund created by this Trust Agreement and who, in writing adopts and agrees to be bound by the terms and provisions of this Agreement and any amendments and modifications thereof. The term Employer shall also mean employers who participate in this Fund by action of the Trustees pursuant to Article IV, Section 10 hereof, for the particular employees affected.

Section 3. **EMPLOYEES.**

(a) The term "Employees" shall mean all persons within bargaining units represented by the Union who are employed by Employers who are covered by this Pension Fund.

(b) The term "Employees" may also include such other class or classes of employees who are not within the bargaining unit represented by the Union but who are employed by an Employer making contributions in their behalf, provided that the acceptance of such class or classes is not discriminatory and in each case is subject to actuarial valuation by the Trustees, whose decision with regard to their acceptance or rejection shall be final.

Section 4. **LOCAL.** The term "Local" shall mean any Local Union affiliated with the Laborers' International Union of North America.

Section 5. **TRUSTEES.** The term "Trustees" shall mean the persons designated in this Trust Agreement to administer the Pension Fund, together with any successor or replacement Trustees designated in accordance with the provisions of this Agreement.

Section 6. **AGREEMENT AND DECLARATION OF TRUST.** The term "Agreement and Declaration of Trust" or "Trust Agreement" shall mean this instrument, including any amendments or modifications hereof.

Section 7. **PLAN.** The term "Plan" or "Pension Plan" shall mean the program of pension benefits to be established by the Trustees pursuant to this Agreement and Declaration of Trust together with any amendments or interpretations thereof duly adopted by the Trustees.

Section 8. **FUND.** The term "Fund" or "Pension Fund" shall mean the trust fund created pursuant to this Agreement and shall mean generally the monies or other things of value which comprise the corpus and additions to the trust fund.

Section 9. **CONTRIBUTIONS:** The term "Contributions" shall mean the money paid to the Fund in accordance with a Collective Bargaining Agreement or applicable law, subject to the provision of this Trust Agreement.

Section 10. **BENEFITS.** The term "Benefits" shall mean the pension or retirement benefits to be provided pursuant to the Plan.

Section 11. **COLLECTIVE BARGAINING AGREEMENT:** The term "Collective Bargaining Agreement" shall mean a collective bargaining agreement between the Union or an affiliate and an Employer, together with any modifications or amendments thereto, which is acceptable to the Trustees. Such term shall also mean any other written agreement between the Union or an affiliate or the Fund and an Employer which is acceptable to the Trustees.

Section 12. **UNION.** The term "Union" shall mean the International and/or any Local.

ARTICLE II CREATION OF PENSION FUND

Section 1. **ESTABLISHMENT OF FUND.** There is hereby established the "Laborers' International Union of North America National Pension Fund" to be used for the purpose set forth in this Agreement and Declaration of Trust.

Section 2. **GENERAL PURPOSE.** The Pension Fund shall be a trust fund and shall be used exclusively for the purpose of providing pension benefits, as decided by the Trustees, and for financing the expenses of the operation and administration of the Fund, in accordance with this Agreement and Declaration of Trust.

ARTICLE III TRUSTEES

Section 1. **INTERNATIONAL UNION AND EMPLOYER TRUSTEES.** The operation and administration of the Pension Fund shall be the joint responsibility of the Trustees appointed by the Employer and the Trustees appointed by the International Union. The Trustees may increase their number from time to time by designating additional Union Trustees and Employer Trustees; provided, however, that the Employer Trustees and the Union Trustees shall be equal in number, and that the Trustees shall not exceed fourteen in number. There shall be no requirement that the companies with which the Employer Trustees are associated be contributing Employers. The

Trustees shall determine the procedure and basis for naming additional Trustees.

Section 2. ORIGINAL TRUSTEES. The Original Trustees shall be:

- (a) Union Trustees: Joseph V. Moreschi, Peter Fosco and Robert J. Connerton.
- (b) Employer Trustee: Thomas J. Nolan, Jr.

Section 3. ACCEPTANCE OF TRUSTEESHIP. The Trustees shall immediately meet and sign this Agreement and Declaration of Trust which establishes the Pension Fund. The Trustees, by affixing their signatures at the end of this Agreement and Declaration of Trust agree to accept the trusteeship and act in such capacity in accordance with the provisions of this Agreement and Declaration of Trust. Any person duly appointed a successor Trustee shall immediately upon his acceptance in writing of the terms of the Agreement and Declaration of Trust be vested with all the property, rights, powers and duties of a Trustee hereunder.

Section 4. TERM OF TRUSTEES. Each Trustee above named, and each Successor Trustee, shall continue to serve as such until his death, incapacity, resignation or inability to serve because of termination of employment with an Employer or Union.

Section 5. FORM OF NOTIFICATION. In case any Union Trustee shall be removed, replaced or succeeded, a statement in writing by the International Union shall be sufficient evidence of the action taken by the Union. In case any Employer Trustee shall be removed, replaced or succeeded, a statement in writing by the Employer shall be sufficient evidence of the action taken by the Employers. Any resignation by a Trustee shall be by registered mail, addressed to the office of the Fund.

ARTICLE IV POWERS, DUTIES, AND OBLIGATIONS OF TRUSTEES

Section 1. PROPERTY AND SERVICES. The Trustees are authorized and empowered to lease or purchase such premises, materials, supplies and equipment, and to hire and employ and retain such legal counsel, investment counsel, administrative, accounting, actuarial, clerical and other agents or employees as in their discretion they may find necessary or appropriate in the performance of their duties; and to pay the reasonable expenses or compensation therefor; and to delegate to any agents or employees such duties as they consider appropriate.

Section 2. CONSTRUCTION OF AGREEMENT. The Trustees shall have power to construe the provisions of this Agreement and Declaration of Trust and the terms used herein and any construction adopted by the Trustees in good faith shall be binding upon the International, the Local Unions, the Employers and the Employees and their families, dependents, beneficiaries and/or legal representatives.

Section 3. GENERAL POWERS. The Trustees are hereby empowered, in addition to other such powers as set forth herein or conferred by law:

- (a) To establish and administer a Pension Plan on behalf of the Employees referred to in this instrument and to hire an Administrator and/or such other employees or professional or technical assistance as they may require in the performance of their duties as Trustees.
- (b) To enter into any and all contracts and agreements for carrying out the terms of this Agreement and Declaration of Trust and for the administration of the Trust Fund and to do all acts as they, in their discretion, may deem necessary and advisable.

- (c) To compromise, settle, arbitrate, and release claims or demands in favor of or against the Trust Fund or the Trustees on such terms and conditions as the Trustees may deem advisable.
- (d) To establish and accumulate as part of the Trust Fund a reserve or reserves, adequate, in the opinion of the Trustees, to carry out the purpose of such Trust.
- (e) To pay out of the Fund all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Fund or any money, property, or securities forming a part thereof.
- (f) To receive contributions or payments from any source whatsoever to the extent permitted by law.
- (g) To invest and reinvest the Pension Fund in any type of investments that are legal for Trust Funds in the State of New York, and to take any and all action with respect to holding, buying, selling, exchanging such investments, in their own name or in the name of their nominee, as they in their sole discretion may deem appropriate and necessary, and such powers shall include but not be limited to the power to authorize investment of the Pension Fund in a bank collective investment trust which has been qualified under Section 401(a), and which is tax exempt under Section 501(a), of the Internal Revenue Code of 1954, and which is maintained as a medium for the collective investment of funds of stock bonus, pension, profit sharing or other employee benefit trusts also qualified under said sections of the Internal Revenue Code, and to the extent that the Pension Fund is invested in such a trust, the provisions of any such qualified collective investment trust shall be deemed a part of this Trust Agreement.
- (h) To hold in uninvested cash without any liability for interest thereon such sums as they deem necessary or advisable for the cash requirements of the Fund.
- (i) In their discretion and to the extent they deem it wise, beneficial or necessary to appoint a bank or banks or trust company or trust companies to be designated as "Corporate Trustee," and to enter into and execute a trust agreement or agreements with such bank or banks or trust company or trust companies, to provide for the investment and reinvestment of assets of the Pension Fund, with such other provisions incorporated therein as may be deemed desirable in the Trustees' sole discretion for the proper management of the Pension Fund and upon such execution to convey and transfer to such Corporate Trustee any assets of the Pension Fund and without limit with respect to the powers which the Trustees may grant to such Corporate Trustee, in such agreement to the extent permitted by law and to the extent that such investments are legal for Trust Funds in the State of New York. The Trustees shall be forever released and discharged from any responsibility or liability with respect to any assets which they may convey to such Corporate Trustee.
- (j) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.
- (k) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to accomplish the general objective of enabling the

Employees to obtain pension benefits in the most efficient and economical manner.

Section 4. COMPENSATION. The Trustees shall not receive compensation for the performance of their duties.

Section 5. PERSONAL LIABILITY. Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any obligations or debts of the Fund contracted by them as such Trustees, or for the non-fulfillment of contracts, but the same shall be paid out of the Fund and the Fund is hereby charged with a first lien in favor of such Trustee for his or their security and indemnification for any amounts paid out by any such Trustee for any such liability and for his and their security and indemnification against any liability of any kind which the Trustees or any of them may incur hereunder; provided, however, that nothing herein shall exempt any Trustee from liability arising out of his own willful misconduct, bad faith or gross negligence, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof.

The Trustees and each individual Trustee shall not be liable for any error of judgment or for any loss arising out of any act or omission in the execution of their duties so long as they act in good faith and without gross negligence; nor shall any Trustee, in the absence of his own willful misconduct, bad faith or gross negligence, be personally liable for the acts or omissions (whether performed at the request of the Trustees or not) of any other Trustee, or of any agent or attorney elected or appointed by or acting for the Trustees.

The Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

Neither the International, nor the Employers nor the Local Unions shall in any way be liable in any respect for any of the acts, omissions or obligations of the Trustees, individually or collectively.

The Trustees may from time to time consult with the Trust's legal counsel and shall be fully protected in acting upon such advice of counsel to the Trust as respects legal questions.

Section 6. BOOKS OF ACCOUNT. The Trustees shall keep true and accurate books of account and records of all their transactions, which shall be audited at least annually by a certified public accountant selected by the Trustees. Such audits shall be available at all times for inspection by the Employers, the International Union, and the Local Unions at the principal office of the Fund.

Section 7. EXECUTION OF DOCUMENTS. The Trustees may authorize one of their number to execute any notice or other instrument in writing and all persons, partnerships, corporations, associations or Local Unions or the International or the Employers may rely thereupon that such notice or instrument has been duly authorized and is binding on the Fund and the Trustees.

Section 8. DEPOSIT AND WITHDRAWAL OF FUNDS. All monies received by the Trustees hereunder shall be deposited by them in such bank or banks as the Trustees may designate for that purpose and all withdrawals of monies from such account or accounts shall be made only by checks signed by such Trustees as are authorized in writing by the Trustees to sign such checks. Except as hereinafter provided, no check shall be valid unless signed

by two persons of whom one shall be a Union Trustee and one an Employer Trustee.

The Employer Trustees shall designate in writing the names of any Employer Trustee who may sign checks in the above manner, and the Union Trustees shall likewise designate in writing the names of any Union Trustee who may sign checks in the above manner.

The Trustees may, in their discretion, designate and authorize an employee of the Trust to sign checks upon such separate and specific bank account or bank accounts as the Trustees may designate and establish for such purpose.

Section 9. SURETY BONDS. The Trustees and any employees of the Trustees who are empowered and authorized to sign checks as aforesaid shall be bonded by a duly authorized surety company in such amounts as may be determined from time to time by the Trustees. Each such employee employed by the Trustees who may be engaged in handling monies of the Trust Fund shall also be bonded by a duly authorized surety company in the same manner. The cost of the premium on such bonds shall be paid out of the Fund.

Section 10. AUTHORITY TO ENTER INTO AGREEMENTS WITH OTHER TRUSTEES. The Trustees are hereby given authority to enter into agreements with Trustees of other Pension Plans to which the Union is a party to permit such other pension funds to join or merge with this Fund.

ARTICLE V CONTRIBUTIONS TO THE FUND

Section 1. RATE OF CONTRIBUTIONS: In order to effectuate the purposes hereof, each Employer shall contribute to the Fund the amount required by its Collective Bargaining Agreement. The rate of Contribution shall at all times be governed by such Collective Bargaining Agreement together with any amendments, supplements or modifications. Contributions due for any period following the expiration of a Collective Bargaining Agreement shall be made at the rate required by the Collective Bargaining Agreement. To the extent that an Employer is required by applicable law to make Contributions, the Employer shall be obligated hereunder to make such Contributions and the rate of such Contributions shall be the rate required by the law.

Section 2. EFFECTIVE DATE OF CONTRIBUTIONS: An Employer shall make Contributions to the Fund as required by its Collective Bargaining Agreement and shall continue to make such Contributions for so long as the Employer is bound by such Collective Bargaining Agreement, and thereafter for so long as the Union or an affiliate and the Employer are negotiating towards a new Collective Bargaining Agreement or the Employer is required by applicable law to continue contributing to the Fund.

Section 3. MODE OF PAYMENT. All contributions shall be payable to the Pension Fund and shall be paid in the manner and form determined by the Trustees.

Section 4. DEFAULT IN PAYMENT. Nonpayment by an Employer of any contributions when due shall not relieve any other Employer of his obligation to make payments. In addition to any other remedies to which the parties may be entitled, an Employer in default for ten working days may be required at the discretion of the Trustees to pay such reasonable rate of interest as the Trustees may fix on the money due to the Trustees from the date when the payment was due to the date when payment is made, together with all expenses of collection incurred by the Trustees. The Trustees may take any

action necessary to enforce payment of the contributions due hereunder, including, but not limited to, proceedings at law and in equity.

Section 5. **REPORT ON CONTRIBUTIONS.** The Employers shall make all reports on contributions required by the Trustees. The Trustees may at any time have an audit made by independent certified public accountants of the payroll and wage records of any Employer in connection with the said contributions and/or reports.

ARTICLE VI PLAN OF BENEFITS

Section 1. **BENEFITS.** The Trustees shall have full authority to determine all questions of nature, amount and duration of benefits to be provided based on what it is estimated the Fund can provide without undue depletion or excessive accumulation, provided, however, that no benefits other than pension or annuity benefits may be provided for or paid under this Agreement and Declaration of Trust.

Section 2. **RECIPIENTS OF BENEFITS.** Benefits may be provided in accordance with Section 1 of this Article only for any Employee of a contributing Employer covered by a collective bargaining agreement between the Employer and the Union.

Section 3. **ELIGIBILITY REQUIREMENTS FOR BENEFITS.** The Trustees shall have full authority to determine eligibility requirements for benefits and to adopt rules and regulations setting forth same which shall be binding on the employees and their dependents.

Section 4. **METHOD OF PROVIDING BENEFITS.** The benefits shall be provided and maintained by such means as the Trustees shall in their sole discretion determine.

Section 5. **WRITTEN PLAN OF BENEFITS.** The detailed basis on which payment of benefits is to be made pursuant to this Agreement shall be specified in writing by appropriate action of the Trustees subject, however, to such changes or modifications as shall similarly be specified in writing by appropriate resolution of the Trustees.

Section 6. **TREASURY APPROVAL.** The Pension Plan adopted by the Trustees shall be such as will qualify for approval by the Bureau of Internal Revenue, U.S. Treasury Department, and as will continue as a qualified Plan, so as to insure that the employer contributions to the Pension Fund are proper deductions for income tax purposes. The Trustees are authorized to make whatever applications are necessary with the said Bureau of Internal Revenue to receive and maintain approval of the Pension Plan.

ARTICLE VII MEETING AND DECISIONS OF TRUSTEES

Section 1. **OFFICERS OF TRUSTEES.** The Trustees shall meet as promptly as possible after the execution of this Agreement and Declaration of Trust and elect a Chairman and a Co-Chairman from among the Trustees. The terms of such officers shall commence on the date of their election and continue to the end of the calendar year or until his or their successors have been elected. At no time shall both officers be held by Trustees designated by the same parties.

Section 2. **MEETING OF TRUSTEES.** Meetings of the Trustees shall be at such place or places as may be agreed upon by the Chairman and Co-Chairman and may be called by the said officers upon five (5) days' written notice to the other Trustees and may be held at any time without such notice if all the Trustees consent thereto in writing.

Section 3. **ACTION BY TRUSTEES WITHOUT MEETING.** Action by the Trustees may also be taken by

them in writing without a meeting, provided, however, that in such cases there shall be unanimous written concurrence by all of the Trustees.

Section 4. **QUORUM.** In all meetings of the Trustees, two Trustees shall constitute a quorum for the transaction of business providing there are at least 1 Employer Trustee and 1 Union Trustee present at the meeting; and at all meetings the Employer Trustees and the Union Trustees shall have equal voting strength. The vote of any absent Trustee shall be cast by the Trustees present, designated by the same party with the same force and effect as if such absent Trustees were present.

Section 5. **MAJORITY VOTE OF TRUSTEES.** All actions by the Trustees shall be by majority decision of the Employer and Union Trustees. Such majority vote shall govern not only this Article but any portion of this Agreement and Declaration of Trust which refers to action by the Trustees. In the event any matter presented for decision cannot be decided because of a tie vote, or because of the lack of a quorum at two consecutive meetings the matter may then be submitted to arbitration as hereinafter provided.

Section 6. **MINUTES OF MEETINGS.** The Trustees shall keep minutes of all meetings but such minutes need not be verbatim. Copies of the minutes shall be sent to all Trustees.

ARTICLE VIII IMPARTIAL ARBITRATOR

Section 1. **APPLICATION OF THIS ARTICLE.** Either all or any of the Employer or Union Trustees may apply to the American Arbitration Association in the area in which the Fund maintains its principal office for the designation of an arbitrator who will decide any disputes among the Trustees or any other matter submitted to arbitration in accordance with the provisions of Article VII, Section 5. The decisions of the arbitrator shall be final and binding.

Section 2. **EXPENSES OF ARBITRATION.** The cost and expense incidental to any arbitration proceeding, including the fee, if any, of the impartial arbitrator, shall be a proper charge against the Fund and the Trustees are authorized to pay such charges.

ARTICLE IX EXECUTION OF TRUST AGREEMENT

Section 1. **COUNTERPARTS.** This Trust Agreement may be executed in one or more counterparts. The signature of a party on any counterpart shall be sufficient evidence of his execution thereof.

Section 2. **WRITTEN INSTRUMENTS.** An Employer may adopt and become a party to this Trust Agreement by executing a counterpart hereof or by executing any other written instrument wherein he agrees to participate in the Fund pursuant to the terms of this Trust Agreement and to accept as his representative on the Board of Trustees such Trustees as are named in the Agreement and Declaration of Trust as Employer Trustees and their successors appointed in the manner provided herein.

ARTICLE X AMENDMENT TO TRUST AGREEMENT

Section 1. **AMENDMENT BY TRUSTEES.** This Agreement and Declaration of Trust may be amended in any respect from time to time by the Trustees, provided that each amendment shall be duly executed in writing by the Trustees and annexed hereto. As to any amendment, the Trustees in their sole discretion shall have full power to fix the effective date thereof.

Section 2. **LIMITATION OF RIGHT TO AMEND-**

MENT. No amendment may be adopted which will alter the basic principles of this Agreement and Declaration of Trust, be in conflict with the Collective Bargaining Agreements with the Union as such Agreements affect contributions to the Fund created hereunder, be contrary to the laws governing trust funds of this nature, or be contrary to any agreements entered into by the Trustees.

Section 3. AMENDMENT BY UNION AND EMPLOYERS. The Union and the Employers shall have the same power to amend this Agreement and Declaration of Trust as set forth in Section 1 hereof and as limited by Section 2 hereof.

Section 4. NOTIFICATION OF AMENDMENT. Whenever an amendment is adopted in accordance with this Article, a copy thereof shall be distributed to all Trustees, and the Trustees shall so notify all necessary parties and shall execute any instrument or instruments necessary in connection therewith.

ARTICLE XI TERMINATION OF TRUST

Section 1. BY THE TRUSTEES. This Agreement and Declaration of Trust may be terminated by an instrument in writing executed by all the Trustees when there is no longer in force and effect a collective bargaining agreement between any Employer and the Union requiring contributions to the Fund.

Section 2. BY THE PARTIES. This Agreement and Declaration of Trust may be terminated by an instrument in writing duly executed by the Employers and the Union.

Section 3. PROCEDURE ON TERMINATION. In the event of the termination of this Agreement and Declaration of Trust, the Trustees shall apply the Fund to pay or to provide for the payment of any and all obligations of the Fund and shall distribute and apply any remaining surplus in such manner as will in their opinion best effectuate the purpose of the Fund; provided, however, that no part of the corpus or income of said Fund shall be used for or diverted to purposes other than for the exclusive benefit of the employees, their families, beneficiaries, or dependents, or the administrative expenses of the Fund or for other payments in accordance with the provisions of the Fund. Under no circumstances shall any portion of the corpus or income of the Fund, directly or indirectly, revert or accrue to the benefit of any contributing Employer or Union.

Section 4. NOTIFICATION OF TERMINATION. Upon termination of the Fund in accordance with this Article, the Trustees shall forthwith notify the Union and each Employer and also all other necessary parties; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

ARTICLE XII MISCELLANEOUS PROVISIONS

Section 1. TERMINATION OF INDIVIDUAL EMPLOYERS. An Employer shall cease to be an Employer within the meaning of this Agreement and Declaration of Trust when he is no longer obligated, pursuant to a Collective Bargaining Agreement with the Union, to make contributions to this Pension Fund, or, as determined by the Trustees, when he is delinquent in his contributions or reports to the Pension Fund.

Section 2. VESTED RIGHTS. No Employee or any person claiming by or through such Employee, including his family, dependents, beneficiary and/or legal representative, shall have any right, title or interest in or to the Fund or any property of the Fund or any part thereof except as may be specifically determined by the Trustees.

Section 3. ENCUMBRANCE OF BENEFITS. No monies, property or equity, of any nature whatsoever, in the Fund, or policies or benefits or monies payable therefrom, shall be subject in any manner by an Employee or person claiming through such Employee to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void.

Section 4. SITUS. The City of Washington, District of Columbia, shall be deemed the situs of the Trust Fund created hereunder. All questions pertaining to validity, construction and administration shall be determined in accordance with the laws of such City and District.

Section 5. CONSTRUCTION OF TERMS. Wherever any words are used in this Agreement and Declaration of Trust in the masculine gender they shall be construed as though they were also in the feminine or neuter gender in all situations where they would so apply, and wherever any words are used in this Agreement and Declaration of Trust in the singular form they shall be construed as though they were also used in the plural form in all situations where they would so apply, and wherever any words are used in this Agreement and Declaration of Trust in the plural form they shall be construed as though they were also used in the singular form in all situations where they would so apply.

Section 6. CERTIFICATION OF TRUSTEES' ACTIONS. The Chairman and Secretary of the Trustees may execute any certificate or document jointly on behalf of the Trustees and such execution shall be deemed execution by all the Trustees. All persons having dealings with the Fund or with the Trustees shall be fully protected in reliance placed on such duly executed document.

Section 7. SEVERABILITY. Should any provision in this Trust Agreement or in the Plan or rules and regulations adopted thereunder or in any Collective Bargaining Agreement be deemed or held to be unlawful or invalid for any reason, such fact shall not adversely affect the provisions herein and therein contained unless such illegality shall make impossible or impractical the functioning of the Trust and the Plan, and in such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

Section 8. EXPENSES OF TRUSTEES. Expenses of the Trustees incurred in the performance of their duties may be chargeable to the Fund at the discretion of the Trustees. All other expenses incurred pursuant to Article IV hereof shall be paid by the Fund.

IN WITNESS HEREOF, the undersigned do hereunto cause this instrument to be duly executed on the day and the year first above written.

For the Union
By: Peter Fosco
Title: Trustee & Co-Chairman

For the Employers
By: Thomas J. Nolan, Jr.
Title: Trustee & Co-Chairman

We the undersigned, hereby agree to act as Trustees in accordance with the foregoing Agreement and Declaration of Trust, we have read the foregoing instrument, fully understand its contents and agree to comply with its terms and conditions.

Terence M. O'Sullivan
Armand E. Sabitoni
J Rocco Davis
Robert P. McCormick
Robert B. Di Scuiillo, Jr.
F. Gilbert Crosthwaite

Amendments to the Agreement and Declaration of Trust Establishing the

Laborers' International Union of North America National (Industrial) Pension Fund

Each and every reference in the Agreement and Declaration of Trust to the "Laborers' International Union of North America National Pension Fund" is hereby amended to read "Laborers' International Union of North America National (Industrial) Pension Fund."

This amendment shall be effective as of February 2, 1971.

Adopted on February 2, 1971 by the Board of Trustees.

Article V, Section 4 is amended to read as follows:

"DEFAULT IN PAYMENT. Nonpayment by an Employer of any contributions when due shall not relieve any other Employer of his obligation to make payments. The Trustees shall be entitled to take any action necessary to enforce payment of contributions and other monies due to the Fund, including, but not limited to, proceedings at law and in equity. Delinquent Employers shall be subject to the procedures and remedies set forth in the Delinquency Control Program."

This amendment shall be effective as of December 10, 1980.

Adopted by the Board of Trustees on December 10, 1980.

Article I, Section 2 is hereby amended to read as follows:

"EMPLOYER. The term 'Employer' shall mean any employer who now or hereafter has a collective bargaining agreement with the Union requiring periodic contributions to the Pension Fund created by this Trust Agreement or who now or hereafter is otherwise accepted by the Trustees for participation in the Pension Fund, and who, in writing adopts and agrees to be bound by the terms and provisions of this Agreement and any amendments and modifications thereof. The term 'Employer' shall also mean employers who participate in this Fund by action of the Trustees pursuant to Article IV, Section 10 hereof, for the particular employees affected. The term 'Employer' shall also mean Local Unions and District Councils to the extent that the Trustees, subject to the conditions hereinafter stated, permit them to contribute to the Pension Fund on behalf of their employees."

Article I, Section 3 is hereby amended to add a subsection (c) which shall read as follows:

"The term 'Employees' may also include employees of Local Unions and District Councils making contributions on their behalf, provided that the Local Union and District Council represents employees of Employers participating in the Pension Fund, and provided further that the acceptance of such employees is not discriminatory and in each case is subject to actuarial valuation by the Trustees, whose decision with regard to their acceptance or rejection shall be final."

Article I, Section 4 is hereby renumbered as Article I, Section 5 and the following is hereby added as a new Article I, Section 4:

"DISTRICT COUNCIL. The term 'District Council' shall mean any District Council affiliated with the Laborers' International Union of North America."

Article I, Sections 5 through 8 are hereby renumbered as Article I, Sections 6 through 9 respectively.

Article I, Section 9 is hereby renumbered as Article I, Section 10 and is hereby amended to read as follows:

"CONTRIBUTIONS. The term 'Contributions' shall mean the money paid to the Fund in accordance with the Collective Bargaining Agreement between the Union and the Employer or, where applicable, in accordance with an agreement between an Employer and the Pension Fund."

Article I, Sections 10 and 11 are hereby renumbered as Article I, Sections 11 and 12, respectively.

Article I, Section 12 is hereby renumbered as Article I, Section 13 and is hereby amended to read as follows:

"UNION. The term 'Union' shall mean the International and/or its affiliated Local Unions and District Councils."

Article IV, Section 2 is hereby amended by inserting the term "District Councils" between "International," and "the Local Unions."

Article IV, Section 5, paragraphs fourth and fifth, are hereby amended to read as follows:

"Neither the International, nor the Employers, nor the District Councils, nor the Local Unions shall in any way be liable in any respect for any of the acts, omissions or obligations of the Trustees, individually or collectively.

"The Trustees may from time to time consult with the Trust's legal counsel, consultants, actuaries and investment managers, and shall be protected in acting upon their advice to the full extent permitted under the law."

Article IV, Section 6 is hereby amended by inserting the term "the District Councils" between "International Union," and "and the Local Unions."

Article IV, Section 7 is hereby amended by inserting the term "or District Councils" between "Local Unions" and "or the International."

Article IV, Section 8 is hereby amended to read as follows:

"DEPOSIT AND WITHDRAWAL OF FUNDS. All monies received by the Trustees hereunder shall be deposited by them in such bank or banks as the Trustees may designate for that purpose and, except as hereinafter provided, all withdrawals of monies from such account or accounts shall be made only by checks signed by such Trustees as are authorized in writing by the Trustees to sign such checks. Except as hereinafter provided, no checks shall be valid unless signed by two persons of whom one shall be a Union Trustee and one an Employer Trustee.

"The Employer Trustees shall designate in writing the names of any Employer Trustee who may sign checks in the above manner, and the Union Trustees shall likewise designate in writing the names of any Union Trustee who may sign checks in the above manner.

"The Trustees may, in their discretion, designate and authorize an employee of the Trust to sign checks or to otherwise draw upon the funds in such separate and specific bank account or bank accounts as the Trustees may designate and establish for such purpose."

Article V, Section 1 is hereby amended to read as follows:

"RATE OF CONTRIBUTIONS. In order to effectuate the purposes hereof, each Employer shall contribute to the Fund the amount required by the Collective Bargaining Agreement between the Union and the Employer or, where applicable, by the agreement between the Employer and the Pension Fund. The rate of contribution shall at all times be governed by the aforesaid Collective Bargaining Agreement, or agreement between the Employer and the Pension Fund then in force and effect, together with any amendments, supplements or modifications thereto."

Article V, Section 2 is hereby amended to read as follows:

"EFFECTIVE DATE OF CONTRIBUTIONS. All contributions shall be made effective as required by the Collective Bargaining Agreement or, where applicable, by the agreement between the Employer and the Pension Fund, and shall

continue to be paid as long as the Employer is so obligated pursuant to the Collective Bargaining Agreement with the Union or agreement with the Pension Fund, or until he ceases to be an Employer within the meaning of this Agreement and Declaration of Trust as hereinafter provided.”

Article V, Section 3 is hereby amended to read as follows:

“MODE OF PAYMENT. All contributions shall be payable to the Pension Fund and shall be paid in the manner and form as set forth in the Delinquency Control Program of the Pension Fund, described hereinafter, and as otherwise determined by the Trustees.”

Article VI, Section 2 is hereby amended by striking the period and adding the following clause at the end thereof:

“or, where applicable, by an agreement between the Employer and the Pension Fund.”

Article VI, Section 3 is hereby amended by striking the period and adding the words “and beneficiaries” at the end thereof.

Article VII, Section 1 is hereby amended to read as follows:

“There shall be two Co-Chairmen of the Trustees. The terms of such officers shall commence on the date of their

election and continue to the end of the calendar year or until his or their successors have been elected. At no time shall both offices be held by Trustees designated by the same parties.”

Article VII, Section 2 is amended by striking the terms “Chairman and Co-Chairman” and substituting therefor the term “Co-Chairmen.”

Article X, Section 2 is hereby amended to read as follows:

“LIMITATION OF RIGHT TO AMENDMENT. No amendments may be adopted which will alter the basic principles of the Agreement and Declaration of Trust, be contrary to the laws governing trust funds of this nature, or be contrary to any agreements entered into by the Trustees.”

Article XII, Section 1 is hereby amended by inserting the clause “or, where applicable, an agreement with the Pension Fund,” between the terms “Union,” and “to make.”

Article XII, Section 6 is hereby amended to delete the terms, “The Co-Chairman and Secretary” at the beginning thereof and to substitute therefor the term “The Co-Chairmen.”

These amendments are effective February 25, 1981.

Adopted by the Board of Trustees on February 25, 1981.

Amendment to the Agreement and Declaration of Trust

Establishing the

Laborers' International Union of North America National (Industrial) Pension Fund

LIUNA NATIONAL (INDUSTRIAL) PENSION FUND DELINQUENCY CONTROL PROGRAM

Pursuant to their authority under Articles IV, V and X of the Agreement and Declaration of Trust (“Trust Agreement”) of the LIUNA National (Industrial) Pension Fund (“Fund”) the Trustees have instituted the following program of reasonable, diligent and systematic procedures for the uniform and effective monitoring of employer contributions and collection of delinquent employer contributions. The provisions of this program are annexed to and incorporated into the Trust Agreement and are and shall be enforceable as a part of the Trust Agreement.

I. GENERAL PRINCIPLES

A. Each and every Employer is responsible for making all reports and all contributions required by its Collective Bargaining Agreement to the Fund in a timely, correct and complete manner. The term “Collective Bargaining Agreement” means any written labor contract, Standard Form of Participation or written agreement between the Union and an Employer which provides for contributions to the Fund in a manner acceptable to the Trustees.

B. Recognizing the importance of maximizing the collection of contributions owed so as to maximize the monies available for the payment of employee benefits and minimize the unfunded liabilities of the Fund, the Trustees will take reasonable and lawful steps, within their reasonable discretion, to enforce the reporting and contribution obligations of Employers.

C. The Trustees shall be authorized to at any time have an audit conducted, by independent certified public accountants selected by the Trustees, of the payroll and wage records of any Employer in connection with its reports and/or contributions. Recognizing the importance of field audits for confirming the accuracy of reports and contributions made to the Fund by all Employers, it is the policy of the Trustees to conduct a program of random and priority audits for the purpose of determining whether Employers have fully satisfied their reporting and contribution obligations to the Fund.

D. Employers who become delinquent in making required contributions shall be liable to the Fund for the costs of collecting the delinquent contributions, including auditing fees, attorney’s fees and court costs, for interest charges, for liquidated damages, and for such other relief as may be available to the Fund under applicable law.

E. It is the policy of the Trustees to advise the Local Union and/or District Council (“Unions”) signatory to the Collective Bargaining Agreement and the International Union’s Regional Offices of an Employer’s contribution delinquencies. However, whatever steps the Union might take to secure compliance with the Collective Bargaining Agreement shall neither bind the Trustees nor otherwise affect the right of the Trustees to collect the delinquent contributions as well as any other monies due to the Fund. An Employer’s liability for payment of contributions shall not be subject to any grievance or arbitration procedure provided under the Collective Bargaining Agreement.

F. It is the Policy of the Trustees to encourage all Employers to advise the Fund Administrator of any discrepancies in any Employer’s reports and contributions of which they are aware, inasmuch as it is in the interest of all Employers contributing to the Fund that delinquencies be minimized.

G. The Delinquency Committee of the Board of Trustees will oversee the operation of the delinquency control program between meetings of the Board of Trustees, including periodically reviewing the nature and amount of existing delinquencies, the efforts being made by the Fund Administrator and Fund Counsel to collect these delinquencies, and the auditors’ reports. At each meeting of the Board of Trustees, the Fund Administrator will report on the operations of the delinquency control program. His report will identify all Employers which are delinquent and the efforts made to collect the delinquent amounts. The Fund Administrator will also prepare an annual summary of the results of the payroll audit program.

H. The Trustees shall have authority to vary these procedures in special circumstances under which such variance would be in the best interests of the Fund and its participants and beneficiaries.

II. REPORTING AND CONTRIBUTION PROCEDURES

A. It is the responsibility of each and every Employer to maintain complete and accurate payroll records on any employee for whom contributions are required. These records must be maintained for a period of six (6) years.

B. Each and every Employer is required to file with the Fund for each month it is obligated to contribute, the Monthly Report and such other reports as may be required by the Trustees as well as any and all contributions due for work performed by covered employees during the month. Monthly Reports must be filed even for those months during which the Employer did not employ any covered employees. If an Employer is obligated to contribute to the Fund pursuant to more than one Collective Bargaining Agreement, it is required to file separate Monthly Reports for each unit of employees covered by a separate Collective Bargaining Agreement, unless otherwise approved by the Trustees.

C. Contributions shall be paid on a monthly basis, except to the extent the Trustees agree to accept contributions at shorter intervals. Monthly Reports and contributions shall be filed with the Fund Administrator and shall be due and payable by the twentieth (20th) day of the month following the month on which the Monthly Report and contributions are based. Contributions payments shall be made in the name of the "LIUNA National Pension Fund."

D. The Fund Administrator will send a copy of each Monthly Report to the appropriate Union. It is the policy of the Trustees to encourage the Unions to promptly review the Monthly Reports and report any discrepancies to the Fund Administrator.

E. The Fund Administrator will maintain files for each Employer which shall contain all Monthly Reports and any other pertinent documents. The Fund Administrator shall not accept any Monthly Reports or contributions unless he has on file a signed Collective Bargaining Agreement and a signed, written agreement whereby the Employer agrees to accept, be bound by and comply with the Trust Agreement and any amendments thereto.

III. DELINQUENCY PROCEDURES

A. An employer shall be considered "delinquent" if its completed Monthly Report and full payment of contributions due are not received by the Fund Administrator within thirty (30) calendar days following the end of the month on which the Monthly Report and contributions are based. If the thirtieth (30th) day falls on a non-business day, the first (1st) business day thereafter shall be considered the thirtieth (30th) day.

B. The Fund Administrator will promptly record all delinquencies and the following actions will be taken with respect to each delinquent Employer:

1. The Fund Administrator shall as soon as possible send a letter to each newly delinquent Employer advising it of its delinquent status and requesting prompt payment of the delinquent contributions and submission of the Monthly Report. A copy of that letter will be sent by the Fund Administrator to the Union signatory to the Collective Bargaining Agreement with the Employer accompanied by a letter inquiring of the Union whether the Employer is still active and, if so, whether it employed any covered employees during the period of the stated delinquency.

2. If the Employer fails to correct the delinquency within one (1) month after the first delinquency letter, a second letter shall be sent to the Employer by the Fund Administrator over the signature of the Fund Counsel demanding correction of the delinquency. This second delinquency letter shall be sent by certified mail, return receipt requested, to insure receipt by the Employer. A copy of this second delinquency letter will be sent to the Union.

3. The names of delinquent Employers that have not corrected their delinquencies within fifteen (15) days of the date on which the second delinquency letter was sent will be

referred to the Fund Counsel for collection. Thereupon, the Fund Counsel will take appropriate action, including commencing appropriate legal action, against each delinquent Employer to collect the delinquencies and other monies due. In addition, the Fund Administrator shall arrange for an audit of each such delinquent Employer by the auditors selected by the Trustees. The cost of that audit shall be charged to the Employer.

4. If it appears that a contribution delinquency presents an immediate threat to the interests of the Fund, the Fund Administrator, upon authorization by the Delinquency Committee of the Board of Trustees, may immediately refer the delinquency to the Fund Counsel for appropriate legal action without regard to the procedures of III-B-1, 2 & 3, hereof.

C. Delinquent Employers shall be assessed the following charges:

1. Each Employer carrying a contribution delinquency for thirty (30) calendar days or more will automatically be assessed interest on the delinquent amount at the rate of 1½% per month for each month or part thereof from the date on which the Employer became delinquent until the date on which the delinquency is corrected. All interest assessments will be immediately due and payable. The Fund Administrator will notify the Employer of the interest charges.

2. Each Employer whose delinquent status is referred to the Fund Counsel for legal action shall, in addition to interest, be charged liquidated damages in an amount equal to twenty percent (20%) of the unpaid delinquent contributions as the reasonably anticipated costs of administration and collection. All liquidated damages shall be immediately due and payable. The Fund Administrator will notify the Employer in writing of the assessment of liquidated damages.

3. Each delinquent Employer that is audited pursuant to Part III-B-3 hereof shall be charged for the actual cost of the audit. The Fund Administrator will notify the Employer of the assessment of audit charges which shall be due and payable immediately.

4. In addition to interest and auditing charges, each Employer against which legal action is taken to collect delinquent contributions or other monies due the Fund shall be charged and liable to the Fund for attorneys fees and for costs incurred by the Fund in taking such legal action, as well as for the liquidated damages assessed under Part III-C-2 hereof, and such other relief as may be available to the Fund under the Employee Retirement Income Security Act and other applicable law.

5. Each Employer which makes its payment of contributions by a check which is not honored by the drawer bank upon presentation will be considered a delinquent Employer and will be charged an administrative fee equal to ten percent (10%) of the amount of the check up to a maximum of five hundred dollars (\$500.00) for each such dishonored check. Such fees may be waived by the Delinquency Committee of the Board of Trustees, in its discretion, in the event that a substitute check drawn on sufficient funds is paid within fifteen (15) days of notice by the Fund Administrator to the Employer or for good cause shown by the Employer.

D. Notwithstanding the provisions of Parts III-B and III-C of these procedures, where a delinquent Employer is located within an area in which the Fund has a cooperative delinquency collection arrangement with a local Delinquency Committee or Health and Welfare Fund, the method for collection and assessment of charges, fees and costs shall be governed by the terms of that arrangement, unless the

Delinquency Committee of the Board of Trustees elects to utilize the procedures set forth herein.

E. Except as otherwise determined by the Delinquency Committee or the Fund Counsel for good cause shown, no extension of time in which an Employer is required to make a monthly contribution may be granted unless such extension is set forth in a written promissory note which contains the following minimum provisions:

1. Fifty percent (50%) of the amount due shall be paid immediately;
2. Payments shall extend for a period not to exceed twelve (12) months;
3. The Employer confesses judgment on the amount due and the method of payment;
4. Interest shall accrue and be paid monthly at the rate of one and one-half percent (1½%) of the remaining balance;
5. The Employer shall not become delinquent in making its current monthly contributions. If the Employer becomes delinquent in making any current monthly contribution, the Employer's obligations under the promissory note may be accelerated so that the full amount of the contributions owed under the note will become immediately due and payable; and
6. If the Employer fails to make payments on the promissory note on a timely basis, the Employer's obligations under the note may be accelerated so that the full amount of the contributions owed under the note will become immediately due and payable. In addition, the Employer will be liable to the Fund for liquidated damages equal to the greater of five hundred dollars (\$500.00) or twenty percent (20%) of the remaining balance, attorneys' fees and costs incurred by the Fund in enforcing the note, and such other relief as may be available under applicable law.

F. Decisions not to pursue litigation or to discontinue litigation or to accept less than the full amount of contributions and other monies due in settlement of an Employer's liability to the Fund shall be made by the Delinquency Committee of the Board of Trustees with the advice of the Fund Counsel. However, the Fund Counsel shall be authorized to enter into settlement negotiations with any delinquent Employer, and shall be authorized to settle any case in which the delinquent Employer agrees to pay the full amount of the delinquency, as well as the full amount of interest accrued and liquidated damages and audit fees assessed. The Fund's Counsel is also authorized to enter into settlement agreements allowing the Employer an extension of time to fully pay its delinquent contributions and other monies due to the Fund, provided that such agreements comply with the requirements of Part III-E hereof. Generally, the Fund will enter into a less-than-whole settlement, decline to initiate litigation or withdraw from litigation only where reasonable and appropriate based on the likelihood of collecting the delinquent amounts or the approximate expenses that would be incurred if the Fund continued its collection efforts.

IV. EMPLOYER PAYROLL AUDIT PROCEDURES

A. All audits shall be conducted by independent certified public accountants selected by the Trustees, except that the Railroad Employers shall be audited by the auditing firm(s) selected by the local Health and Welfare Fund, on a cost sharing basis.

B. Audits will be conducted according to a schedule established by the Fund Administrator, subject to the approval of the Trustees. Audits will be scheduled, when feasible, by

area so that more than one Employer in the general location can be audited.

C. It shall be the responsibility of the Fund Administrator to select the specific Employers to be audited within guidelines provided by the Trustees. In making such selections, the Fund Administrator will take into account any joint payroll audit programs entered into by the Fund with local employee benefit funds. In addition to auditing Employers within priority categories set forth in the Trustees' guidelines, the Fund Administrator will cause to have audited Employers selected at random.

D. When an audit is to be conducted, the Fund Administrator will forward to the auditor copies of the Employer's ledger card, the Employer's Monthly Report Form (showing the rate of contribution), an executed copy of the Agreement and Declaration of Trust, an executed copy of the Participation Agreement and the Collective Bargaining Agreement. Such other Fund information as the auditors may need shall also be provided by the Fund.

E. An Employer selected for an audit will be advised in writing by the Fund Administrator that the audit will be conducted and that the auditor will contact the Employer to arrange a mutually acceptable time, within reason, for conducting the audit. A copy of that letter will be sent by the Fund Administrator to the auditor and to the Union signatory to the Collective Bargaining Agreement. Upon receipt of that notice, it will be the responsibility of the auditor to contact the Employer and make arrangements for conducting the audit. The auditors shall undertake to conduct such audits as soon after notification is sent to the Employer as is possible, but in no event later than a date specified by the Fund Administrator, if any.

F. The Fund's auditors shall be authorized to enter upon the premises of any Employer at reasonable times and during business hours to examine and copy any and all books, records, papers or reports of such Employer which the Trustees or the auditor deem necessary for determining whether the Employer has fully complied with its reporting and contribution obligations to the Fund. Such documents shall include, but are not limited to, the following: general ledger, payroll journal or ledger, individual employee wage records, time cards, financial statements, federal and state quarterly tax returns, Forms W-2, W-3, 1099 and 1096, state unemployment compensation reports, contribution reports filed with other employee benefit funds, and cash receipt and disbursement records. The Employer shall also identify all employees including their addresses and craft or job classifications. In addition, the Employer must produce, upon request, records showing the names of all persons having an ownership interest in it, if it is a single proprietorship or other non-corporate business organization, and of all officers and directors if it is a corporation.

G. The auditors shall report the results of each audit to the Fund Administrator as soon as possible (generally within thirty (30) days) after completion of the audit. Copies of the audit report shall be sent to the audited Employer and the to the Union signatory to the Collective Bargaining Agreement. If the audit reveals that contributions are due the Fund, the Employer will be considered delinquent and a billing for the delinquent amount, including interest charges and, if applicable, auditing fees, shall be sent by the Fund Administrator to the Employer by certified mail, return receipt requested. A copy of such billing will be sent to the Union signatory to the Collective Bargaining Agreement by the Fund Administrator.

H. The cost of the audit shall be borne by the Fund, except that the audited Employer shall be liable for the cost of the audit under the following circumstances:

1. If the Employer is audited as a known delinquent pursuant to Part III-B hereof;

2. If the Employer is audited pursuant to Part IV-J hereof; or

3. If the audit reveals a "substantial underpayment." For purposes of these procedures, a substantial underpayment means that the actual contributions paid for the period of the audit were twenty percent (20%), but at least five hundred fifty dollars (\$550.00), less than the required contributions for that period. However, the Trustees may waive the assessment of audit fees on the Employer in substantial underpayment situations, if payment of the delinquent contributions and interest charges is made within thirty (30) days after the Employer is notified of the delinquency.

I. In the case of payroll audits performed as part of a joint payroll audit program with local employee benefit funds, the assessment of audit costs on Employers will be governed by the terms of the program.

J. In the event that an Employer fails or refuses to permit the conduct of an audit or in any way fails or refuses to cooperate with the auditor, the Trustees will take all reasonable steps, including the commencement of legal proceedings, to insure that the audit is conducted. Such an Employer shall be liable to the Fund for all attorneys' fees and costs incurred in enforcing the Employer's obligations with respect to Fund audits, as well as for the cost of the audit. In addition, such Employer will be subject to removal from the Fund in the sole discretion of the Trustees.

K. In the event that, for any reason, an Employer is unable to produce requested records which are deemed necessary for the audit by the Trustees or the auditor, the Trustees will cause to have conducted a full inquiry for the purpose of determining the amount of contributions owed by the Employer. All costs and expenses incurred by the Fund in connection with such investigation shall be charged to the Employer under investigation.

L. It is the policy of the Trustees to enter into joint payroll auditing programs with local employee benefit funds so as to share, and thereby minimize, auditing costs.

M. In all lawsuits brought on behalf of the Fund to collect delinquent contributions, the Fund Counsel will demand, as part of the relief demanded, that the court order an audit of the defendant Employer, by auditors selected by the Fund or by the court, and that the costs of such audit be assessed against the Employer.

V. EMPLOYER APPEALS

Any Employer which disputes an audit report, a determination of delinquency, the assessment of interest charges, liquidated damages or other charges and fees, or other like matters relating to the delinquency and auditing procedures, may request the Board of Trustees to arrange a hearing for the dispute. Upon receipt of such a request, the Trustees shall arrange for the Employer's representatives to meet with the Trustees, or their designee(s), to discuss and attempt to resolve the dispute. The taking of such an appeal shall not normally delay or otherwise affect the operation of the auditing and delinquency procedures with respect to the employer, although adjustments may be made by the Trustees to implement any resolution reached with the Employer on its appeal.

VI. ROLE OF THE FUND COUNSEL

A. Whenever a delinquency is referred to the Fund Counsel, he shall be authorized to exercise his discretion as to what action to take, unless otherwise instructed by the Trustees or their Delinquency Committee. As a general rule, the Fund Counsel will commence legal proceedings against any Employer which is delinquent to the Fund in excess of two hundred fifty dollars (\$250.00) or where the amount of the delinquency is unknown because the Employer has not filed Monthly Reports. In each lawsuit filed, the Fund Counsel will seek all appropriate relief available under the terms of the Trust Agreement and Collective Bargaining Agreement as well as under the Employee Retirement Income Security Act and other applicable law, including interest, liquidated damages, audit fees, attorneys' fees and court costs. The Fund Counsel will in appropriate cases seek injunctive relief against the defendant Employer.

B. The Fund Counsel shall be authorized to enter into settlement negotiations and to enter into settlement agreements in accordance with Part III-F hereof.

C. When the Trustees or the Fund Administrator refer to the Fund Counsel matters concerning the failure or refusal of an Employer to submit to an audit or to cooperate with the auditor, the Fund Counsel shall be authorized to exercise his discretion as to what action to take to enforce the Employer's obligations. If a lawsuit is filed, the Fund Counsel will seek all appropriate relief available under the terms of the Trust Agreement and the Collective Bargaining Agreement as well as under applicable law, including attorneys' fees and costs incurred by the Fund in securing compliance with the Employer's obligations.

D. The Fund Counsel is authorized to enter an appearance on behalf of the Fund in any bankruptcy proceedings involving a delinquent Employer as well as in any other judicial or administrative proceedings in which the Fund's claim to delinquent contributions or other monies may be affected.

E. The Fund Counsel shall be authorized to refer matters brought to his attention by the Fund to other counsel located in the jurisdiction where a delinquent Employer, or an Employer which has otherwise breached its obligations to the Fund, is located, where the Fund Counsel determines such referral to be in the interest of the Fund. The Fund Counsel shall also be authorized to retain such technical and expert assistance as he determines to be in the interest of the Fund for the prosecution of particular cases.

This amendment is effective as of December 10, 1980.

Adopted by the Board of Trustees on December 10, 1980.

IN WITNESS HEREOF, the undersigned do hereunto cause this instrument to be duly executed on the day and the year first above written.

For the Union
By: Arthur A. Coia
Title: Trustee & Co-Chairman

For the Employers
By: George J. Fischer
Title: Trustee & Co-Chairman

Amendment to the Agreement and Declaration of Trust
Establishing the
Laborers' International Union of North America National (Industrial) Pension Fund

Pursuant to its authority under Article X of the Agreement and Declaration of Trust, the Board of Trustees hereby adopts the following amendments to the Agreement and Declaration of Trust effective January 1, 1998:

Article I, Section 12 UNION is amended by deleting the current language in its entirety and substituting therefor the following language:

"Section 13. UNION. The term "Union" shall mean the International, its affiliated Local Unions and District Councils, and/or any other labor union (whether or not affiliated with the International) that is accepted for participation in the Pension Fund by the Board of Trustees and whose participation has not been terminated."

Article IV, Section 2 CONSTRUCTION OF AGREEMENT is amended by deleting the words "the International, the District Councils, the Local Unions," and substituting therefor the words "the Union."

Article IV, Section 3 GENERAL POWERS is amended by adding after the current subsection (k) a subsection (l) containing the following language:

"(l) To accept, reject, and terminate participation in the Pension Fund by Unions and Employers on such terms and conditions that the Trustees deem appropriate to protect and advance the best interests of the Fund."

Article IV, Section 5 PERSONAL LIABILITY is amended by deleting from the fourth paragraph thereof the words "Neither the International nor the Employers, nor the District Councils, nor the Local Unions," and substituting therefor the words "Neither the Union nor the Employers."

Article IV, Section 6 BOOKS OF ACCOUNT is amended by deleting the words "the International Union, the District Councils, and the Local Unions," and substituting therefor the word "Union."

Article IV, Section 7 EXECUTION OF DOCUMENTS is amended by deleting the words "the Local Unions or the District Councils, or the International Union," and substituting therefor the word "Union."

Article X, Section 3 AMENDMENT BY UNION AND EMPLOYERS is amended by inserting the word "International" immediately before the word "Union" in each of the two places where it appears.

Article XI, Section 2 BY THE PARTIES is amended by inserting the word "International" immediately before the word "Union" therein.

These amendments are effective January 1, 1998.

Adopted by the Board of Trustees on January 29, 1998.

We the undersigned, hereby agree to act as Trustees in accordance with the foregoing Agreement and Declaration of Trust, we have read the foregoing instrument, fully understand its contents and agree to comply with its terms and conditions.

Union Trustees

Terence M. O'Sullivan
Armand E. Sabitoni
J Rocco Davis

Employer Trustees

Robert P. McCormick
Robert B. Di Scullo, Jr.
F. Gilbert Crosthwaite

**AGREEMENT
AND
TRUSTEE DESIGNATION BY EMPLOYER**

The undersigned Employer, having entered into a Collective Bargaining Agreement with the Laborers' International Union of North America, AFL-CIO, Local No. _____, which provides among other things for contributions to the Laborers' International Union of North America National Pension Fund, agrees to be bound by the foregoing Agreement and Declaration of Trust and hereby irrevocably designates as its representatives on the Board of Trustees such Trustees as are named in said Agreement as Employer Trustees together with their successors selected in the manner provided in the within Agreement and agrees to be bound by all actions taken by said Employer Trustees pursuant to the said Agreement and Declaration of Trust.

Dated:

_____ Company

By _____

Business Address:

**AGREEMENT
AND
TRUSTEE DESIGNATION BY UNION**

The undersigned Union having entered into a Collective Bargaining Agreement with _____
(Name of Company)

which provides among other things for contributions to the Laborers' International Union of North America Pension Fund, for itself and on behalf of the employees of the said Company represented by it for collective bargaining purposes, agrees to be bound by the foregoing Agreement and Declaration of Trust, as now and hereinafter amended, and hereby irrevocably designates such Trustees as are serving under said Agreement as Union Trustees, together with their successors selected in the manner provided in the said Agreement, as the representative of the said employees and Union on the Board of Trustees and agrees to be bound by all actions taken by said Union Trustees pursuant to the said Agreement and Declaration of Trust.

(Name of Union)

By: _____

Title: _____

Dated: _____

THE ADMINISTRATION AND INTERPRETATION OF THIS AGREEMENT AND DECLARATION OF TRUST AS SET FORTH IN THIS AGREEMENT AND DECLARATION OF TRUST IS SOLELY THE RIGHT AND THE RESPONSIBILITY OF THE BOARD OF TRUSTEES. ALL QUESTIONS CONCERNING THE CONTENT OF THIS AGREEMENT AND DECLARATION OF TRUST SHALL BE REFERRED TO THE BOARD OF TRUSTEES IN CARE OF THE FUND ADMINISTRATOR. THE PENSION FUND SHALL NOT BE BOUND BY ANY REPRESENTATIONS CONCERNING THE PENSION FUND OR ITS PENSION PLAN OTHER THAN THOSE MADE BY THE BOARD OF TRUSTEES.



