

AGREEMENT AND DECLARATION OF TRUST
of the
IRONWORKERS LOCAL UNION NO. 33
SUPPLEMENTAL BENEFIT PLAN

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AGREEMENT AND DECLARATION OF TRUST
of the
IRONWORKERS LOCAL UNION NO. 33
SUPPLEMENTAL BENEFIT PLAN

WHEREAS, the Trustees, designated and in office, as such, have executed this Agreement and Declaration of Trust as indicating their acceptance of the respective duties imposed upon them as Trustees under the terms of this Agreement; and

WHEREAS, various Employers have entered into, or will from time-to-time hereinafter enter into, Collective Bargaining Agreements or written Agreements with the Iron Workers Local Union No. 33 and various other Iron Workers Local Unions [hereinafter collectively "Union"], on behalf of employees represented by them, all of which agreements provide, among other things, for the payment, by the Employers, to the Trustees of this Trust Fund, known as the Iron Workers Local Union No. 33 Supplemental Benefit Trust or to the Trustees of the Iron Workers District Council of Western New York and Vicinity Welfare Fund, of contributions as set forth in such agreements; and

WHEREAS, the sums payable to the Union as aforesaid, are for the purposes of providing certain health related benefits, educational benefits and certain supplemental income from the Union as now are or may hereafter be authorized or permitted by law for eligible employees, their dependents, or their beneficiaries, as determined hereunder; and

WHEREAS, the Trustees have been duly appointed in accordance with the provisions of this Agreement;

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 any Employer which makes contributions to the Plan.

Section 2. Employee. The term "Employee" as used herein shall mean (a) all employees upon whose behalf contributions are made by any of the employers contributing to this trust fund or to the trust fund of the Iron Workers District Council of Western New York and Vicinity Welfare Fund; and (b) all employees who are members of Iron Workers Local Union No. 33 or who are covered by Collective Bargaining Agreements between Iron Workers Local Union No. 33 or any other Iron Workers Local Unions and an Employer.

Section 3. Participant. The term "Participant" shall mean any Employee as defined herein who has satisfied the eligibility requirements to receive benefits as such eligibility requirements may be defined in the Plan created pursuant to this Agreement.

Section 4. 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 5. 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.

Section 6. Trust Fund. "Trust", "Trust Fund" and "Fund" as used herein shall mean the entire trust estate of the Ironworkers Local Union No. 33 Supplemental Benefit Plan, 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 7. 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 8. Plan. The term "Plan" shall mean the Ironworkers Local Union No. 33 Supplemental Benefit Plan and the method, rules and procedures for the payment of benefits from the Trust Fund established by the Trustees pursuant to the Plan and this Agreement and Declaration of Trust and any amendments thereto.

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. Association. The term "Association" as used herein shall mean the Upstate Iron Workers Employers Association, Inc., and its successors.

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 health related benefits, educational benefits and supplemental income benefits and other similar or dissimilar benefits, as now are, or hereafter may be, authorized or permitted by law for participants, their dependents, and beneficiaries and in accordance with the provisions set forth herein and in the Plan.

ARTICLE III

TRUSTEES

Section 1. Number. The operation and administration of the Fund shall be the joint responsibility of two (2) Trustees, consisting of one (1) Employer Trustee and one (1) Union Trustee. The Employer Trustee shall be appointed by the Board of Directors of the Upstate Iron Workers Employers Association, Inc. The Union Trustee shall be the Business Manager of the Union or such other person as designated by the Business Manager of the Union.

Section 2. Acceptance of Trusteeship. The Trustees shall immediately meet and sign this Agreement and Declaration of Trust which maintains the 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 two (2) years or until a successor trustee shall be designated. Union Trustees and Employer Trustees may be removed or replaced at will and without cause by the Business Manager of Ironworkers Local Union No. 33 and by the Board of Directors of the Association, respectively.

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 by the Association in the case of an Employer Trustee and by the Union in the case of a Union Trustee. 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. 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 6. 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, 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 defaults of any other fiduciary or party in interest or any other person, except in accordance with applicable law.

Section 7. Office of the Fund. The principal office of the Trust Fund shall, so long as such location is feasible, be located and maintained at the headquarters office of Ironworkers Local Union No. 33. 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 8. 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. 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 shall preside at all meetings of the Trustees.

Section 9. 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 10. 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 one (1) Trustee 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 11. 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 or invited by the Trustees and such others 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 12. Quorum; Voting; Action without Meeting.

a) To constitute a Quorum, there must be two (2) Trustees present in person at any meeting of the Board of Trustees for the transaction of business and there must also be at least one (1) Employer Trustee and one (1) Union Trustee present at the meeting. If at any meeting the number of Employer and Employee 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 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.

b) Any action taken by the Trustees, except as herein otherwise provided, shall be by majority vote of the Board of Trustees.

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 13. 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 is 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 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 14. 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.

ARTICLE IV

CONTRIBUTIONS AND COLLECTIONS

Section 1. Employer Contributions.

a) Each Employer shall make prompt contributions to the Trust Fund in such amount and under the terms as are provided for in the applicable collective bargaining agreement or other agreement in effect from time to time between the Employer and Ironworkers Local Union No. 33. An Employer may also be required to make such contributions or remittances in such amount and under such terms as such Employer may be obligated, in writing, to make, provided that such contributions or remittances shall be

subject to acceptance by the Trustees. The Employer agrees that such contributions or remittances 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 Ironworkers Local Union No. 33, or of an Employee.

~~b) Contributions or remittances 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 Ironworkers Local Union No. 33 Supplemental Benefit Trust. 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.

c) Each employer shall be responsible only for the contributions or remittances 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, remittances or other obligations of any other employer.

Section 2. Contributions From Qualified Plans. The Trustees may also permit contributions to be made from such tax-exempt employee welfare benefit plans as is permissible pursuant to the then-applicable Internal Revenue Code and in accordance

with other applicable law.

Section 3. 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.

Section 4. 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 Union to take whatever steps it deems necessary and wishes to undertake for such purposes.

Section 5. 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 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 the Fund. The Union shall, upon the request of the Trustees, promptly furnish information in respect to an Employee's employment status.

Section 6. Delinquent Contributions; Expenses of Collection. The Trustees may require the payment by Employers of liquidated damages (as provided in the Trust, applicable collective bargaining agreement or in a schedule established by the Trustees) and of other costs and expenses (such, as without limitation, interest, attorneys' fees, filing fees and cost of service of papers) incurred by the Trustees and arising out of the collection of an Employer's delinquent contributions.

Section 7. 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 and 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 Ironworkers Local Union No. 33 Supplemental Benefit Trust, which instruments shall be signed by the Chairman and the Secretary of the Board of 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 contributions, remittances and payments and other moneys and property to which they may 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 have the power and authority to use and apply the Trust Fund to pay or provide for the payment of benefits to eligible Participants, their dependents, or beneficiaries in accordance with the terms, provisions, and conditions of the Plan to be formulated and agreed upon hereunder by the Trustees.

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 law relating to the investment of assets of trust funds. The Trustees may sell, exchange or otherwise dispose of such investments at any time and, from time to time, as provided in Section 8(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, with 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 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 disbursement 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; Administrative Manager. 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.

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 7. 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, shall in any manner conflict or be inconsistent with this Trust Agreement or with any applicable Federal, State or local law.

Section 8. 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;

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

h) to borrow such monies as may be necessary to carry out the purposes of this Fund.

Section 9. Bonds. The Trustees shall obtain from an authorized security 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 10. 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, 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 11. Information to Participants and Beneficiaries.

The Trustees shall provide Participants and Beneficiaries with such information as may be required by Law.

Section 12. Accountants. The Trustees may engage one or more independent qualified public accountants who shall be either a certified public accountant or a licensed public accountant to perform all services as may be required by applicable law and such other services as the Trustees may deem necessary.

Section 13. Compensation of Trustees, the Union and its Employees. The Trustees shall be reimbursed for all reasonable and necessary expenses incurred by them in the performance of their duties and shall otherwise receive no compensation. The Trustees may call upon the Union and its employees for assistance

in the administration of the Trust, but shall reimburse the Union and its employees for any expenses incurred in connection therewith and shall reimburse the Union on a reasonable basis for wages allocable to the time devoted to the Trust.

Section 14. Reports. All reports required by law to be signed by one or more Trustees shall be signed by the Chairman and the Secretary on behalf of the Board of Trustees.

Section 15. 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 Union and shall be available for inspection by interested persons at the principal office of the Trustees.

Section 16. Construction and Determination 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 Employers 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 17. 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 18. 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 19. Reliance by Others. No party dealing with the Trustee 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 20. 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 21. Establishment of Supplemental Benefit Plan. The Trustees shall formulate a Plan for the payment of such benefits as are feasible. Such Plan shall at all times comply with all applicable 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 dependents, procedures for claiming benefits, schedules of type and amount of benefits to be paid, and procedures for the distribution of benefits.

Section 22. Establishment of Claims Appeal Procedure. The

Trustees shall adopt an appropriate and legal claims appeal procedure, such claims 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 Participants, and afford a reasonable opportunity to any Participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim in accordance with the Act, and in accordance with any regulations promulgated thereunder.

Section 23. Attendance at Educational Seminars or Conferences. The Trustees may be authorized upon action of the Board of Trustees to attend meetings, seminars and/or educational conferences, the sole purpose of which shall be disseminating and providing of information in educational matters for the benefit, instruction, aid, and guidance of Trustees of the 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 24. 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 ruling issued with respect thereto.

Section 25. Plan Interpretation and Determinations. The Trustees shall have exclusive authority and discretion to:

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

b) Determine the amount of benefits, if any, an individual is entitled to under the Plan and Trust;

c) Interpret all of the provisions of the Plan and Trust; and

d) Interpret all of the terms used in the Plan and Trust.

All determinations and interpretations made by the Trustees, or their designee, pursuant to this section shall:

a) Be binding upon any individual claiming benefits under the Plan;

b) Be given deference in all arbitrations and in all courts of law, to the greatest extent allowed by applicable law; and

c) Not be overturned or set aside by any arbitrator or by any court of law unless found to be arbitrary and capricious,

or made in bad faith.

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 or any instruments on file with the Trustees, 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 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 deem 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

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 Fund or any part thereof, except the right of a Participant, his dependents, or Beneficiary who is covered by insurance 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 monies, property or equity of any nature whatsoever, in the Trust Fund, or any 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 benefits hereunder any part of the Employer contributions. The assets of the Fund shall never inure to the benefit of any Employer. 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 six 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 contribute to this Fund on behalf of their employees upon approval by the Trustees subject to such terms and conditions as the Trustees may prescribe. The Trustees may also permit contributions to be made from such tax-exempt employee welfare benefit plans as is permissible pursuant to the then-applicable Internal Revenue Code and in accordance with other applicable law.

Section 2. Mergers. The Trustees are authorized to merge, combine and consolidate with other Funds upon any terms and conditions mutually agreed upon by the Board of Trustees.

ARTICLE IX

AMENDMENTS

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.

ARTICLE X

TERMINATION OF TRUST

Section 1. By The Trustees. This Agreement and Declaration of Trust may be terminated by an instrument in writing executed by the Trustees.

Section 2. Procedure on Termination. In the event of the termination of this Agreement and Declaration of Trust, the Trustees shall apply the money and property of the Fund in their possession to pay or to provide for the payment of any and all obligations of the Fund and shall distribute and apply any remaining surplus in such manner as will in their opinion best effectuate the purpose of the Fund, provided, however, that no part of the corpus or income of said Fund shall be used for or diverted to purposes other than for the exclusive benefit of the Employees, their dependents and beneficiaries, or for the administrative expenses of the Fund, or for other payments in accordance with the provisions hereof. Under no circumstances shall any portion of the corpus or income of the Fund, directly or indirectly, revert or accrue to the benefit of any Employer or to the Union, or to Employees and/or their dependents or beneficiaries, except for the payment of benefits, as provided herein and in the Rules adopted by the Trustees.

Section 3. Notification of Termination. Upon termination

of the Fund, in accordance with this Article, the Trustees shall notify the Employers, the insurance carrier or carriers of any policies or contracts which may be held as part of this Fund, and all other necessary parties; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust and may take any action with regard to any policies which may be required by law or by the insurance carrier of such policies.

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


Section 2. 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 has not been included or made a part hereof.

Section 3. Designee for Service of Process. The Administrative Manager, or any 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:

Ironworkers Local Union No. 33 Supplemental Benefit Plan
509 North Goodman Street
Rochester, New York 14609

IN WITNESS WHEREOF, the Trustees have executed this Agreement and Declaration of Trust of the Ironworkers Local Union No. 33 Supplemental Benefit Trust and have evidenced their ratification and consent to be bound by the Trust created herein, effective the 10 day of Sept, 1998.

EMPLOYER TRUSTEE


Gerrett Geartz

UNION TRUSTEE


Michael Downey

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IRON WORKERS LOCAL UNION NO. 33 SUPPLEMENT BENEFIT PLAN
AGREEMENT AND DECLARATION OF TRUST

AMENDMENT

In accordance with the provisions of Section 24 of Article V of the Agreement and Declaration of Trust of the Iron Workers Local Union No. 33 Supplemental Benefit Plan, the Trustees hereby amend the Agreement and Declaration of Trust by revising the following paragraphs.

I.

The second WHEREAS clause on the first page of the Trust Agreement shall be revised to read as follows:

“WHEREAS, various Employers have entered into, or will from time-to-time hereinafter enter into, Collective Bargaining Agreements or written Agreements with the Iron Workers Local Union No. 33 and various other Iron Workers Local Unions [hereinafter collectively “Union”], on behalf of employees represented by them, all of which agreements provide, among other things, for the payment, by the Employers, to the Trustees of this Trust Fund, known as the Iron Workers Local Union No. 33 Supplemental Benefit Trust or to the Trustees of the Iron Workers District Council of Western New York and Vicinity Welfare Fund, of contributions as set forth in such agreements; and”

II.

In Article I, Section 2 entitled “Employee” the definition of an Employee shall be revised to read as follows:

"Section 2. Employee. The term "employee" as used herein shall mean (a) all employees upon whose behalf contributions are made by any of the employers contributing to this trust fund or to the trust fund of the Iron Workers District Council of Western New York and Vicinity Welfare Fund; and (b) all employees who are members of Iron Workers Local Union No. 33 or who are covered by Collective Bargaining Agreements between Iron Workers Local Union No. 33 or any other Iron Workers Local Unions and an Employer."

IN WITNESS WHEREOF, the Trustees of the Iron Workers Local Union No. 33 Supplemental Benefit Fund adopted this Amendment on Sept 29, 1998, to be effective as of July 1, 1998.

DATED: 9/29/98 Michael Dourey
UNION TRUSTEE

DATED: 9/29/98 [Signature]
EMPLOYER TRUSTEE

**IRON WORKERS LOCAL UNION NO. 33 SUPPLEMENT BENEFIT PLAN
AGREEMENT AND DECLARATION OF TRUST**

AMENDMENT

In accordance with the provisions of Section 24 of Article V of the Agreement and Declaration of Trust of the Iron Workers Local Union No. 33 Supplemental Benefit Plan, the Trustees hereby amend the Agreement and Declaration of Trust by revising the following paragraphs.

I.

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 *four (4)* Trustees, consisting of *two (2)* Employer Trustees and *two (2)* Union Trustees. The Employer Trustees shall be appointed by the Board of Directors of the Upstate Iron Workers Employers Association, Inc. The Union Trustees shall be the Business Manager of the Union *and* such other person as designated by the Business Manager of the Union.”

IN WITNESS WHEREOF, the Trustees of the Iron Workers Local Union No. 33 Supplemental Benefit Fund adopted this Amendment on the 15th day of February, 1999, to be effective as of the 15th day of February, 1999.

DATED: 5/17/99 Michael Daney
UNION TRUSTEE

DATED: 5/17/99 [Signature]
EMPLOYER TRUSTEE

**IRON WORKERS LOCAL UNION NO. 33 SUPPLEMENT BENEFIT PLAN
AGREEMENT AND DECLARATION OF TRUST**

AMENDMENT

In accordance with the provisions of Section 24 of Article V of the Agreement and Declaration of Trust of the Iron Workers Local Union No. 33 Supplemental Benefit Plan, the Trustees hereby amend the Agreement and Declaration of Trust as follows:

Any reference to "Plan" appearing in this Agreement and Declaration of Trust and defining the "Ironworkers Local Union No. 33 Supplemental Benefit Plan" is hereby amended to reference the new name of the Trust Fund, the "Iron Workers Local Unions No. 33/440 Supplemental Benefit Plan".

IN WITNESS WHEREOF, the Trustees of the Iron Workers Local Union No. 33 Supplemental Benefit Fund adopted this Amendment on the 15th day of February, 2001, to be effective as of the 15th day of February, 1999.

DATED: 2/15/2001

Michael Roney
UNION TRUSTEE

DATED: 2/15/2001

[Signature]
EMPLOYER TRUSTEE

IRON WORKERS LOCAL UNION NO. 33/440
SUPPLEMENTAL BENEFIT PLAN

AGREEMENT AND DECLARATION OF TRUST

Amendment

Pursuant to the provisions of Article IX of the Agreement and Declaration of Trust of the Iron Workers Local Union No. 33/440 Supplemental Benefit Plan, said Agreement and Declaration of Trust is hereby amended at ARTICLE IV "Contributions and Collections" by deleting Section 3 and substituting the following in lieu thereof, with the new language shown in italics:

"Section 3. 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 Local Union 33/440 Supplemental Benefit Plan on the 23rd day of April, 2002, to be effective as of the 23rd day of April, 2002.

DATED: 4/23/2002

Michael Downey
UNION TRUSTEE

Print
Name MICHAEL DOWNEY

DATED: 4/23/2002

Gerrit Gerantz
EMPLOYER TRUSTEE

Print
Name Gerrit Gerantz

AGREEMENT AND
DECLARATION OF TRUST OF THE IRON WORKERS
LOCAL UNION NO. 33/440 SUPPLEMENTAL BENEFIT FUND

AMENDMENT

Pursuant to Article IX, Section 1, of the Agreement and Declaration of Trust of the Iron Workers Local Union No. 33/440 Supplemental Benefit 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 Local Union No. 33/440 Supplemental Benefit Fund on the 16th day of July, 2003, to be effective as of the 4th day of November, 2002.

DATED: 7/16/03 William E. Pearl
UNION TRUSTEE

DATED: 7/16/03 [Signature]
EMPLOYER TRUSTEE

IRON WORKERS LOCAL UNIONS NO. 33/440
SUPPLEMENTAL BENEFIT PLAN

AGREEMENT AND DECLARATION OF TRUST

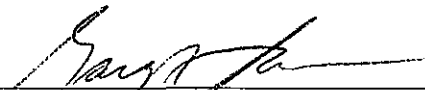
Amendment

Pursuant to the provisions of Article IX of the Agreement and Declaration of Trust of the Iron Workers Local Unions No. 33/440 Supplemental Benefit Plan, the Agreement and Declaration of Trust is hereby amended by revising Section 10 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 Local Unions No. 33/440 Supplemental Benefit Plan on the 2nd day of November, 2005, to be effective immediately.

DATED: 3-20-06



UNION TRUSTEE

Print Name GARY W. SWANSON

DATED: 3-20-06



EMPLOYER TRUSTEE

Print Name Gerald Gearty

AMENDED AND RESTATED AGREEMENT AND
DECLARATION OF TRUST OF THE IRON WORKERS LOCAL UNION NO. 33/440
SUPPLEMENTAL BENEFIT FUND

AMENDMENT

Pursuant to Article IX, Section 1, of the Amended and Restated Agreement and Declaration of Trust of the Iron Workers Local Union No. 33/440 Supplemental Benefit Fund, Article IV (Contributions and Collections) is hereby amended by deleting the Section 1(b), and replacing it with the following:

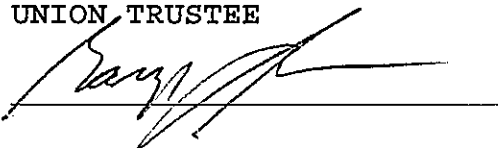
"(b) Contributions or remittances to the Fund shall be paid to the Trustees or to such depository as the Trustees shall designate, by check, bank draft, money order or other recognized written or electronic method of transmitting money or its equivalent, made payable to the order of the Iron Workers Local Union No. 33/440 Supplemental Benefit 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 Local Union No. 33/440 Supplemental Benefit Fund on the 27th day of Nov., 2007, to be effective as of the 27th day of November, 2007.

UNION TRUSTEE

DATED:

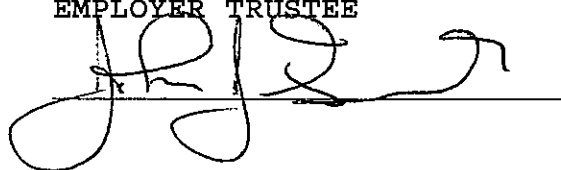
11-27-07



EMPLOYER TRUSTEE

DATED:

11-27-07



AMENDED AND RESTATED AGREEMENT AND
DECLARATION OF TRUST OF THE IRON WORKERS LOCAL UNION NO. 33/440
SUPPLEMENTAL BENEFIT FUND

AMENDMENT

Pursuant to Article IX, Section 1, of the Amended and Restated Agreement and Declaration of Trust of the Iron Workers Local Union No. 33/440 Supplemental Benefit Fund, Article IV (Contributions and Collections), Section 3, 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 Local Union No. 33/440 Supplemental Benefit Fund on the 12th day of Nov., 2008, to be effective immediately.

UNION TRUSTEE

DATED:

11-12-08

Michael Altobelli

EMPLOYER TRUSTEE

DATED:

11-12-08

[Signature]