

AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST

of the

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

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**AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST**

**of the**

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

WHEREAS, there has heretofore been entered into an Amended Agreement and Declaration of Trust, effective December, 1975, by and between various employer representatives, various local unions of the International Association of Bridge Structural and Ornamental Iron Workers, AFL-CIO, and certain individual Trustees setting forth the rules and regulations governing the operation of the Pension Fund as therein provided; and

WHEREAS, a Restated Agreement and Declaration of Trust was adopted on June 8, 1993 to incorporate the changes made in the Amended Agreement and Declaration of Trust since it was adopted and to reflect changes in the employer representatives; and

WHEREAS, the Trustees have determined that it is desirable to amend and restate the Restated Agreement and Declaration of Trust in its entirety so as to incorporate various recent changes affecting the Pension Fund's operation.

NOW THEREFORE pursuant to Section 1 of Article IX of the Restated Agreement and Declaration of Trust and in consideration of the premises and mutual covenants and agreements herein contained, it is agreed that the Trust Agreement is hereby amended and restated to provide 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 one or more of the Unions providing for the making of payments to the Fund with respect to employees represented by the Unions.

(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 bargaining agreement with one or more of the Unions providing for the making of payments to the Fund with respect to employees represented by the Unions.

(c) Each of the Unions which, for the purpose of making the required contributions into the Fund, shall be considered as the Employer of the Employees of the Union for whom the Union contributes to the 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 Fund as a result of being a signatory to a national agreement or to an international agreement with the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO.

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(e) The Trust Fund and any affiliated Welfare, Annuity, SUB, or Training Trust of one or more of the Unions, shall be deemed to be an Employer within the meaning of this Trust Agreement and shall provide benefits for said Employees out of said 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 Pension 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 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 Unions. The term "Local Unions", "Unions", "Union", or "Local" shall mean the International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 9, Local Union No. 12, Local Union No. 33, Local Union No. 60, Local Union No. 440, or any local union affiliated with the International Association of Bridge, Structural or Ornamental Iron Workers, AFL-CIO

(e) An officer or employee of an Employer Association which has contributory Employers as defined herein, who shall have been proposed for benefits under the Fund by the Association and who shall have been accepted by the Trustees and for whom the Association agrees in writing to contribute to the Fund at a rate established 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 authorized and approved by the Trustees.

**NOTE:** Contributions on behalf of such 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 Pension 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



who the Trustees agree to accept as a party to this Agreement and Declaration of Trust.

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

(a) Any employee represented by one or more of the Unions 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) An officer or employee of one or more of the Unions who shall have been proposed for benefits under the Fund by the Union and who shall have been accepted by the Trustees and for whom the Union agrees in writing to contribute to the Trust Fund.

(c) An 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 Fund as provided in subsection (d) of Section 1.

(d) Employees, if any, of this Fund who are not employed by an Employer (except for an Employer described in Section 1(e)), but as shall be proposed and accepted for such benefits by the Trustees. As to such personnel as are employees of the Fund and any affiliated Welfare, Annuity, SUB or Training Fund of one or more of the Unions as are accepted, such Trustees shall be deemed to be an Employer within the meaning of this Trust Agreement and shall provide benefits for said Employees out of said Fund as determined by the Trustees.

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 District Council of Western New York and Vicinity Pension 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 "Amended and Restated Agreement and Declaration of Trust", "Restated Agreement and Declaration of Trust," "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. Pension Plan. The term "Pension 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 Amended and Restated Agreement and Declaration of Trust and amendments thereto.

Section 11. Association. The term "Association" shall mean the Upstate Ironworker Employers' Association, Inc.

## 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 their Beneficiaries and in accordance with the provisions herein set forth and the Pension Plan. It is intended that this Trust Fund and Pension 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 ten (10) Trustees. Five (5) Union Trustees shall be appointed by the Unions participating in this Fund. One (1) Employer Trustee shall be appointed by the Association. The remaining four (4) Employer Trustees shall be appointed by the then current Employer Trustees. Notwithstanding the foregoing, no person shall be appointed or be permitted to serve as an Employer Trustee unless the person is an employee of an Employer obligated to

contribute to the Fund under the terms of a collective bargaining agreement with the Local Union having jurisdiction over that Employer's geographic area. Employer Trustees shall, if possible, be from the same geographic area as the corresponding Union appointed Trustee.

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 enlarge and increase 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.

Section 2. Acceptance of Trusteeship. The Trustees shall immediately meet and sign this Amended and Restated Agreement and Declaration of Trust which maintains the Fund. The Trustees, by affixing their signatures at the end of this Amended and Restated 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 one (1) year or until a successor trustee shall be designated. A Trustee

may be removed or replaced at will by the appointing party. A Trustee may also be removed or replaced by a majority vote of the Employer or Union Trustees, as the case may be, for cause, at a duly held meeting for this purpose. The term of any Employer Trustee shall terminate immediately if the Employer Trustee fails to meet the requirements of Section 1 of this Article III.

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. In the event the Association shall fail to appoint a successor Trustee within thirty (30) days of a vacancy, the remaining Employer Trustees of the Board of Trustees by majority vote may appoint a successor Employer Trustee who meets the requirements of Section 1 of Article III. In the event the Association is no longer a party to a collective bargaining agreement with a Union participating in this Fund at the time the Employer Trustee which it appointed becomes unable to serve, deceased, incapacitated, resigns or is removed as an Employer Trustee, the remaining Employer Trustees by majority vote shall appoint a successor Employer Trustee. The inability to serve, 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 case 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 Trustees shall in any way be liable or responsible for anything done or committed in the administration of the Trust prior to the date they become a Trustee. The Trustees shall not be liable for the acts or omissions of any investment manager, attorney, actuary, auditor, accountant, consultant, agent or assistant employed by them in pursuance of this agreement, if such investment manager, attorney, actuary, 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 Suite 400, Building B, 1115 East Main Street, Rochester, New York, 14609. 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. During June of each year the Trustees shall elect from among themselves a Chairman and a Secretary to serve for a term of one (1) year commencing the 1st day of June of such year, or until his or their successors have been elected. When the Chairman is elected from the Employer Trustees, then the Secretary shall be elected from the Union Trustees; and when the Chairman is elected from the Union Trustees, then the Secretary shall be elected from the Employer Trustees. In the even numbered years the Chairman shall be selected from among the Union Trustees; in odd numbered years the Chairman shall be selected from among the Employer Trustees to provide for alternating years of Chairmanship; but, if such right is not exercised, the current Chairman and Secretary will continue in their duties. 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 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 five (5) Trustees shall, call a meeting of the Trustees at any time by giving at least ten (10) working 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 so to do, 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) Six (6) Trustees present in person or by proxy at any meeting of the Board of Trustees shall constitute a quorum for the transaction of business so long as there are at least two (2) Employer Trustees and at least two (2) Union Trustees present in person. 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 the 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, 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 Board of Trustees.

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 or rejected by a majority vote 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, the senior judge on duty of the District Court of the United States for the Western 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 fees of

professionals and other 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 Unions, the Association and other Employers, and such impartial umpire shall have no power or authority to change or modify any provisions of 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. Plan 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 Unions. 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 Unions 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 District Council of Western New York and Vicinity Pension Fund. The payment of contributions 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.

(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) Work Outside Jurisdiction: In the event an Employee employed by an Employer, as defined herein, shall perform work outside

of the geographical jurisdiction of the Unions, 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 Administrative 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 Unions to take whatever steps they deem necessary and wish 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 and payroll 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 Unions shall, upon the request of the Trustees, promptly furnish information in respect to an Employee's employment status.

Section 5. Delinquent Contributions; Expenses of Collection. The Trustees may require the payment by Employers of liquidated damages and interest (as provided in the applicable collective bargaining agreement or in a separate collections policy established by the Trustees) and of other costs and expenses (such as, without limitation, attorneys' fees, paralegals' fees, accountants' fees, audit 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. In the event the Trustees adopt a separate collections policy, the provisions of such separate collections policy shall supersede any inconsistent provisions of this Trust Agreement or of any collective bargaining agreement. Notwithstanding the foregoing, an Employer may be liable

for payment of benefits suffered by an Employee by reason of the Employer's failure to make his contribution promptly.

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.

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 District Council of Western New York and Vicinity Pension 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 lawsuits 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 pension and related benefits to eligible Participants and Beneficiaries in accordance with the terms, provisions and conditions of the Pension 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 or liquid reserves, 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, power 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, investment and reinvestment 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 may, 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 and 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 and 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 sub-committees 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. Administrative Manager. The Trustees may employ or contract for the services of an individual, firm or corporation, to be known as "Administrative 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 Administrative 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 may 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. Notwithstanding the foregoing, in the event the Trustees adopt a separate collections policy pursuant to Section 5 of Article IV of this Trust Agreement, the provisions of such separate collections policy shall supersede any inconsistent provision 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 an impartial umpire appointed pursuant to Article III, Section 14(b) of this Agreement shall in any manner conflict or be inconsistent (1) with any provision of the applicable current collective bargaining agreement in effect, or which may be made, between an Employer and the Unions (2) with this Trust Agreement and (3) with any applicable Federal, State or local law. Notwithstanding the foregoing, in the event the Trustees adopt a separate collections policy pursuant to the provisions of Section 5 of Article IV of this Trust Agreement, the provisions of such separate collections policy shall supersede any inconsistent provision of this Trust Agreement or of an applicable current collective bargaining agreement in effect, or which may be made, between an Employer and the Unions.

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, and one or more enrolled actuaries 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, unless as otherwise required by applicable law or regulations. The Trustees may, however, by motion, authorize one or more of their members, or the Administrative Manager, to execute documents on their behalf.

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 both to the Association and to the Unions 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 Association, an Employer and one or more of the Unions, 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 Pension Plan. The Trustees shall formulate a Pension Plan for the payment of such retirement pension benefits, permanent disability pension benefits, death benefits, and related benefits, as are feasible. Such Pension 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 Pension Plan, including, by way of illustration and not limitation:

conditions of eligibility for Participants and 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 pension plans which conform to the applicable sections of the then applicable Internal Revenue Code for purposes of tax deductions for the reciprocal recognition of service credits and payments of partial or full pension benefits based upon such service credits.

Section 23. Establishment of Claims Appeal Procedure. The Trustees shall adopt an appropriate and legal claims appeal procedure, such claim appeal procedure to 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 afford 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 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 Agreement, the Trustees, or their designee, shall have exclusive authority and discretion to:

(a) Determine whether an individual is eligible for any benefits under the Plan;

(b) Determine the amount of benefits, if any, an individual is entitled to from the Plan;

(c) Determine or find facts that are relevant to any claim for benefits from the Plan;

(d) Interpret all of the Plan's provisions;

(e) Interpret all of the provisions of the Plan's Summary Plan Description Booklet;

(f) Interpret the provisions of any Collective Bargaining Agreement or written Participation Agreement involving or impacting the Plan;

(g) Interpret the provisions of this Trust Agreement;

(h) Interpret all of the provisions of any other document or instrument involving or impacting the Plan; and

(i) Interpret all of the terms used in the Plan, the Summary Plan Description Booklet, and all of the other previously mentioned Agreements, documents, and instruments.

All such determinations and interpretations made by the Trustees, or their designee: shall be final and binding upon any individual claiming benefits under the Plan, and upon all Employees, all Employers, the Association, the Unions, and any party who has executed any agreement with the Trustees or the Participant's agent for collective bargaining; 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 Pension 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 Pension 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 Unions or with the Employers, any facts certified to the Trustees by the Unions 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 majority 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 Unions, nor any member of the Unions, 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 pension and/or retirement benefits in the amount and subject to the terms and conditions specified in the Pension Plan, or as may be specified and determined by the Trustees. 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 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. No person shall have the option to receive instead of the pension and/or retirement benefits any part of the Employer contributions. The assets of the Fund shall never inure to the

benefit of any Employer. However, in the case of a contribution which is made by an Employer by a mistake of fact or law, such contribution may be returned by the Trustees to such Employer within twelve months 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 only be taken 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 Employer 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 Unions 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, duly approved



by the Trustees and executed by at least one Union Trustee and one Employer Trustee, 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, discretions, 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 declared or held to 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 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 District Council of Western  
New York and Vicinity Pension Fund  
The Design Center  
3445 Winton Place  
Rochester, New York 14623-2950

ATTN: Administrative Manager

IN WITNESS WHEREOF, the Trustees, have executed this Amended and Restated Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Pension Fund, and

have evidenced their ratification and consent to be bound by the Trust created herein, effective the 7th day of May, 1996.

EMPLOYER TRUSTEES:

William L. Sloan  
[Signature]  
[Signature]  
[Signature]  
[Signature]

UNION TRUSTEES:

[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]

AMENDED AND RESTATED AGREEMENT AND  
DECLARATION OF TRUST TO THE IRON WORKERS  
DISTRICT COUNCIL OF WESTERN NEW YORK  
AND VICINITY PENSION 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 Pension Fund, Article IV (Contributions and Collections) of the Amended and Restated Agreement and Declaration of Trust is hereby amended by adding Section 7 to read as follows:

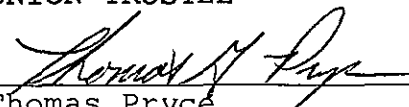
Section 7. Title to all the monies paid into and/or due and owing to the Pension Fund shall be vested in and remain exclusively in the Trustees of that Fund; outstanding and withheld contributions constitute Plan assets.

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 Pension Fund on the 4<sup>th</sup> day of November, 1998, to be effective as of the 4<sup>th</sup> day of November, 1998.

UNION TRUSTEE

DATED:

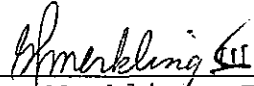
November 4, 1998

  
Thomas Pryce

EMPLOYER TRUSTEE

DATED:

November 4, 1998

  
George Merklung, III

AMENDED AND RESTATED AGREEMENT AND  
DECLARATION OF TRUST TO THE IRON WORKERS  
DISTRICT COUNCIL OF WESTERN NEW YORK  
AND VICINITY PENSION 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 Pension Fund, Article IV (Contributions and Collections) of the Amended and Restated Agreement and Declaration of Trust is hereby amended by adding Section 8 to read as follows:

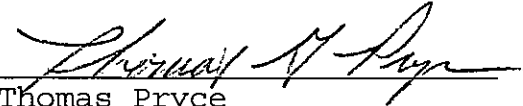
Section 8. In the event the Employer does not maintain or otherwise does not have in its possession records of the number of hours worked by each Employee, the Employer agrees that in order to determine the number of hours for which contributions are required to be submitted to the designated Fund, the Employee's gross wages shall be divided by the hourly wage schedule set forth in the applicable collective bargaining agreement for each Employee's job classification.

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 Pension Fund on the 24th day of October, 2000, to be effective as of the 24th day of October, 2000.

UNION TRUSTEE

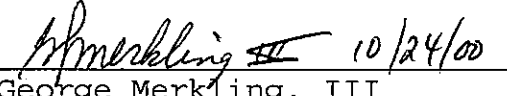
DATED:

10-24-00

  
Thomas Pryce

EMPLOYER TRUSTEE

DATED:

10/24/00  
  
George Merklung, III

AMENDED AND RESTATED AGREEMENT AND  
DECLARATION OF TRUST OF THE IRON WORKERS  
DISTRICT COUNCIL OF WESTERN NEW YORK  
AND VICINITY PENSION 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 Pension Fund, Article III (Trustees) is hereby amended by deleting the first paragraph of Section 1, Number, and replacing it with the following, with the revised language shown in italics:

Section 1. Number. The operation and administration of the Fund shall be the joint responsibility of ten (10) Trustees. Five (5) Union Trustees shall be appointed by the Unions participating in this Fund. One (1) Employer Trustee shall be appointed by the Association. The remaining four (4) Employer Trustees shall be appointed by the then current Employer Trustees. *In addition to the ten (10) Trustees described above, one (1) additional Union Trustee at Large shall be appointed by the Unions and one (1) additional Employer Trustee at Large shall be appointed by the then current Employer Trustees.* Notwithstanding the foregoing, no person shall be appointed to serve as an Employer Trustee unless the person is an employee of an Employer obligated to contribute to the Fund under the terms of a collective bargaining agreement with the Local Union having jurisdiction over that Employer's geographic area. Employer Trustees shall, if possible, be from the same geographic area as the corresponding Union appointed Trustee.

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 Pension Fund on the 15<sup>th</sup> day of November 2002, to be effective as of the 24<sup>th</sup> day of April, 2002.

UNION TRUSTEE

DATED:

11/15/02

*Thomas M. [Signature]*

EMPLOYER TRUSTEE

DATED:

11/15/02

*[Signature] 11/15/2*

AMENDED AND RESTATED AGREEMENT AND  
DECLARATION OF TRUST OF THE IRON WORKERS  
DISTRICT COUNCIL OF WESTERN NEW YORK  
AND VICINITY PENSION 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 Pension 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.

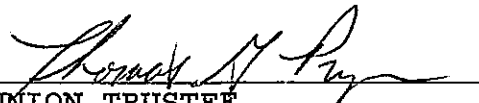
*The Trustees shall also have the discretion and authority to use Plan assets to pay for expenses related to activities that are typically considered settlor in nature, such as activities that relate to the establishment, design, and termination of the plan. Pursuant to U.S. DOL Field Assistance Bulletin 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 Pension Fund on the 17<sup>th</sup> day of July, 2003, to be effective as of the 4th day of November, 2002.

DATED:

7-17-03

  
UNION TRUSTEE

DATED:

7/17/03

  
EMPLOYER TRUSTEE

AMENDED AND RESTATED AGREEMENT AND  
DECLARATION OF TRUST OF THE IRON WORKERS  
DISTRICT COUNCIL OF WESTERN NEW YORK  
AND VICINITY PENSION 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 Pension Fund, Article IV (Contributions and Collections) is hereby amended by deleting the Section 1(b), and replacing it with the following:

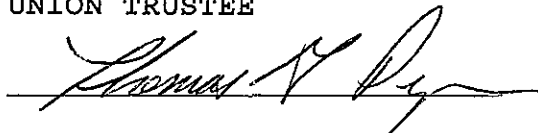
"(b) Contributions or remittances to the Fund shall be paid to the Trustees or to such depository as the Trustees shall designate, by check, bank draft, money order or other recognized written or electronic method of transmitting money or its equivalent, made payable to the order of the Iron Workers District Council of Western New York and Vicinity Pension 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 Pension Fund on the 26<sup>th</sup> day of Nov., 2007, to be effective as of the 26<sup>th</sup> day of November, 2007.

UNION TRUSTEE

DATED:

11-26-07



EMPLOYER TRUSTEE

DATED:

11/26/07

