

AGREEMENT AND DECLARATION OF TRUST

OF THE

IRON WORKERS LOCALS 12 AND 9 ANNUITY FUND

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will provide, among other things, for the payment, by said employers, to the Trustees of this Trust Fund, certain contributions as set forth in the collective bargaining agreements; and

WHEREAS, the sums payable to the Fund as aforesaid are for the purposes of providing retirement payments to participants or their beneficiaries, after retirement of the participants from active employment;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, it is hereby agreed as follows:

## ARTICLE I

### DEFINITIONS

Section 1. Employer. The term "Employer" as used herein shall mean:

(a) An Employer who is a member of, or is represented in collective bargaining by, the Association and who is bound by a collective bargaining agreement with the Union providing for the making of payments to the Trust Fund with respect to employees represented by the Union.

(b) An Employer who is not a member of, nor represented in collective bargaining by the Association, but who has duly executed or is bound by a collective

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WHEREAS, the IRON WORKERS LOCALS 12 AND 9 (hereinafter collectively "Locals 12 and 9" or "Union") are labor unions having entered into collective bargaining agreements with the certain employer associations including, but not limited to, the Upstate Iron Workers Employers Association, Inc. (hereinafter the "Association") and certain other individual employers; and

WHEREAS, those collective bargaining agreements provide, among other things, for payment by employers represented by the Association and the other individual employers to the Trustees of the Trust Fund, known as the Iron Workers Locals 12 and 9 Annuity Fund, certain contributions based upon hours worked as set forth in the collective bargaining agreements; and

WHEREAS, the Trustees, designated by Locals 12 and 9 and the Association, have executed this Agreement and Declaration of Trust indicating their acceptance of the respective duties imposed upon them as Trustees under the terms of this Agreement; and

WHEREAS, various other employers have entered into, or will from time to time hereafter enter into, collective bargaining agreements or written agreements with the Union on behalf of employees represented by them, all of which agreements provide or

bargaining agreement with the Union providing for the making of payments to the Trust Fund with respect to employees represented by the Union.

(c) The Union which, for the purpose of making the required contributions into the Trust Fund, shall be considered as the Employer of the Employees of the Union for whom the Union contributes to the Trust Fund.

(d) An Employer who does not meet the requirements of the definition of "Employer" as stated in subsections (a), (b) and (c) of this Section, but who is required to make payments or contributions to the Trust Fund as a result of being a signatory to a national agreement or to an international agreement with the International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO.

(e) The Trust Fund and any affiliated Welfare, Pension, or Training Trust of the Union, shall be deemed to be an Employer within the meaning of this Trust Agreement and shall provide benefits for said Employees out of said Trust Fund, as determined by the Trustees.

(f) Any Employer Association which has contributory Employers as defined herein and which is the Employer of its Employees for whom it agrees to contribute to the Fund, provided the receipt of such contributions is authorized and approved by the Trustees.

(g) Any Employer who agrees to contribute to the Annuity Fund on



behalf of non-bargaining unit employees. Such participating Employers may voluntarily elect to contribute to the Fund on behalf of those corporate officers and/or shareholders, or on behalf of any clerical and/or other non-bargaining unit personnel, subject to approval of such participation by the Trustees.

(h) Employers as described in this Section shall, by the making of payments to the Trust Fund pursuant to such collective bargaining or other written agreements, be deemed to have accepted and be bound by this Trust Agreement.

Section 2. Local Unions or Union. The term "Local Unions" or "Union" shall mean the Iron Workers Locals No. 12 and 9 affiliated with the International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO.

Section 3. Employee. The term "Employee" as used herein shall mean:

(a) Any Employee represented by the Union and working for an Employer as defined herein, and with respect to whose employment an Employer is required to make contributions into the Trust Fund.

(b) Any Employee employed by the Union as defined herein, or any officer of the Union, upon whom contributions are made by said Union, even though such employee is not covered by a collective bargaining agreement, provided the receipt

of such contributions is pursuant to a participation agreement which is authorized and approved by the Trustees.

(c) Any Employee of an Employer, as defined in subsection (d) of Section 1, on whose behalf such Employer is required to make payments or contributions to the Trust Fund as provided in subsection (d) of Section 1.

(d) Any Employee of this Trust Fund and any affiliated Welfare, Pension, or Training Fund of the Union, upon whom contributions are made by said Trust, even though such employee is not covered by a collective bargaining agreement, provided the receipt of such contributions is pursuant to a participation agreement which is authorized and approved by the Trustees.

(e) Any officer or Employee of an Employer Association which has contributory Employers as defined herein, upon whom contributions are made by said Association, even though such officer or employee is not covered by a collective bargaining agreement, provided the receipt of such contributions is pursuant to a participation agreement which is authorized and approved by the Trustees.

(f) Any Employee employed by an Employer as defined herein, or any officer or shareholder of an Employer, upon whom contributions are made by said Employer, even though such Employee is not covered by a collective bargaining agreement, provided the receipt of such contributions is pursuant to a participation

agreement which is authorized and approved by the Trustees. Contributions on behalf of non-bargaining unit employees must be on a non-discriminatory basis.

Section 4. Participant. The term "Participant" shall mean any Employee as defined herein who has satisfied the requirements for participation (if any) as defined in the Plan created pursuant to this Agreement.

Section 5. Beneficiary. The term "Beneficiary" shall mean a person designated by a Participant or by the terms of the Plan created pursuant to this Agreement and Declaration of Trust, who is or may become entitled to a benefit.

Section 6. Trustees. The term "Trustees" as used herein shall mean the Trustees designated in this Trust Agreement, together with their successors designated and appointed in accordance with the terms of this Trust Agreement. The Trustees collectively, shall be the "Administrator" of this Fund as that term is used in the Act.

Section 7. Trust Fund. "Trust", "Trust Fund" and "Fund" as used herein shall mean the entire trust estate of the Iron Workers Locals No. 12 and 9 Annuity Fund as it may from time to time, be constituted, including, but not limited to all funds received in the form of contributions, together with all contracts (including dividends, interest, refunds, and other sums payable to the Trustees on account of such contracts), all investments made and held by the Trustees, all income, increments, earnings and profits therefrom, and any and all other property or funds received and held by the Trustees by

reason of their acceptance of this Agreement and Declaration of Trust.

Section 8. Trust Agreement. The terms "Agreement and Declaration of Trust" or "Trust Agreement" as used herein shall mean this instrument including all amendments and modifications as may from time to time be made.

Section 9. Act or ERISA. The term "Act" or "ERISA" as used herein shall mean the Employee Retirement Income Security Act of 1974, any amendments as may from time to time be made, and any regulations promulgated pursuant to the provisions of the said Act.

Section 10. Annuity Plan. The term "Annuity Plan", or "Plan", shall mean the plan, program, method, rules and procedure for the payment of benefits from the Trust Fund established by the Trustees pursuant to this Agreement and Declaration of Trust and amendments thereto.

Section 11. Association. The term "Association" shall mean the Upstate Ironworker Employers Association, Inc. ("UIE"). It shall be a condition to be determined an "Association" referred to above that the Association shall be signatory to a current collective bargaining agreement with the Union.

Section 12. Effective Date. The term "Effective Date" shall mean May 1, 1999.

## ARTICLE II

### CREATION AND PURPOSES OF FUND

The Trust Fund is created, established and maintained, and the Trustees agree to receive, hold and administer the Trust Fund, for the purpose of providing such benefits as now are, or hereafter may be, authorized or permitted by law for Participants and Beneficiaries and in accordance with the provisions herein set forth and the Plan. It is intended that this Trust Fund and Plan be a "multi-employer plan" as that term is defined in Section 3(37) (A) of the Act.

## ARTICLE III

### TRUSTEES

Section 1. Number. The operation and administration of the Fund shall be the joint responsibility of eight (8) Trustees, consisting of four (4) Employer Trustees and four (4) Union Trustees. The Employer Trustees shall be appointed by the Association. Two (2) Union Trustees shall be appointed by Local Union No. 9 and two (2) Union Trustees shall be appointed by Local Union No. 12. Successor Employer Trustees shall be appointed by the Association and successor Union Trustees shall be elected by the respective Union. The Union and the Employers shall always be equally represented on

the Board of Trustees.

Although the parties acknowledge that it is expected that there will be four (4) Employer Trustees and four (4) Union Trustees at all times, the failure of the Association or the Union to have four (4) Trustees in office at all times shall not be deemed a violation of this Trust Agreement. It is further understood and agreed that any imbalance between the number of Employer Trustees and Union Trustees shall have no effect upon the unit voting system as described in Section 13 below.

The Trustees are hereby authorized and empowered, in the event that in the opinion of the majority of the Trustees, it shall become necessary to increase or decrease the number of Trustees, then, in that event, the Board may be enlarged to such number as shall be deemed proper and sufficient to give adequate representation as in the opinion of the Board of Trustees shall be necessary. Whenever the Board of Trustees shall be enlarged, it shall always be a requirement that equal representation on behalf of the Employer and the Union Trustees shall prevail. When this occurs, the appointment of additional Trustees shall be made as previously provided in this Section. However if UIE does not represent any employer who is a signatory contractor with either Local Union No. 9 or 12, the appointment shall be made by the person who is the chairman of the management negotiating committee with Local Unions No. 12 and 9, as the case may be.

Section 2. Acceptance of Trusteeship. The Trustees shall immediately meet and

sign this Agreement and Declaration of Trust for the Annuity 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 their capacity strictly in accordance with the provisions of this Agreement and Declaration of Trust.

Section 3. Term of Trustees. The Trustees shall serve for three (3) years or until a successor trustee shall be designated. A Trustee may be removed or replaced at will by the party appointing the Trustee or for cause by a majority vote of the Employer and Union Trustees at a meeting duly held for this purpose. Cause is defined hereafter in Article III, Section 15.

Section 4. Vacancies. If for any reason a Trustee cannot serve, or resigns, or is removed before the expiration of the term for which he is appointed, a successor shall be appointed in the same manner and by the same group, either Employer or Union, as the Trustee to whose office he is succeeding. The resignation, removal or death of any Trustee shall not impair the right of the remaining Trustees to vote providing a quorum shall be present.

Section 5. Form of Notification. In the event any Trustee shall be removed, replaced, or succeeded, a notice in writing by the Secretary of the Fund shall be sufficient evidence of the action taken by the Board of Trustees.

Section 6. Successor Trustee, Assumption of Office. Any Successor Trustee shall

immediately upon his appointment as a Successor Trustee and his acceptance of the Trusteeship in writing become vested with all the property rights, powers and duties of a Trustee hereunder with like effect as if originally named a Trustee without the necessity of any formal conveyance or other instrument of title.

Section 7. Limitation of Liability of Trustees.

(a) No successor Trustee shall in any way be liable or responsible for anything done or committed in the administration of the Trust prior to the date he becomes a Trustee. The Trustees shall not be liable for the acts or omissions of any investment manager, attorney, auditor, accountant, consultant, agent, or assistant employed by them in pursuance of this agreement, if such investment manager, attorney, auditor, accountant, consultant, agent or assistant was selected pursuant to this Trust Agreement and such person's performance was periodically reviewed by the Trustees who found such performance to be satisfactory.

(b) No Trustee shall be liable or responsible for his own acts or for any acts or default of any other fiduciary or party in interest or any other person, except in accordance with applicable federal law.

Section 8. Office of the Fund. The principal office of the Trust Fund shall, so long as such location is feasible, be located and maintained at 3445 Winton Place, Suite 110, Rochester, New York 14623-2950. The location of the principal office shall be made



known to the parties interested in the Trust Fund. At such office, and at such other places as may be required by law, there shall be maintained the books and records pertaining to the Trust Fund and its administration.

Section 9. Officers. Each year the Trustees shall elect from among themselves a Chairman and a Secretary to serve for a term of one (1) year commencing with the Plan's fiscal year, or until his or their successors have been elected. When the Chairman shall be elected from the Employer Trustees, then the Secretary shall be elected from the Union Trustees; and when the Chairman shall be elected from the Union Trustees, then the Secretary shall be elected from the Employer Trustees. The Secretary or such other person as the Trustees may designate, shall keep minutes and records of all meetings, proceedings and acts of the Trustees and shall, with reasonable promptness, send copies of such minutes and records to all Trustees. The Chairman or in his absence the Secretary or other person as the Trustees shall designate, shall preside at all meetings of the Trustees.

Section 10. Power to Act in Case of Vacancy. No vacancy or vacancies on the Board of Trustees shall impair the power of the remaining Trustees, acting in the manner provided by this Trust Agreement, to administer the affairs of the Trust Fund notwithstanding the existence of such vacancy or vacancies.

Section 11. Meetings; Notices. The Trustees shall meet at least once each three

(3) months and at such other times as they deem it necessary to transact their business.

The Chairman or the Secretary of the Board of Trustees may, and upon the written request of any three (3) Trustees shall, call a meeting of the Trustees at any time by giving at least five (5) days' written notice of the time and place thereof to the remaining Trustees. A meeting of the Trustees may be held at any time without notice if all the Trustees consent thereto in writing.

Section 12. Attendance at Meetings; Minutes. All official meetings of the Trustees shall be attended only by the Trustees and shall not be open to the public, except that there may attend such other persons as may be designated by the Trustees or when invited to do so, and as may be otherwise required by law. Written minutes, a copy of which shall be furnished with reasonable promptness to each Trustee, shall be kept of all business transacted and of all matters upon which voting shall have occurred and the vote of each Trustee shall be recorded.

Section 13. Quorum; Voting; Action Without Meeting.

(a) One (1) Employer Trustee and one (1) Union Trustee present in person or by proxy at any meeting of the Board of Trustees shall constitute a quorum for the transaction of business, regardless of whether the Employer or Union Trustee represents Local Union 12 or Local Union 9. If at any meeting, the number of Employer and Union Trustees present shall be unequal, then the group of Trustees lesser in number

shall be entitled to cast the same number of votes as the other group of Trustees. In the event there shall be present at any meeting less than all of the Trustees of a group and if no proxy has been given by any absent Trustee and such Trustees shall be unable to agree as to the manner in which the vote of the absent Trustee shall be cast, then action on the matter under consideration shall be postponed until all Trustees of the group shall be present. If a written proxy has been granted in accordance with subsection (d), below, the Trustee who holds the proxy may vote it as he sees fit, subject to any limitations or restrictions which may be specified in the proxy.

(b) Any action taken by the Trustees, except as herein otherwise provided, shall be by unit voting. The Union Trustees shall constitute one unit, and the Employer Trustees shall constitute one unit. For any action to be taken, both units must vote in favor of taking such action. A unit votes in favor of any action only if the majority of the Trustees in that unit, who are present at the meeting either personally or by proxy, vote in favor of taking the action.

(c) Action by the Trustees on any proposition may also be taken without a meeting if all of the Trustees agree thereon in writing.

(d) Any Trustee absent from a meeting may, by written proxy, duly subscribed by him, authorize another Trustee who was appointed by the same entity as the absent Trustee, to vote on his behalf and in his stead at any meeting of the Trustees.

(e) Any one or more members of the Board of Trustees may participate in a meeting of the Board of Trustees by conference telephone or similar communications equipment allowing all participants in the meeting to hear each other at the same time. Participation by such means shall constitute presence at a meeting.

Section 14. Manner of Acting in the Event of Deadlock.

(a) A deadlock shall be deemed to exist whenever a proposal, nomination, motion or resolution made or proposed by any one of the Trustees is not adopted, rejected, or otherwise acted upon by a majority vote of both units and the maker of the proposal, nomination, motion or resolution notifies the remaining Trustees in writing that a deadlock exists.

(b) In the event of such deadlock arising, the Trustees shall meet for the purpose of agreeing upon an impartial umpire to break such deadlock by deciding the dispute in question. In the event of the inability of the Trustees to agree upon the selection of such impartial umpire within a reasonable time, then, on the petition of either group of Trustees, a senior judge on duty of the District Court of the United States for the Eastern District of New York shall appoint such impartial umpire. Such impartial umpire shall immediately proceed to hear the dispute between the Trustees and decide such dispute, and the decision and award of such umpire shall be final and binding upon the parties. The reasonable compensation of such umpire and the costs and expenses

(including, without limitation, professional fees such as legal and reporting fees) incidental to any proceedings instituted to break a deadlock shall be paid by the Trust Fund.

(c) Any impartial umpire selected or designated to break a deadlock shall be required to enter his decision within a reasonable time fixed by the Trustees. The scope of any such proceeding before such impartial umpire shall be limited to the provisions of this Trust Agreement and to the provisions of the rules, regulations and by-laws adopted by the Trustees and to the plan of benefits established by them. The impartial umpire shall have no jurisdiction or authority to change or modify the provisions of this Trust Agreement or to decide any issue arising under or involving the interpretation of any collective bargaining agreements between the Union, the Association and other Employers, and such impartial umpire shall have no power or authority to change or modify any provisions of any such collective bargaining agreements.

Section 15. Removal of Trustee (Violation of Act). The Board of Trustees shall initiate action to cause the removal of any fellow member Trustee who may be serving as a Trustee in violation of the Act. The vacancy or vacancies caused by such a removal shall be filled in accordance with Section 4 of this Article.

Section 16. Indemnification of Exonerated Fiduciary. The Fund shall reimburse a

"Covered Fiduciary" for the "Reasonable Litigation Costs" he incurred in "Breach Litigation", after there has been a final judgment on the merits of such litigation or after the litigation has been dismissed for any reason (including settlement), provided the Covered Fiduciary prevailed in such litigation, but only to the extent the Reasonable Litigation Costs are not covered by the Fund's fiduciary liability insurance coverage policy. "Covered Fiduciary" means any present or former Trustee of the Fund and any present or former employee of the Fund who, at times relevant to the Breach Litigation, was and/or is an alleged or actual "fiduciary" relative to the Fund (as defined in ERISA).

"Reasonable Litigation Costs" means the reasonable cost of appropriate legal representation of a Covered Fiduciary in Breach Litigation. "Breach Litigation" means one or more criminal or civil litigation claims (other than a claim that a Covered Fiduciary violated ERISA in a denial of a claim for benefits from the Fund), asserted by the U.S. Secretary of Labor or by any "participant", "beneficiary", or "fiduciary" of the Fund (as those terms are defined in ERISA) against a Covered Fiduciary in a pleading filed in a civil or criminal action, which allege(s) that the Covered Fiduciary breached a fiduciary responsibility imposed upon him by ERISA and/or the Internal Revenue Code, or otherwise acted improperly in the performance of his duties with respect to the Fund.

## ARTICLE IV

### CONTRIBUTIONS AND COLLECTIONS

#### Section 1. Employer Contributions.

(a) Each Employer shall make prompt contributions or payments to the Trust Fund in such amount and under the terms as are provided for in the applicable collective bargaining agreement in effect from time to time between the Employer or his bargaining representative and the Union. An Employer may also be required to make contributions in such amount and under such terms as such Employer may be obligated, in writing, to make, provided that such contributions shall be subject to acceptance by the Trustees. The Employer agrees that such contributions shall constitute an absolute obligation to the Trust Fund, and such obligation shall not be subject to set-off or counterclaim which the Employer may have for any liability of the Union or of an Employee.

(b) Contributions to the Fund shall be paid to the Trustees or to such depository as the Trustees shall designate, only by check, bank draft, money order or other recognized written method of transmitting money or its equivalent, made payable to the order of the Iron Workers Local Nos. 12 and 9 Annuity Fund. The payment of contributions shall be made periodically at such times as the Trustees shall specify by

rules and regulations or, if the Trustees so elect, as may be provided in the applicable collective bargaining agreement.

(c) Each Employer shall be responsible only for the contributions payable by him on account of Employees covered by him, except as may be otherwise provided by law. The Employer shall not be responsible for the contributions, payments or other obligations of any other Employer, or otherwise.

(d) In the event an Employee employed by an Employer, as defined herein, shall perform work outside of the geographical jurisdiction of the Union, the Employer may continue to make payments to the Trust Fund and the Trustees may accept such payments.

Section 2. Receipt of Payment and Other Property of Trust. The Trustees or such other person or entity designated or appointed by the Trustees are hereby designated as the persons to receive the payments heretofore or hereafter made to the Trust Fund by the Employers and Employees. The Trustees are hereby vested with all right, title and interest in and to such moneys and all interest which may be accrued thereon, and are authorized to receive and be paid the same.

Section 3. Collection and Enforcement of Payments. The Trustees, or such committee of the Trustees as the Board of Trustees shall appoint, or the Fund Manager if one has been appointed and when directed by such committee or by the Board of



Trustees, shall have the power to demand, collect and receive Employer payments and all other money and property to which the Trustees may be entitled, and shall hold the same until applied to the purposes provided in this Trust Agreement. They shall take such steps, including the institution and prosecution of, or the intervention in, such legal or administrative proceedings as the Trustees in their sole discretion determine to be in the best interest of the Trust Fund for the purpose of collecting such payments, money and property, without prejudice, however, to the rights of the Union to take whatever steps it deems necessary and wishes to undertake for such purposes.

Section 4. Production of Records. Each Employer shall promptly furnish to the Trustees, on demand, the names of his Employees, their Social Security numbers, the hours worked by each Employee and such other information as the Trustees may reasonably require in connection with the administration of the Trust Fund and for no other purpose. The Trustees may, by their respective representatives, examine the pertinent employment, payroll and related records of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust Fund. The Trustees may require, in the cases of Employers with offices outside the geographical jurisdiction of the Union, that the Employer produce the above-referred to records for examination at the Office of the Fund. The Union shall, upon the request of the Trustees, promptly

furnish information in respect to an Employee's employment status. An Employer's production of records shall be on such other terms as the Trustees may specify by rules and regulations, including payment of any costs and fees incurred in obtaining the audit, such as, without limitation, auditing fees attorneys' and paralegal fees, and any other costs.

Section 5. Delinquent Contributions; Expenses of Collection. The Trustees, in their sole discretion, may require the payment by Employers of liquidated damages and interest (as provided in this Trust or a separate collections policy established by the Trustees) and of other costs and expenses (such, as without limitation, attorneys' fees, paralegals' fees, accountants' or auditors' fees, filing fees and cost of service of papers and all other costs and disbursements) incurred by the Trustees and arising out of the collection of an Employer's delinquent contributions.

Section 6. Non-Payment by An Employer; Others Still Obligated. Non-payment by any Employer of any contribution or other moneys owed to the Fund shall not relieve any other Employer from his or its obligation to make required payments to the Trust Fund.

Section 7. Effect of this Trust Agreement. To the extent this Trust Agreement conflicts with the terms and provisions of the Collective Bargaining Agreement, the terms and provisions of this Trust Agreement shall govern. If this Trust Agreement

conflicts with the terms and provisions of a separate Collections Policy established by the Trustees, the terms and provisions of the separate Collections Policy shall govern.

## ARTICLE V

### POWERS AND DUTIES OF TRUSTEES

Section 1. Conduct of Trust Business. The Trustees shall have general supervision of the operation of this Trust Fund and shall conduct the business and activities of the Trust Fund in accordance with this Trust Agreement and applicable law. The Trustees shall hold, manage and protect the Trust Fund and collect the income therefrom and contributions thereto. The Trustees may, in the course of conducting the business of the Trust, execute all instruments in the name of the Iron Workers Locals No. 12 and 9 Annuity Fund which instruments shall be signed by at least one Employer and one Union Trustee, provided, however, any one Trustee may execute legal documents to commence and process authorized law suits to enforce trust collections on behalf of the Trustees.

Section 2. Use of Fund for Expenses. The Trustees shall have the power and authority to use and apply the Trust Fund to pay or provide for the payment of all reasonable and necessary expenses (i) of collecting the Employer contributions and payments and other moneys and property to which they may be entitled and (ii) of

administering the affairs of this Trust, including the employment of such administrative, legal, expert and clerical assistance, the purchase or lease of such premises, materials, supplies and equipment and the performance of such other acts as the Trustees, in their sole discretion, find necessary or appropriate in the performance of their duties.

Section 3. Use of Fund to Provide Benefits. The Trustees shall also have the power and authority to use and apply the Trust Fund to pay or provide for the payment of such retirement, and related benefits to eligible Participants and their Beneficiaries, in accordance with the terms, provisions, and conditions of the Plan to be formulated and agreed upon hereunder by the Trustees, and pursuant to the provisions of the Act.

Section 4. Investments.

(a) The Trustees shall have the power and authority, in their sole discretion, to invest and reinvest such funds as are not necessary for current expenditures, as they may from time to time determine, in such investments as are legal investments under applicable State and Federal law relating to the investment of assets of multi-employer trust funds not limited, however, by any limitation restricting investments in common stocks to a percentage of the Fund or to a percentage of the total market value of the Fund. The Trustees may sell, exchange or otherwise dispose of such investments at any time and, from time to time, as provided in Section 9(f) of this Article. The Trustees shall also have power and authority (in addition to, and not in limitation of, common law

and statutory authority) to invest in any stocks, bonds or other property, real or personal, including improved or unimproved real estate and equity interests in real estate, where such an investment appears to the Trustees, in their discretion and consistent with their fiduciary obligations, to be in the best interest of the Trust Fund and its Participants and Beneficiaries, judged by then prevailing business conditions and standards. The Trustees shall have the authority, in respect to any stocks, bonds or other property, real or personal, held by them as Trustees, to exercise all such rights, powers and privileges as might be lawfully exercised by any person owning similar stocks, bonds or other property in his own right.

(b) Delegation and Allocation of Investment Functions.

(1) The Trustees are authorized, in their discretion, by resolution, to allocate to a Finance Committee such duties and responsibilities to invest and reinvest such Fund assets as they shall specify in such allocation.

(2) The Trustees shall have the power and authority to appoint one or more investment managers (as defined in Section 3(38) of the Act) who shall be responsible for the management, acquisition, disposition, investing and reinvesting of such of the assets of the Trust Fund as the Trustees shall specify. Any such appointment may be terminated by the Trustees upon proper written notice. The fees of such investment manager, and its expenses to the extent permitted by law, shall be paid out of

the Trust Fund.

(3) In connection with any allocation or delegation of investment functions under paragraphs (1) and (2) of this subsection (b), the Trustees shall, from time to time, adopt appropriate investment policies or guidelines.

Section 5. Deposits and Disbursements. All Trust funds not invested shall be deposited by the Trustees in such depository or depositories as the Trustees shall from time to time select, and any such deposit or deposits, or disbursements therefrom, shall be made in the name of the Trust in the manner designated by the Trustees, upon the signature(s) of persons designated and authorized by the Trustees or by a custodian appointed in accordance with the provisions of this Agreement.

Section 6. Allocation & Delegation of Fiduciary Responsibilities. The Trustees may, by resolution or by-law or by provisions of this Trust Agreement, allocate fiduciary responsibilities and various administrative duties to committees or subcommittees of the Board of Trustees, and they may delegate such responsibilities and duties to other individuals as they may deem appropriate or necessary in their sole discretion and consistent with the Act.

Section 7. Fund Manager. The Trustees may employ or contract for the services of an individual, firm or corporation, to be known as "Fund Manager," who shall, under the direction of the Trustees or under the direction of any appropriate committee of the

Trustees, administer the office or offices of the Trust Fund and of the Trustees; coordinate and administer the accounting, bookkeeping and clerical services, provide for the coordination of various services furnished by any consultants to the Fund, prepare (in cooperation where appropriate with any consultant and independent auditor) all reports and other documents to be prepared, filed or disseminated by or on behalf of the Trust in accordance with law, assist in the collection of contributions required to be paid to the Trust Fund by Employers and perform such other duties and furnish such other services as may be assigned, delegated or directed or as may be contracted by or on behalf of the Trustees. The Fund Manager shall be the custodian on behalf of the Trustees of all documents and other records of the Trustees and of the Trust Fund.

Section 8. By-Laws, Rules and Regulations.

(a) The Trustees are hereby empowered and authorized to adopt by-laws and to promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust Fund, provided the same are not inconsistent with the terms of this Trust Agreement. All by-laws, rules and regulations adopted by action of the Trustees shall be binding upon all parties hereto, all parties dealing with the Trust Fund and all persons claiming any benefits hereunder.

(b) No by-law, regulation, rule, action or determination made or adopted by the Trustees, nor any decision or determination made by any impartial umpire

appointed pursuant to Article III, Section 14(b) of this Agreement, shall in any manner conflict or be inconsistent (1) with this Trust Agreement; and (2) with any applicable Federal, State or local law.

Section 9. Additional Authority. The Trustees are hereby empowered in addition to such other powers as are set forth herein or conferred by law,

(a) to enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration of the Trust Fund, and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the Participants involved;

(b) to keep property and securities registered in the names of the Trustees or of the Fund or in the name of any other individual or entity duly designated by the Trustees;

(c) to establish and accumulate as part of the Trust Fund such reasonable reserve funds as the Trustees, in their sole discretion, deem necessary or desirable to carry out the purposes of such Trust Fund;

(d) to pay out of the Trust 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 Trust Fund, or any money, property, or securities



forming a part thereof;

(e) 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;

(f) to sell, exchange, lease, convey, mortgage or dispose of any property, whether real or personal, at any time forming a part of the Trust Fund upon such terms as they may deem proper, and to execute and deliver any and all instruments of conveyance, lease, mortgage and transfer in connection therewith; and

(g) to establish and carry out a funding policy and method consistent with the objectives of the Plan and the Act.

Section 10. Bonds. The Trustees shall obtain from an authorized surety company such bonds as may be required by law, covering such persons and in such amounts (but not less than required by law) as the Trustees, in their discretion, may determine. The cost of premiums for such bonds shall be paid out of the Trust Fund.

Section 11. Insurance. The Trustees may in their discretion obtain and maintain policies of insurance, to the extent permitted by law, to insure themselves, the Trust Fund as such, as well as employees or agents of the Trustees and of the Trust Fund, while engaged in business and related activities for and on behalf of the Trust Fund (1) with respect to liability to others as a result of acts, errors or omissions of such Trustee or Trustees, employees or agents, respectively, provided such insurance policy shall provide

recourse by the insurer against Trustees as may be required by law and (2) with respect to injuries received or property damage suffered by them. The cost of the premiums for such policies of insurance shall be paid out of the Trust Fund.

Section 12. Information to Participants and Beneficiaries. The Trustees shall provide Participants and Beneficiaries with such information as may be required by the Act.

Section 13. Accountants and Actuaries. The Trustees shall engage one or more independent qualified public accountants who shall be either a certified public accountant or a licensed public accountant as defined in the Act, to perform all services as may be required by applicable law and such other services as the Trustees may deem necessary.

Section 14. Trustees to Act without Compensation. The Trustees shall act in such capacity without compensation, but they shall be entitled to reimbursement for the expenses properly and actually incurred in the performance of their duties with the Trust Fund, including, without limitation, attendance at meetings and other functions of the Board of Trustees or its committees or while on business of the Board of Trustees, attendance at institutes, seminars, conferences or workshops for or on behalf of the Trust Fund.

Section 15. Reports. All reports required by law to be signed by one or more Trustees shall be signed by all of the Trustees, provided that all of the Trustees may

appoint, in writing, or by resolution adopted and recorded in the Minutes, one or more of their members to sign such report on behalf of the Trustees.

Section 16. Records of Trustee Transactions. The Trustees shall keep true and accurate books of account and a record of all of their transactions and meetings (including actions taken at such meetings and by informal action of the Trustees), which records and books shall be audited at least annually by an independent qualified public accountant. A copy of each audit report shall be furnished to the Association and to the Union and shall be available for inspection by interested persons at the principal office of the Trustees.

Section 17. Construction and Determinations by Trustees. Subject to the stated purposes of the Fund and the provisions of this Agreement, the Trustees shall have full and exclusive authority to determine all questions of coverage and eligibility, methods of providing or arranging for benefits and all other related matters. They shall have full power to construe the provisions of this Agreement, the terms used herein and the by-laws and regulations issued thereunder. Any such determination and any such construction adopted by the Trustees in good faith shall be binding upon all of the parties hereto and any Beneficiaries hereof. No matter respecting the foregoing or any difference arising thereunder or any matter involved in or arising under this Trust Agreement shall be subject to the grievance or arbitration procedure established in any

collective bargaining agreement between the Employer and the Union, provided, however, that this clause shall not affect the rights and liabilities of any of the parties under any of such collective bargaining agreements.

Section 18. Liability. The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person.

Section 19. Reliance on Written Instruments. Any Trustee, to the extent permitted by applicable law, may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument.

Section 20. Reliance by Others. No party dealing with the Trustees shall be obligated (a) to confirm that any funds or property of the Trust Fund are applied for the stated Trust purposes or (b) to confirm that the terms of this Trust Agreement have been complied with or (c) to inquire into the necessity or expediency of any act of the Trustees. Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon (a) that at the time of the execution of said instrument, the Trust was in full force and effect, (b) that the instrument was executed in accordance with the terms and conditions of this Trust Agreement and (c) that the

Trustees were duly authorized and empowered to execute the instrument.

Section 21. Discharge of Liability. The receipt by the Trustees for any money or property or checks (after such checks are honored at the bank and paid to the Trust Fund) shall discharge the person or persons paying or transferring the same.

Section 22. Establishment of the Plan. The Trustees shall formulate a Plan for the payment of such retirement and related benefits, as are feasible. Such Plan shall at all times comply with all applicable federal statutes and regulations and to the provisions of this Trust Agreement. The Trustees shall not be under any obligation to pay any benefits if the payment of such benefits will result in loss of the Trust Fund's tax exempt status under the then applicable Internal Revenue Code and any regulations or rulings issued pursuant thereto. Said Trustees shall draft procedures, regulations, and conditions for the operation of the Plan, including, by way of illustration and not limitation: conditions of eligibility for Participants and their Beneficiaries, procedures for claiming benefits, schedules of type and amount of benefits to be paid, and procedures for the distribution of benefits. The Trustees may also provide for the payment of partial or full benefits, and may enter into agreements with other trustees of similar plans which conform to the applicable sections of the then applicable Internal Revenue Code for purposes of tax deductions for the reciprocal recognition of working hour credits, and payment of partial or full benefits based upon such credits.

Section 23. Establishment of Claims Appeal Procedure. The Trustees shall adopt an appropriate and legal claims appeal procedure. Such claims appeal procedure shall provide adequate notice in writing to any Participant or Beneficiary whose claim for benefits under the Plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the Participant, and affording a reasonable opportunity to any Participant whose claim for benefits has been denied for a full and fair review by the appropriately named fiduciary of the decision denying the claim in accordance with the Act, and in accordance with any regulations promulgated thereunder.

Section 24. Attendance at Educational Seminars or Conferences. The Trustees are hereby authorized to attend meetings, seminars and/or educational conferences, the sole purpose of which shall be the disseminating and providing of information in educational matters for the benefit, instruction, aid, and guidance of Trustees of Funds, and it is expressly provided that Trustees attending such meetings or conferences, upon due authorization by the Board of Trustees, shall be reimbursed for all necessary and proper expenses in connection with the attendance of such meetings, seminars, or educational conferences.

Section 25. Plan Interpretation and Determinations. Notwithstanding any other provision of this Trust Agreement, the Board of Trustees, or their designee, shall have

exclusive authority and discretion to:

- (a) Determine whether an individual is eligible for any benefits under the Annuity Plan;
- (b) Determine the amount of benefits, if any, an individual is entitled to from the Annuity Plan;
- (c) Determine or find facts that are relevant to any claim for benefits from the Annuity Plan;
- (d) Interpret all of the Annuity Plan's provisions;
- (e) Interpret all of the provisions of the Summary Plan Description booklet;
- (f) Interpret the provisions of any Collective Bargaining Agreement or written Participation Agreement involving or impacting the Annuity Plan;
- (g) Interpret the provisions of the Trust Agreement governing the operation of the Annuity Plan;
- (h) Interpret all the provisions of any other document or instrument involving or impacting the Annuity Plan;
- (i) Interpret all of the terms used in the Annuity Plan, the Summary Plan Description booklet, and all of the other previously mentioned agreements, documents, and instruments;

- (j) Administer and value employees' Individual Accounts; and
- (k) Uniformly reduce the amount in each Employee's Individual Account.

All such determinations and interpretations made by the Trustees, or their designee: shall be final and binding upon any individual claiming benefits under the Annuity Plan, and upon all Employees, all Employers, the Union, and any party who has executed any agreement with the Trustees or the Union; shall be given deference in all courts of law, to the greatest extent allowed by applicable law; and, shall not be overturned or set aside by any court of law unless the court finds that the Trustees, or their designee, abused their discretion in making such determination or rendering such interpretation.

Section 26. Amendment of Plan. The Plan may be amended by the Trustees from time to time, provided that such amendments comply with the applicable sections of the then applicable Internal Revenue Code, all applicable federal statutes and regulations, the contract articles creating the Trust Fund, and the purposes as set forth in this Trust Agreement. Additionally and not by way of limitation, the Trustees may amend the Plan, in futuro, or retroactively, where they deem it necessary to maintain the continuation of the Trust Fund's tax exempt status or to preserve compliance with the then applicable Internal Revenue Code, applicable federal statutes, and any regulations or rulings issued with respect thereto.



## ARTICLE VI

### CONTROVERSIES AND DISPUTES

Section 1. Reliance on Records. In any controversy, claim, demand, suit at law or other proceeding between any Participant, Beneficiary or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Union or with the Employers, any facts certified to the Trustees by the Union or the Employers, any facts which are of public record and any other evidence pertinent to the issue involved.

Section 2. Submission to Trustees. All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons in connection with the Trust Fund or the operation thereof, whether as to any claim for any benefits preferred by any Participant, Beneficiary or any other person, or whether as to the construction of the language or meaning of the by-laws, rules and regulations adopted by the Trustees or this instrument, or as to any writing, decision, instrument or accounts in connection with the operation of the Trust Fund or otherwise, shall be submitted to the Trustees or, in the case of questions related to claims for benefits, to an Appeals or Review Committee, if one has been appointed, and the decision of the Trustees or Appeals or Review Committee

shall be binding upon all persons dealing with the Trust Fund or claiming benefits thereunder.

Section 3. Settling Disputes. The Trustees may in their sole discretion compromise or settle any claim or controversy in such manner as they think best, and any decision made by the Trustees in compromise or settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all parties interested in this Trust.

## ARTICLE VII

### BENEFICIAL RIGHTS

Section 1. No Right, Title or Interest. No Employer, nor any employee of any such Employer, nor the Union, nor any member of the Union, nor any persons claiming by, through or under any of them, shall have any right, title or interest in or to the Trust Estate or any part thereof, except the right of a Participant, or his Beneficiary who is covered by retirement benefits in the amount and subject to the terms and conditions specified in the Plan, or as may be specified and determined by the Trustees. No person shall have the option to receive instead of the retirement benefits any part of the Employer contributions.

Section 2. Assignment Prohibited. No moneys, property or equity of any nature

whatsoever, in the Fund, or policies or benefits or moneys payable therefrom, shall be subject in any manner by an Employee or a person claiming through such employee, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, levy, mortgage, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void.

Section 3. Inurement Prohibited; Mistaken Contributions. The assets of the Fund shall never inure to the benefit of any Employer, except in the case of a contribution which is made by an Employer by mistake of fact or law, such contribution may be returned by the Trustees to such Employer within one (1) year after the Trustees determine that the contribution was made by mistake. This shall not entitle any Employer to unilaterally take a credit for any such alleged mistaken contribution. Such credit may be taken only if the Trustees, in their sole discretion, determine that such a mistaken contribution has, in fact, been made, and that such contribution should be returned.

## ARTICLE VIII

### ADDITIONAL PARTIES

Section 1. Additional Employers. Additional Employers may be admitted to participation in this Fund upon approval by the Trustees. The participation of such

additional Employers shall be subject to such terms and conditions as the Trustees may prescribe.

Section 2. Mergers. The Trustees, with the prior written approval of the Union and the Association, are authorized to merge, combine and consolidate with other Funds upon any terms and conditions mutually agreed upon by the Trustees of this Fund and such other Fund, subject to the provisions of ERISA.

## ARTICLE IX

### AMENDMENTS

Section 1. Trust Agreement. The provisions of this Agreement may be amended at any time by an instrument, in writing, executed by the Trustees, provided that no amendment shall divert or provide for the use of the Trust Fund then in the hands of the Trustees, other than for the purposes of this Trust, to those persons who are covered hereby or to their beneficiaries as hereinabove set forth.

Section 2. Compliance with ERISA. Anything in Section 1 above, to the contrary notwithstanding, the Trustees shall have the authority to amend this Agreement and Declaration of Trust in order to conform with the requirements of ERISA.

ARTICLE X

TERMINATION OF TRUST

In the event of the termination of the Trust Fund, the Trustees shall thereupon allocate and distribute the assets of the Fund in accordance with the applicable provisions of ERISA.

ARTICLE XI

CONSTRUCTION OF TRUST

All questions pertaining to the validity of or construction of this Agreement and of the acts or transactions of the parties shall be determined in accordance with the provisions of ERISA.

ARTICLE XII

MISCELLANEOUS

Section 1. Trustee Powers After Termination. The Trustees shall be entitled to continue and/or exercise all the title, powers, discretion, rights and duties conferred or imposed upon the Trustees by law or by this Trust after the termination of this Trust in whole or in part or until the final distribution of the assets thereof.

Section 2. Counterparts. This Trust is made in counterparts any of which shall be deemed the sole original if the others be not produced.

Section 3. Enforceability of Trust Provisions. In the event that any of the provisions herein contained shall be invalid or unenforceable, such declaration or adjudication shall not in any manner affect or impair the validity or the enforceability of the other and remaining provisions of this Trust and such other and remaining provisions shall remain in full force and effect as though such invalid or unenforceable provisions or clauses had not been herein included or made a part hereof.

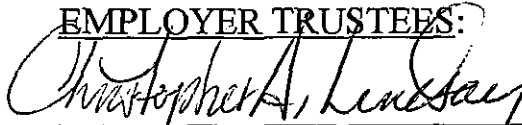
Section 4. Designee for Service of Process. The Board of Trustees, or any individual Trustee is designated as the agent of the Trust upon whom process against the Trust may be served. The address where any process against the Trust may be served is:

Iron Workers Locals 12 and 9 Annuity Fund  
3445 Winton Place – Suite 110  
Rochester, New York 14623-2950

IN WITNESS WHEREOF, the Trustees have executed this Agreement and Declaration of Trust of the Iron Workers Locals No. 12 and 9 Annuity Fund and have

evidenced their ratification and consent to be bound by the Trust created herein, effective the 1<sup>st</sup> day of May, 1999.

EMPLOYER TRUSTEES:


  
CHRISTOPHER LINDSAY

  
GEORGE MERKLING, JR.


  
LAURENCE DESKIN

UNION TRUSTEES:

  
MICHAEL BURNS

  
PETER E. RILEY

  
THOMAS PRYCE

  
GERALD DICKEY, JR.

**IRON WORKERS LOCALS 12 AND 9 ANNUITY FUND  
AGREEMENT AND DECLARATION OF TRUST**

**AMENDMENT**

In accordance with the provisions of Section 26 of Article V of the Agreement and Declaration of Trust of the Iron Workers Locals 12 and 9 Annuity Fund, the Trustees hereby amend the Agreement and Declaration of Trust as follows:

I.

Any reference to "Trust", "Trust Fund" or "Fund" appearing in this Agreement and Declaration of Trust and defining the "Iron Workers Locals No. 12 and 9 Annuity Fund" is hereby amended to reference the new name of the Trust Fund, the "Iron Workers District Council of Western New York and Vicinity Annuity Fund".

II.

Any reference to "Local Unions", "Local Unions No. 12 and 9," or "Union" appearing in this Agreement and Declaration of Trust and defining the "Iron Workers Locals No. 12 and 9 affiliated with the International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO" is hereby amended to reference the "Iron Workers Locals No. 12, 9 and 33 affiliated with the International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO".

III.

Section 1 of Article III shall be revised to read as follows, with the changed language in italics:



"Section 1. Number. The operation and administration of the Fund shall be the joint responsibility of *ten (10)* Trustees, consisting of *five (5)* Employer Trustees and *five (5)* Union Trustees. The Employer Trustees shall be appointed by the Association. Two (2) Union Trustees shall be appointed by Local Union No. 9, two (2) Union Trustees shall be appointed by Local Union No. 12 *and one (1) Union Trustee shall be appointed by Local Union No. 33.* Successor Employer Trustees shall be appointed by the Association and successor Union Trustees shall be elected by the respective Union. The Union and Employers shall always be equally represented on the Board of Trustees.

Although the parties acknowledge that it is expected that there will be *five (5)* Employer Trustees and *five (5)* Union Trustees at all times, the failure of the Association or the Union to have *five (5)* Trustees in office at all times shall not be deemed a violation of this Trust Agreement. It is further understood and agreed that any imbalance between the number of Employer Trustees and Union Trustees shall have no effect upon the unit voting system as described in Section 13 below."

#### IV.

Section 13 (a) of Article III shall be revised to read as follows, with the changed language in italics:

- (a) *Two (2)* Employer Trustees and *two (2)* Union Trustees present in person or by proxy at any meeting of the Board of Trustees shall constitute a quorum for the transaction of business, regardless of whether the Employer or Union Trustees represent Local Union 12, Local Union 9 or *Local Union 33*. If at any meeting, the number of Employer and Union Trustees present shall be unequal, then the group of Trustees lesser in number shall be entitled to cast the same number of votes as the other group of Trustees. In the event there shall be present at any meeting less than all of the Trustees of a group and if no proxy has been given by any absent Trustee and such Trustees shall be unable to agree as to the manner in which the vote of the absent Trustee shall be cast, then action on

the matter under consideration shall be postponed until all Trustees of the group shall be present. If a written proxy has been granted in accordance with subsection (d), below, the Trustee who holds the proxy may vote it as he sees fit, subject to any limitations or restrictions which may be specified in the proxy.

IN WITNESS WHEREOF, the Trustees of the Iron Workers Locals No. 12 and 9 Annuity Fund adopted this Amendment on the 15<sup>th</sup> day of FEBRUARY, 2001, to be effective as of the 1<sup>st</sup> day of January, 2001.

DATED: 2-15-01 \_\_\_\_\_ *Thomas J. Payne*  
UNION TRUSTEE

DATED: 2-15-01 \_\_\_\_\_ *Christopher A. Lewis Day*  
EMPLOYER TRUSTEE

BGIW12-9AF-TRUST-AMD

IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND VICINITY ANNUITY FUND

AGREEMENT AND DECLARATION OF TRUST


Amendment

Pursuant to the provisions of Article IX of the Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Annuity Fund, said Agreement and Declaration of Trust is hereby amended at ARTICLE IV "Contributions and Collections" by deleting Section 2 and substituting the following in lieu thereof, with the new language shown in italics:

"Section 2. Receipt of Payment and Other Property of Trust. The Trustees or such other person or entity designated or appointed by the Trustees are hereby designated as the persons to receive the payments heretofore or hereafter made to the Trust Fund. The Trustees are hereby vested with all right, title and interest in and to such moneys and all interest which may be accrued thereon, and are authorized to receive and be paid the same. *Title to all the monies paid into and/or due and owing to the Fund shall be vested in and remain exclusively in the Trustees of the Fund; outstanding and withheld contributions constitute Plan assets.*"

THIS IS TO CERTIFY that the above Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Fund on the 23<sup>rd</sup> day of April, 2002, to be effective as of the 23<sup>rd</sup> day of April, 2002.

DATED: 4.23.2

  
UNION TRUSTEE

Print  
Name \_\_\_\_\_

DATED: 4.23.2

  
EMPLOYER TRUSTEE

Print  
Name \_\_\_\_\_

AGREEMENT AND  
DECLARATION OF TRUST OF THE IRON WORKERS  
DISTRICT COUNCIL OF WESTERN NEW YORK  
AND VICINITY ANNUITY FUND

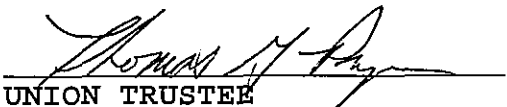
AMENDMENT

Pursuant to Article IX, Section 1, of the Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Annuity Fund, Article V (Powers and Duties of Trustees) is hereby amended by deleting Section 2, Use of Fund for Expenses, and substituting the following in lieu thereof with the new language shown in italics:

"Section 2. Use of Fund for Expenses. The Trustees shall have the power and authority to use and apply the Trust Fund to pay or provide for the payment of all reasonable and necessary expenses (i) of collecting the contributions, remittances and payments and other moneys and property to which they may be entitled and (ii) of administering the affairs of the Trust, including the employment of such administrative, legal, expert and clerical assistance, the purchase or lease of such premises, materials, supplies and equipment and the performance of such other acts, as the Trustees, in their sole discretion, find necessary or appropriate in the performance of their duties.

*The Trustees shall also have the discretion and authority to use Plan assets to pay for expenses related to activities that are typically considered settlor in nature, such as activities that relate to the establishment, design, and termination of the plan. Pursuant to U.S. DOL Field Assistance Bulletin 2002-2, in carrying out such settlor activities, the Trustees will act as fiduciaries and such activities will be governed by the fiduciary provisions of ERISA."*

THIS IS TO CERTIFY that the above Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Fund on the 16<sup>th</sup> day of July, 2003, to be effective as of the 4th day of November, 2002.

DATED: 7/16/03   
UNION TRUSTEE

DATED: 7/16/03   
EMPLOYER TRUSTEE

IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND  
VICINITY ANNUITY FUND

AGREEMENT AND DECLARATION OF TRUST


Amendment

Pursuant to the provisions of Article IX of the Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Annuity Fund, the Agreement and Declaration of Trust is hereby amended by revising Section 11 of Article III to read as follows, with the new language shown in italics:

“Section 11. Meetings; Notices. The Trustees shall *endeavor to meet on a quarterly basis, however, in no event shall the Trustees meet less than twice in each plan year.* The Chairman and Secretary of the Board of Trustees may, and upon the written request of any three (3) Trustees shall, call a meeting of the Trustees at any time by giving at least five (5) days’ written notice of the time and place thereof to the remaining Trustees. A meeting of the Trustees may be held at any time without notice if all the Trustees consent thereto in writing.”

THIS IS TO CERTIFY that the above Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Fund on the 2nd day of November, 2005, to be effective immediately.

DATED: 3-20-06

  
UNION TRUSTEE

Print Name THOMAS PRYCE

DATED: 3-20-06

  
EMPLOYER TRUSTEE

Print Name Germett Germett

AMENDED AND RESTATED AGREEMENT AND  
DECLARATION OF TRUST OF THE IRON WORKERS  
DISTRICT COUNCIL OF WESTERN NEW YORK  
AND VICINITY ANNUITY FUND

AMENDMENT

Pursuant to Article IX, Section 1, of the Amended and Restated Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Annuity Fund, Article IV (Contributions and Collections) is hereby amended by deleting the Section 1(b), and replacing it with the following:

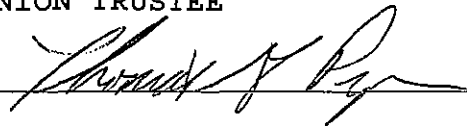
"(b) Contributions or remittances to the Fund shall be paid to the Trustees or to such depository as the Trustees shall designate, by check, bank draft, money order or other recognized written or electronic method of transmitting money or its equivalent, made payable to the order of the Iron Workers District Council of Western New York and Vicinity Annuity Fund. The payment of contributions or remittances shall be made periodically at such times as the Trustees shall specify by rules and regulations or as may be provided in the applicable collective bargaining agreement."

THIS IS TO CERTIFY that the above Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Fund on the 27<sup>th</sup> day of November, 2007, to be effective as of the 27<sup>th</sup> day of November, 2007.

UNION TRUSTEE

DATED:

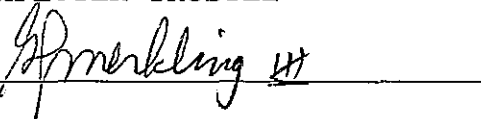
11-27-07



EMPLOYER TRUSTEE

DATED:

11/27/2007



IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND VICINITY  
ANNUITY FUND

AGREEMENT AND DECLARATION OF TRUST

Amendment

Pursuant to the provisions of Article IX of the Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Annuity Fund, the Agreement and Declaration of Trust is hereby amended by revising Section 2 of Article I and by revising Sections 1 and 13(a) of Article III to read as follows, with the new language shown in italics:

Article I

“ Section 2. Local Unions or Union. The term "Local Union" or "Union" shall mean the Iron Workers Locals No. 12, 9, *440 and 33* affiliated with the International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO. “

Article III

“ Section 1. Number. The operation and administration of the Fund shall be the joint responsibility of *fourteen (14)* Trustees, consisting of *seven (7)* Employer Trustees and *seven (7)* Union Trustees. The Employer Trustees shall be appointed by the Association. Two (2) Union Trustees shall be appointed *each* by Local Union No. 9, Local Union No. 12, *and Local Union No. 440. One (1) Union Trustee shall be appointed by Local Union No. 33.* Successor Employer Trustees shall be appointed by the Association and successor Union Trustees shall be elected by the respective Union. The Union and the Employers shall always be equally represented on the Board of Trustees.

Although the parties acknowledge that it is expected that there will be *seven (7)* Employer Trustees and *seven (7)* Union Trustees at all times, the failure of the Association or the Union to have *seven (7)* Trustees in office at all times shall not be deemed a violation of this Trust Agreement. It is further understood and agreed that any imbalance between the number of Employer Trustees and Union Trustees shall have no effect upon the unit voting system as described in Section 13 below.

The Trustees are hereby authorized and empowered, in the event that in the opinion of the majority of the Trustees, it shall become necessary to increase or decrease the number of Trustees, then, in that event, the Board may be enlarged to such number as shall be deemed proper and sufficient to give adequate representation as in the opinion of the Board of Trustees shall be



necessary. Whenever the Board of Trustees shall be enlarged, it shall always be a requirement that equal representation on behalf of the Employer and the Union Trustees shall prevail. When this occurs, the appointment of additional Trustees shall be made as previously provided in this Section. However if UIE does not represent any employer who is a signatory contractor with a Local Union, the appointment shall be made by the person who is the chairman of the management negotiating committee with the Local Union, as the case may be.

*SPM* Section 13. <sup>*T.P.*</sup> Quorum; Voting; Action Without Meeting. <sup>*Three T.P. SPM*</sup>  
 (a) ~~Three~~ <sup>*Four*</sup> (2) Employer Trustees and ~~Four~~ <sup>*Four*</sup> (4) Union Trustees present in person or by proxy at any meeting of the Board of Trustees shall constitute a quorum for the transaction of business. If at any meeting, the number of Employer and Union Trustees present shall be unequal, then the group of Trustees lesser in number shall be entitled to cast the same number of votes as the other group of Trustees. In the event there shall be present at any meeting less than all of the Trustees of a group and if no proxy has been given by any absent Trustee and such Trustees shall be unable to agree as to the manner in which the vote of the absent Trustee shall be cast, then action on the matter under consideration shall be postponed until all Trustees of the group shall be present. If a written proxy has been granted in accordance with subsection (d), below, the Trustee who holds the proxy may vote it as he sees fit, subject to any limitations or restrictions which may be specified in the proxy."

THIS IS TO CERTIFY that the above Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Fund on the 27<sup>th</sup> day of November, 2007, to be effective January 1, 2008.

DATED: 11-27-07   
 UNION TRUSTEE

Print Name \_\_\_\_\_

DATED: 11/27/07   
 EMPLOYER TRUSTEE

Print Name \_\_\_\_\_

IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK  
AND VICINITY ANNUITY FUND

AGREEMENT AND DECLARATION OF TRUST

AMENDMENT

Pursuant to Article IX, Section 1, of the Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Annuity Fund, Article V (POWERS AND DUTIES OF TRUSTEES) is hereby amended by deleting Section 14. "Trustees to Act without Compensation" in its entirety and replacing it with the following:

"Section 14. Trustees to Act without Compensation. The Trustees shall act in such capacity without compensation, but they shall be entitled to reimbursement for expenses, including reimbursement of wages for lost time as permitted by the Act, properly and actually incurred in the performance of their duties with the Trust Fund, including, without limitation, attendance at meetings and other functions of the Board of Trustees or its committees or while on business of the Board of Trustees, attendance at institutes, seminars, conferences or workshops for or on behalf of the Trust."

THIS IS TO CERTIFY that the above Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Fund on the 10<sup>th</sup> day of June, 2008, to be effective as of the 10<sup>th</sup> day of June, 2008.

DATED:

6/10/08

  
UNION TRUSTEE

Print

Name Thomas Pryce

DATED:

6/10/08

  
EMPLOYER TRUSTEE

Print

Name Garrett Beart

**IRON WORKERS  
DISTRICT COUNCIL OF WESTERN NEW YORK  
AND VICINITY ANNUITY FUND**

**AGREEMENT AND DECLARATION OF TRUST**

**AMENDMENT**

Pursuant to Article IX, Section 1, of the Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Annuity Fund, Article IV (Contributions and Collections), Section 2, is hereby amended by adding the following paragraph to the end of said section:

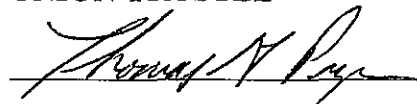
“All monies received by an Employer from any source for work performed by Employees represented by the Union shall be held in trust by the Employer. The Employer shall disburse the monies only for the purpose of paying wages owed to the Employees represented by the Union and fringe benefit contributions owed to the Fund on behalf of the Employees’ labor. If the Employer owes any wages to the Employees represented by the Union and/or owes any monies to the Fund on behalf of the Employees’ labor, it may not utilize the monies received by it in connection with its Employees’ labor for its own obligations or those of its officers, shareholders or directors.”

THIS IS TO CERTIFY that the above Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Fund on the 10<sup>th</sup> day of NOV., 2008, to be effective as of the 10<sup>th</sup> day of NOV., 2008.

**UNION TRUSTEE**

DATED:

11/12/08



**EMPLOYER TRUSTEE**

DATED:

11/12/08



**IRON WORKERS DISTRICT COUNCIL OF WESTERN  
NEW YORK AND VICINITY ANNUITY PLAN**

Amendment

Pursuant to Article V, Section 26 of the Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Annuity Fund ("Plan"), and Article 10, Section 10.03 of the Iron Workers District Council of Western New York and Vicinity Annuity Plan, the Plan is amended as follows:

Article 5, Section 5.01, of the Plan is amended by adding a new subsection E. to read as follows:


- "E.    **ADDITIONAL LIMITATION PROVISIONS FOR LIMITATION YEARS BEGINNING ON OR AFTER JULY 1, 2007.** The following provisions are intended to comply with the Final Regulations promulgated on April 5, 2007 by the Internal Revenue Service for Section 415 of the Code, and which are generally effective for Limitation Years beginning on or after July 1, 2007.
1. "Compensation" for purposes of this Plan means compensation as defined in Treasury Regulation § 1.415(c)-2(d)(2). Compensation paid or made available during a limitation year shall also include the Participant's regular pay, as defined in Treasury Regulation § 1.415-2(e)(3)(ii), paid by the later of: (A) two and one-half (2 ½ months) after severance from employment; or (B) the end of the limitation year that includes the severance from employment.
  2. Protection of Prior Benefits. To the extent by permitted by law, the application of the provisions of this Plan, as amended for the final regulations under Section 415 of the Internal Revenue Code, shall not cause the benefit that is accrued, distributed or otherwise payable for any Participant to be less than the Participant's accrued benefit as of June 30, 2007 under the provisions of the Plan that were both adopted and in effect before April 5, 2007 and that satisfied the limitations under Section 415 as of that date.
  3. Annual Additions – Incorporation of 415 by Reference. This Plan will comply with the limitations of Section 415(c) of the Internal Revenue Code and the regulations thereunder, which are hereby incorporated by reference, governing contributions and other additions under the Plan with respect to any Participant for any taxable year. Effective for limitation years beginning on or after

July 1, 2007, annual additions to this plan will be automatically reduced to preclude the violation of the limits provided in Treasury Regulation § 1.415(a)-1(d)(2). The operation of this provision will comply with the requirements of Treasury Regulation § 1.401(a)-1(b)(1)(iii).

4. Aggregation of Plans. This Plan will comply with the requirements of Treasury Regulation § 1.415(a)-1(e), which is incorporated herein by reference, for purposes of applying the 415 limitations with respect to all participants in this Plan. In the event that the aggregate annual additions in any Plan Year by a Participant exceeds the limits under Section 415 of the Code and the Treasury Regulations thereunder as a result of the mandatory aggregation of the benefits under this Plan with the benefits under another plan maintained by an Employer, the benefits of the other plan shall be reduced to the extent necessary to comply with Section 415 of the Code and the Treasury Regulations thereunder.
5. Notwithstanding any other provision of the Plan to the contrary, effective for limitation years beginning on or after July 1, 2007, annual additions to the plan will be limited in accordance with Section 415 of the Internal Revenue Code and the Treasury Regulations thereunder. This section is intended to incorporate the requirements of Section 415 of the Code by reference. In accordance with Treasury Regulation § 1.415(a)-1(d)(3), if no language is set forth in this Plan and a default rule exists, then the default rule applies. If there is any discrepancy between the provisions of this Plan and the provisions of Section 415 of the Internal Revenue Code and the regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Internal Revenue Code.”

THIS IS TO CERTIFY that the above amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Plan on the 10<sup>th</sup> day of NOV., 2009, to be effective as stated herein.

DATED: 11/11/09

  
UNION TRUSTEE

DATED: 11/11/09

  
EMPLOYER TRUSTEE