

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

THE ELECTRICAL WELFARE TRUST
FUND, THE OPERATING ENGINEERS
TRUST FUND OF WASHINGTON, D.C., and
THE STONE & MARBLE MASONS OF
METROPOLITAN WASHINGTON, D.C.
HEALTH AND WELFARE FUND on behalf of
themselves and all others similarly situated,

Civil Action No. 19-353 C

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs The Electrical Welfare Trust Fund (“EWTF”), The Operating Engineers Trust Fund of Washington, D.C. (“OETF”), and The Stone & Marble Masons of Metropolitan Washington, D.C. Health and Welfare Fund (“Stone Masons”) (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, allege the following against the United States of America (the “United States” or “Defendant”) based upon information and belief¹ except as to the allegations pertaining specifically as to Plaintiffs that are based on personal knowledge:

¹ Plaintiffs’ information and belief are based on an investigation (by and through counsel) which included, among other things, a review and analysis of publicly available information, legislative history, documents in Plaintiffs’ possession, custody and control, and additional analysis. Plaintiffs believe that additional evidentiary support may exist for the allegations set forth herein after a reasonable opportunity for discovery and reserve the right to amend their pleading.

I. INTRODUCTION

1. Plaintiffs bring this class action against the United States to recover monies illegally assessed and collected from Plaintiffs and the Classes (defined below) through Defendant's unlawful interpretation and application of Section 1341 of the Patient Protection and Affordable Care Act of 2010, codified in 42 U.S.C. § 18061.²

2. Plaintiffs are not seeking to have the ACA repealed; rather, Plaintiffs are challenging the government's interpretation of one section of the Act.

3. Plaintiffs and certain members of the Classes are self-insured multiemployer employee health and welfare benefit plans that are administered by a third-party administrator that is not a health insurance issuer ("SMPs"). SMPs are created as a result of collective bargaining and are regulated by the Labor Management Relations Act of 1947 ("Taft-Hartley") and the Employee Retirement Income Security Act of 1974 ("ERISA"). SMPs are funded through employee contributions to a multiemployer benefit trust, and benefits under the plans are provided to covered workers and their families pursuant to negotiated wages, hours, and terms of employment through a collective bargaining agreement between one or more unions and more than one employer.

4. Plaintiff EWTF and similarly situated Exaction Class (defined below) members are self-administered, self-insured employee health and welfare benefit plans ("SISAs").

5. The ACA was signed into law by President Barack Obama on March 23, 2010. As part of the Act's implementation, the Transitional Reinsurance Program was created and includes a Transitional Reinsurance Contribution (the "Contribution") that is imposed on certain

² See Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), *as amended by* Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010) (together, the "ACA" or the "Act").

“contributing entities.” The Contribution serves to fund reinsurance payments to health insurance issuers that insure high risk individuals as new enrollees and incur corresponding high costs during the implementation of the Act. *See* 42 U.S.C. § 18061. Those entities deemed “contributing entities” are required to pay the Contribution to the federal government during the transition period, including benefit years 2014 through 2016.

6. The stated goal of the Transitional Reinsurance Program is to help stabilize premiums in the individual health insurance market during benefit years 2014 through 2016—the first three years of the ACA’s guaranteed issue (42 U.S.C. §§ 300gg-1, 300gg-3) and community-rating (42 U.S.C. § 300gg) reforms, which prohibit health insurance issuers from denying coverage or charging higher premiums based on an applicant’s medical condition or history.³ Monies acquired through the Contribution are used to fund reinsurance payments to individual-market health insurance issuers that incur high claim costs for high-risk enrollees in the individual marketplace during the transition period.

7. Defendant illegally assessed and collected the Contribution from SMPs and SISAs, including Plaintiffs and members of the Classes, for benefit years 2014, 2015 and/or 2016.

8. In March 2014, then-Secretary of the United States Department of Health & Human Services, Sylvia Mathews Burwell (“Secretary Burwell”) and the United States Department of Health & Human Services (“HHS”) promulgated a final rule purporting to define “contributing entity” under Section 1341 of the Act as follows:

³ *See* 42 U.S.C. § 18061; *The Transitional Reinsurance Program - Reinsurance Contributions*, The Center for Consumer Information & Insurance Oversight, <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/The-Transitional-Reinsurance-Program/Reinsurance-Contributions.html> (last visited Sept. 14, 2021) (“Section 1341 of the Affordable Care Act established a transitional reinsurance program to stabilize premiums in the individual market inside and outside of the Marketplaces.”).

- (1) A health insurance issuer; or
- (2) ***For the 2014 benefit year, a self-insured group health plan*** (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage), ***whether or not it uses a third party administrator***; and ***for the 2015 and 2016 benefit years, a self-insured group health plan*** (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage) ***that uses a third party administrator*** in connection with claims processing or adjudication (including the management of internal appeals) or plan enrollment for services other than for pharmacy benefits or excepted benefits within the meaning of section 2791(c) of the PHS Act.

45 C.F.R. § 153.20 (emphasis added).

9. Defendant required that all SMPs and SISAs that meet Secretary Burwell and HHS’s definition of “contributing entity” pay the Contribution to the federal government for benefit years 2014 through 2016 within certain specific timeframes.⁴ In particular, under this rule, SMPs that are administered by a third-party administrator that is not a health insurance issuer were required to pay the Contribution for benefit years 2014 through 2016.

⁴ See, e.g., *2015 ACA Transitional Reinsurance Program Annual Enrollment and Contributions Submission Form*, The Center for Consumer Information & Insurance Oversight, https://www.regtap.info/documents/ric_announcement_formnowavailable_5cr_100115.pdf (last visited Sept. 14, 2021) (“All contributing entities must submit the 2015 ACA Transitional Reinsurance Program Annual Enrollment and Contributions Submission Form and schedule reinsurance contribution payment(s) no later than November 16, 2015.”).

10. In addition, SISAs were required to pay the Contribution for benefit year 2014 but were excluded from payment of the Contribution for benefit years 2015 and 2016. Secretary Burwell and HHS required SISAs to pay the Contribution for benefit year 2014 purportedly on the basis of administrative convenience. *See* 79 Fed. Reg. 13744, 13773 (Mar. 11, 2014) (to be codified at 45 C.F.R. pts. 144, 147, 153, 155, 156, and 158) (including SISAs as contributing entities for benefit year 2014 “in order to avoid disruption to contributing entities”).

11. Secretary Burwell and HHS’s inclusion of SMPs in the definition of “contributing entity” for benefit years 2014, 2015 and/or 2016 is unlawful and Defendant’s collection of the Contribution from SMPs constitutes an illegal taking without just compensation, and/or an illegal exaction without due process of law.

12. Secretary Burwell and HHS’s inclusion of SISAs in the definition of “contributing entity” for benefit year 2014 on the basis of administrative convenience is unlawful and Defendant’s collection of the Contribution from SISAs constitutes an illegal taking without just compensation, and/or an illegal exaction without due process of law.

13. Defendant’s assessment and collection of the Contribution from SMPs and SISAs is inconsistent with the unambiguous text of Section 1341 of the ACA and Congressional intent, and exceeds the statutory authority that Congress granted Secretary Burwell and HHS to implement the Transitional Reinsurance Program. Defendant’s exaction of the Contribution constituted an illegal deprivation of property without due process of law or without just compensation in violation of the Due Process and/or Takings clauses of the Fifth Amendment of the United States Constitution.

14. Defendant’s imposition of the Contribution on Plaintiffs and members of the Classes violates the Due Process and/or Takings Clauses of the Fifth Amendment to the United

States Constitution because Defendant's misinterpretation and misapplication of Section 1341 required monies to be paid contrary to law, directly resulting in the illegal exaction of the Contribution paid by Plaintiffs and members of the Classes, which has been illegally collected and kept by Defendant and/or its agents without due process and/or without just compensation.

15. It is clear that Congress did not intend for SMPs, which are not administered by a health insurance issuer, to pay the Contribution for benefit years 2014 through 2016, or for SISAs to pay the Contribution for benefit year 2014. As such, Defendant unlawfully collected the Contribution from SMPs and SISAs. Consider, for example:

- Under the unambiguous language of the ACA, there is no contribution method for SMPs or SISAs. *See* 42 U.S.C. § 18061(b)(3)(B)(i) (“[T]he contribution amount *for each issuer* proportionally *reflects each issuer’s fully insured commercial book of business* for all major medical products and the total value of all fees *charged by the issuer* and *the costs of coverage administered by the issuer as a third party administrator[.]*”) (emphasis added).
- Under the unambiguous language of the ACA, SMPs and SISAs are not required to pay the additional contribution amount. *See* 42 U.S.C. § 18061(b)(3)(B)(iv) (“*[E]ach issuer’s* contribution amount for any calendar year under clause (iii) reflects its proportionate share of an additional \$2,000,000,000 for 2014, an additional \$2,000,000,000 for 2015, and an additional \$1,000,000,000 for 2016.”) (emphasis added).
- SMPs and SISAs cannot benefit from paying the Contribution because they do not sell insurance in the individual market and cannot receive reinsurance payments under the Transitional Reinsurance Program established by the ACA. *See* 42 U.S.C.

§ 18061(b)(1)(B) (the reinsurance entity uses the Contribution “to make reinsurance payments to *health insurance issuers* described in subparagraph (A) that cover high risk individuals in the individual market”) (emphasis added).

- Under the unambiguous language of the ACA, SISAs are not subject to the Contribution because they are (1) not health insurance issuers; and (2) do not use a third-party administrator. *See* 42 U.S.C. § 18061(b)(1)(A) (“*[H]ealth insurance issuers, and third party administrators* on behalf of group health plans,” are required to pay the Contribution) (emphasis added).
- Secretary Burwell and HHS have admitted that the express language of the ACA does not require SISAs to pay the Contribution:

*[O]ur view is that the better reading of section 1341 is that a self-insured, self-administered plan should not be a contributing entity, but in order to avoid disruption to contributing entities, we propose to retain the prior definition of contributing entity for the 2014 benefit year. Section 1341(b)(1)(A) of the Affordable Care Act states that health insurance issuers and TPAs on behalf of group health plans are required to make reinsurance contributions, **but does not refer to self-insured, self-administered plans.** The provision’s reference to group health plans administered by TPAs, **coupled with the omission of self-insured, self-administered plans, supports the proposed exemption.***

79 Fed. Reg. 13744, 13773 (Mar. 11, 2014) (emphasis added).

- Secretary Burwell and HHS excluded SISAs from the definition of contributing entity for benefit years 2015 and 2016. *See* 45 C.F.R. § 153.20 (defining “contributing entity” for benefit years 2015 and 2016 to include only those self-insured group health plans that use a third-party administrator for certain functions).
- It was administratively feasible to exclude SISAs from the definition of contributing entity for benefit year 2014. The final rule defining “contributing

entity” was promulgated on March 11, 2014,⁵ and the first payment of the Contribution for benefit year 2014 was not due until January 15, 2015—over ten months later.⁶

16. Plaintiffs bring this action on behalf of themselves and members of the Classes to recover the Contribution illegally exacted by Defendant under the Transitional Reinsurance Program. Plaintiffs and members of the Classes request that Defendant refund the Contribution unlawfully collected from SMPs and SISAs under the Contribution, and/or provide just compensation for such property illegally taken.

17. As a direct and proximate result of Defendant’s unlawful conduct, Plaintiffs and members of the Classes have been damaged in the amount of the Contributions collected and other damages to be determined at trial.

II. JURISDICTION AND VENUE

18. Pursuant to 28 U.S.C. § 1491(a), this Court has subject-matter jurisdiction over and is the proper venue for Plaintiffs’ claims for money damages and accompanying relief against the United States founded upon the Constitution, an Act of Congress, and/or any regulation of an executive department. Defendant illegally exacted monies under Section 1341 of the ACA, 42 U.S.C. § 18061, without due process of law and/or just compensation, in contravention of

⁵ See 45 C.F.R. § 153.20.

⁶ For the 2014 benefit year, HHS offered contributing entities the option to pay: (1) the entire 2014 benefit year contribution in one payment no later than January 15, 2015 reflecting \$63.00 per covered life; or (2) in two separate payments for the 2014 benefit year, with the first remittance due by January 15, 2015 reflecting \$52.50 per covered life, and the second remittance due by November 15, 2015 reflecting \$10.50 per covered life. *The Transitional Reinsurance Program - Reinsurance Contributions (RIC)*, The Center for Consumer Information & Insurance Oversight, <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/The-Transitional-Reinsurance-Program/2014-Benefit-Year-Page.html> (last visited Sept. 14, 2021).

Congress’s unambiguous language exempting Plaintiffs and other SMPs from payment of the Contribution and in violation of the Due Process and/or Takings clauses of the Fifth Amendment of the United States Constitution. The monies exacted from Plaintiffs and members of the Classes were paid directly to Defendant or its agents.

III. PARTIES

19. Plaintiff EWTF is a multiemployer health and welfare trust fund established by and between the International Brotherhood of Electrical Workers Local Union No. 26 and the National Electrical Contractors Association—Washington D.C. Chapter. EWTF is a Taft-Hartley trust fund, established through the collective bargaining process and subject to the provisions of ERISA, which provides health and welfare benefits to eligible participants, including union electricians performing work under the applicable collective bargaining agreement in Washington D.C., Maryland, and Virginia.

20. EWTF is not an insurance company; it is a self-funded private plan, which “provides medical care, pharmaceutical care, dental care, vision care, hearing care, weekly accident and sickness benefits, death benefits and accidental dismemberment and loss of sight benefits to eligible employees and their qualified dependents.”⁷ The EWTF plan “is funded by contributions made by individuals and employers under the provisions of collective bargaining and other agreements and any income earned from investment of employer contributions” and “[a]ll monies are used exclusively to provide benefits to eligible employees and their dependents, and to pay all expenses incurred with respect to the operation of the Plan.”⁸ Participating employers

⁷ Health Benefits & Summary Plan Description (SPD) at 148, EWTF (Feb. 1, 2021) (“EWTF SPD”), <https://www.ewtf.org/health-benefits-spd/table-of-contents/>. *See also id.* at 17, 59.

⁸ *Id.* at 148.

contribute to a trust fund from which health and welfare benefits are paid for certain active electrical workers and their beneficiaries.⁹

21. Plaintiff EWTF is a SISA that (1) determines eligibility and controls enrollment for its participants; (2) performs claims processing and adjudication; and (3) directly pays the health care costs incurred by its participants and beneficiaries. EWTF “uses collectively bargained employer contributions to the Plan, and income from the investment of Plan assets, to provide the most generous health benefits that are prudently possible, and as supported by the assets of the Plan.”¹⁰ Given that EWTF is a self-funded plan, “employer’s contributions—and any income earned from investment of [] employer’s contributions—pay for the health care expenses that [] participants incur under the Plan.”¹¹ In addition, “[t]he EWTF Plan makes the final decisions about what is covered and what is paid and EWTF writes the checks to pay benefits.”¹²

22. EWTF, which is located at 10003 Derekwood Ln., Ste. 103, Lanham, Maryland, was required by Defendant to pay the Contribution for benefit year 2014 and paid the Contribution in the amount of \$1,038,429 to the federal government. Under HHS and Secretary Burwell’s definition of “contributing entity,” EWTF was not required to pay the Contribution for benefit years 2015 and 2016 because it is a SISA. *See* 45 C.F.R. § 153.20.

23. Plaintiff OETF is a multiemployer health and welfare trust fund established by and between Operating Engineers Local 77 and the Washington, D.C. chapter of the International Union of Operating Engineers. OETF is a Taft-Hartley trust fund, established through the collective bargaining process and subject to the provisions of ERISA, which provides health and

⁹ *Id.* at 17, 26.

¹⁰ *Id.* at viii.

¹¹ *Id.* at 59.

¹² *Id.*

welfare benefits to eligible participants, including union engineers performing work under the applicable collective bargaining agreement in Washington D.C., Maryland and Virginia. OETF is located at 8400 Corporate Drive, Ste. 430, Landover, Maryland.

24. Contributions are made to the OETF Fund by participating employers pursuant to the applicable Collective Bargaining Agreement and optional self-payment made by participants and dependents.¹³ The contribution rate paid by the participating employer determines the benefits plan participants and beneficiaries receive.¹⁴ “Benefits are limited to plan assets for all Fund-provided benefits.”¹⁵

25. “The [OETF] Plan is financed by contributions by employers and those who opt to self-pay, as well as income derived from these contributions. Payments made by employers and participants are paid to a Trust, which is distributed to an interest bearing Trust account at a custodian bank where the money is held. The Trust also accrues interest or other income because of the investment of contributions. When a medical bill needs to be paid, the cost of services by providers—a doctor or hospital, for example—is paid either directly from the Trust, or the Trust pays premiums to an insurance company who in turn pays the doctor or hospital. All monies are used exclusively for providing benefits to eligible employees, the spouses of employees, or their dependents, and for paying the expenses incurred with respect to the operation of the Plan.”¹⁶

26. Plaintiff OETF is an SMP that is administered by a third-party administrator that is not a health insurance issuer. OETF’s third-party administrator, Associated Administrators, LLC:

¹³ Operating Engineers Trust Fund of Washington, D.C. Health and Welfare Program Local No. 77, Summary Plan Description at 7 (Oct. 2017), <https://www.oefi.org/health-welfare/summary-plan-description/> (“OETF SPD”).

¹⁴ *Id.* at 1.

¹⁵ *Id.*

¹⁶ *Id.* at 7.

(1) determines eligibility and controls enrollment for its participants; (2) performs claims processing and adjudication; and (3) directly pays the health care costs incurred by OETF's participants and beneficiaries. OETF provides a wide range of health care benefits, which "may include life, accidental death and dismemberment, hospitalization, medical, mental health, accident & sickness, prescription drug, vision, and dental benefits."¹⁷ Pursuant to the OETF SPD, plan participants become eligible for health coverage after working "400 hours in a 3-month period or 1200 hours during the previous 12-month period."¹⁸ OETF informs participants that it "uses collectively bargained employer contributions to the Plan, and income from the investment of Plan assets, to provide the most generous health plan that is prudently possible given the assets of the Plan."¹⁹

27. OETF was required by Defendant to pay the Contribution for benefit years 2014, 2015 and 2016, and paid the Contribution in the total amount of \$323,154 to the federal government.

28. Plaintiff Stone Masons is a multiemployer health and welfare trust fund administered in the state of Maryland. Stone Masons is a Taft-Hartley trust fund, established through the collective bargaining process and subject to the provisions of ERISA, which provides health and welfare benefits to eligible participants, including stone and marble masons performing work under the applicable collective bargaining agreement. "The Plan is financed by contributions to the Trust and any income earned from investment of contributions. All monies are used exclusively for providing benefits to eligible employees and/or their dependents, and the paying

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 23.

¹⁹ *Id.* at 126.

of all expenses incurred with respect to the operation of the Plan.”²⁰ Stone Masons is located at 7130 Columbia Gateway Drive, Columbia, Maryland 21046.

29. Stone Masons provides coverage for hospitalization, physician’s care, disability income, medical care, vision care, prescription and dental care benefits for certain employees who are employed by a participating employer who has signed a collective bargaining agreement with the union, and who have worked a requisite numbers of hours for which contributions have been paid by one or more contributing employers.²¹ “The Plan uses collectively bargained employer contributions to the Plan, and income from the investment of Plan assets, to provide the most generous health plan that is prudently possible given the assets of the Plan.”²²

30. Plaintiff Stone Masons is an SMP that is administered by a third-party administrator that is not a health insurance issuer. Stone Masons’ third-party administrator, Carday Associates, LLC: (1) determines eligibility and controls enrollment for its participants; (2) performs claims processing and adjudication; and (3) directly pays the health care costs incurred by Stone Mason’s participants and beneficiaries.

31. Stone Masons was required by Defendant to pay the Contribution for benefit years 2014, 2015 and 2016, and paid the Contribution in the total amount of \$46,777 to the federal government.

32. Defendant United States of America is the federal government as established by the United States Constitution. In addition, actions relevant to this lawsuit were taken by the United

²⁰ Stone and Marble Masons of Metropolitan Washington, D.C. Health and Welfare Plan Summary Description Plan at 70 (Feb. 2019), <https://www.ourbenefitoffice.com/StoneandMarbleMasonsandPCCsofMetroDC/Benefits/HealthcareDocuments.aspx> (“Stone Masons SPD”).

²¹ *Id.* at 5.

²² *Id.* at 66.

States Department of Health & Human Services, a federal agency of the United States with its headquarters at 200 Independence Avenue S.W., Washington, D.C. 20201. HHS promulgated a final rule purporting to relate to the interpretation and application of the Transitional Reinsurance Program and Contribution under the Patient Protection and Affordable Care Act of 2010, and unlawfully assessed and/or collected the Contribution for benefit years 2014, 2015, and/or 2016 from Plaintiffs and members of the Classes.

IV. FACTUAL ALLEGATIONS

A. Self-Insured Plans

33. Over 26 million American workers and their families are covered by self-insured multiemployer plans that provide retirement, health and other benefits to employees (and their dependents) in numerous industries, including, *inter alia*, the airline, construction, agriculture, retail food, entertainment, hospitality, longshore, manufacturing, mining, steel and trucking industries. Approximately ninety percent of the employers contributing to self-insured multiemployer plans are small employers with less than fifty employees. SMPs are negotiated through collective bargaining and allow portable health coverage as an employee moves from one employer to another. Given the transient and seasonal nature of the industries which are covered by SMPs, millions of Americans would be left without healthcare benefits absent the self-insured multiemployer plans that provide those benefits.

34. SMPs are established as not-for-profit organizations under § 501(c)(9) of the Internal Revenue Code. *See* 26 U.S.C. § 501(c)(9). In order to qualify under § 501(c)(9), SMPs must: (1) be a voluntary association of employees; (2) “provide for payment of life, sick, accident or other similar benefits to members or their dependents or designated beneficiaries and substantially all of its operations are for this purpose;” and (3) earnings may not inure to the benefit

of any private individual or shareholder other than through the payment of plan benefits.²³ In addition, “[m]embership of a section 501(c)(9) organization must consist of individuals who are employees who have an employment-related common bond.”²⁴

35. SMPs are neither commercial in nature nor sold in the individual market, and ***do not use medical underwriting criteria to exclude participants***. Participation in SMPs is limited to employees who share “a common employer (or affiliated employers), coverage under one or more collective bargaining agreements, membership in a labor union, or membership in one or more locals of a national or international labor union.”²⁵ SMPs are governed by the provisions of Taft-Hartley and ERISA and are maintained through the collective bargaining process. The plans are sponsored by a joint board of trustees, which is comprised of an equal number of employee and employer representatives, and makes decisions regarding plan coverage.

36. Pursuant to ERISA, the funds maintained in SMPs are held exclusively for the benefit of plan participants and their dependents, and cannot be used for any other purpose. *See* 29 U.S.C. § 1103. All assets of SMPs are to be held in trust “for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.” 29 U.S.C. § 1103(c)(1). ERISA preempts any state law relating to self-insured employee benefit plans such as SMPs. *See* 29 U.S.C. § 1144(a). ERISA also imposes duties on the EWTF, OETF, and Stone Masons’ Plan fiduciaries to act prudently and in the interests of plan participants and beneficiaries.

²³ *Voluntary Employees’ Beneficiary Association - 501(c)(9)*, IRS, <https://www.irs.gov/charities-non-profits/other-non-profits/voluntary-employee-beneficiary-association-501c9> (last visited Sept. 14, 2021).

²⁴ *Id.*

²⁵ *Id.*

37. The text of the Act is clear; SMPs and SISAs are not health insurance issuers under the ACA:

Health insurance issuer or issuer means an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance (within the meaning of section 514(b)(2) of ERISA). This term does not include a group health plan.

45 C.F.R. § 144.103; *see also* 45 C.F.R. § 153.20.

38. Congress also did not intend for SMPs and SISAs to be contributing entities to the Transitional Reinsurance Program under Section 1341.

39. Self-insured plans can be administered in one of three ways: (1) self-administered; (2) administered by a third-party administrator that is not a health insurance issuer; or (3) administered by a third-party administrator that is a health insurance issuer through an administrative services only (“ASO”) agreement. The self-insured plans at issue here include the first two groups: SISAs and SMPs administered by a third-party administrator that is not a health insurance issuer. The third group, self-insured multiemployer plans administered by a third-party administrator that is a health insurance issuer through an ASO agreement, is not at issue here.

B. The Trust Funds and Trust Agreements

40. The EWTF, OETF, and Stone Masons funds are governed by Plaintiffs’ Trust Agreements.²⁶

41. Plaintiffs’ Trust Agreements establish that the general and exclusive purpose of the funds is to provide health benefits to plan participants and their dependents. The Trust Agreements state:

²⁶ Attached as Exhibits A-C are the Trust Agreements governing the Plaintiffs’ Trust Funds.

The Fund shall be used for the purposes of providing for the payment of such life, sickness, accident and other benefits for Eligible Employees and Eligible Dependents as may be decided by Trustees and permitted by law and of defraying the reasonable expenses incurred in the administration of the Plan and the Fund; provided, however, that the Fund shall not be used in any manner which would adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

...

Except as specifically permitted by ERISA, the Internal Revenue Code, and other applicable law, the assets of the Fund and the Plan shall never inure to the benefit of any Employer and shall be held for the exclusive purposes of providing for the payment of Plan benefits and of defraying reasonable expenses of administering the Fund and the Plan.²⁷

42. The trustees of the plans have the authority to manage and control the administration of the plans and the funds and have all powers necessary or appropriate in connection therewith.²⁸ The Trust Agreements provide that “[a]ll right, title and interest in and to the assets of the Plan and of the Fund shall at all times be vested in the Trustees. The Trustees jointly shall have the exclusive authority and discretion to manage, control, and invest assets of the Plan and of the Fund at their discretion in any legal manner, provided that any such action shall be consistent with their fiduciary duties under ERISA and shall not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code. The Trustees may delegate their authority to manage and control all or part of the assets of the Plan or of the Fund to one or more Investment Manager(s).”²⁹

43. The plans are funded by contributions made by participating employers pursuant to the terms of a collective bargaining agreement or other written agreement with a union or fund,

²⁷ EWTF Trust Agreement at 4-5; OETF Trust Agreement at 4-5; Stone Masons Trust Agreement at 10.

²⁸ EWTF Trust Agreement at 9; OETF Trust Agreement at 9; Stone Masons Trust Agreement at 16.

²⁹ EWTF Trust Agreement at 9-10; OETF Trust Agreement at 9; Stone Masons Trust Agreement at 16.

and income from investment of plan assets.³⁰ “All contributions shall be payable to the Fund.”³¹ The plans are meant to provide “the most generous health plan that is prudently possible given the assets of the Plan.”³² No employers, participants, beneficiaries, or beneficiaries’ dependents have vested “right[s], title claim or interest in or to the Fund or the Plan, as both are interpreted by the Trustees.”³³

44. All details of how the health plans are operated, administered, and maintained are specified in writing in the Trust Agreements and are updated and amended periodically.³⁴ The Trust Agreements explicitly protect the funds and all benefits and monies payable therefrom from any encumbrance of benefits by employers, employees, dependents, or other persons.³⁵

C. The Transitional Reinsurance Program under Section 1341 of the ACA

45. Unlike health insurance issuers, SMPs did not have pre-existing condition exclusions in their healthcare plans prior to the implementation of the ACA, and their plans are not available for purchase in the individual market. Thus, because SMPs did not face any increased risk under the ACA reforms and because their plans are not available for purchase in the individual market, SMPs cannot receive the reinsurance payments established by Congress pursuant to the

³⁰ See generally EWTF SPD; OETF SPD; Stone Masons SPD (collectively the “Summary Plan Descriptions” or “SPDs”).

³¹ EWTF Trust Agreement at 13; OETF Trust Agreement at 13; Stone Masons Trust Agreement at 20.

³² See, e.g., OETF SPD at 126.

³³ EWTF Trust Agreement at 5; OETF Trust Agreement at 5; Stone Masons Trust Agreement at 10.

³⁴ EWTF Trust Agreement at 20; OETF Trust Agreement at 20; Stone Masons Trust Agreement at 28.

³⁵ EWTF Trust Agreement at 5; OETF Trust Agreement at 5; Stone Masons Trust Agreement at 10.

Act. *See* 42 U.S.C. § 18061(b)(1)(B) (reinsurance payments will be made to health insurance issuers).

46. Pursuant to Section 1341 of the ACA, a Transitional Reinsurance Program is to be established in each state for benefit years 2014 through 2016. If a state does not establish a reinsurance program, HHS will establish its own program and perform all of the necessary functions for maintaining that program. *See* 42 U.S.C. § 18041.

47. Under the Act, the Secretary of HHS, in consultation with the National Association of Insurance Commissioners (“NAIC”), “shall include provisions that enable States to establish and maintain” a Transitional Reinsurance Program, under which:

(A) *health insurance issuers, and third party administrators on behalf of group health plans*, are required to make payments to an applicable reinsurance entity for any plan year beginning in the 3-year period beginning January 1, 2014 . . .

and

(B) the applicable reinsurance entity collects payments under subparagraph (A) and uses amounts so collected to make reinsurance payments to health insurance issuers described in subparagraph (A) that cover high risk individuals in the individual market (excluding grandfathered health plans) for any plan year beginning in such 3-year period.

42 U.S.C. § 18061(b)(1) (emphasis added).

48. The NAIC describes itself as “the U.S. standard-setting and regulatory support organization . . . [t]hrough [which] state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight.”³⁶

D. Congress Intended the Contribution to Apply to Health Insurance Issuers

49. Congress did not intend for SMPs and SISAs, which are not administered by a health insurance issuer, to pay the Contribution. Moreover, the express language of Section 1341 does not apply the Contribution to SMPs and SISAs. *See* 42 U.S.C. § 18061(b)(1)(A).

50. Congress explicitly stated in the ACA that the purpose of the creation of the Transitional Reinsurance Program is to “help stabilize premiums for coverage in the individual market in a State during the first 3 years of operation of an Exchange for such markets within the State when the risk of adverse selection related to new rating rules and market changes is greatest” and the duties of the reinsurance entity “shall be to carry out the reinsurance program under this section by coordinating the funding and operation of the risk-spreading mechanisms designed to implement the reinsurance program.” 42 U.S.C. § 18061(c)(1).

51. As detailed in the specific requirements for the contribution method for the Transitional Reinsurance Program, Congress expressly limited the application of the Contribution to *health insurance issuers*—both in their capacity acting as insurance companies selling fully insured major medical plans in the individual market and acting as third-party administrators for group health plans through an ASO agreement. *See* 42 U.S.C. § 18061(b)(3)(B).

³⁶ *See About the NAIC*, National Association of Insurance Commissioners, http://www.naic.org/index_about.htm (last visited Sept. 14, 2021). Congress’s inclusion of the NAIC in the development of the Transitional Reinsurance Program evidences that Congress intended the program and the corresponding Contribution to apply to health insurance issuers only because the NAIC has no authority to regulate SMPs, which are governed by ERISA.

52. The contribution provision does not support the application of the Contribution to entities other than health insurance issuers.

53. The specific requirements in the Act that describe how to calculate the Contribution make clear that the Contribution is to be applied to *health insurance issuers only*: “(i) the contribution amount *for each issuer proportionally reflects each issuer’s fully insured commercial book of business* for all major medical products and the *total value of all fees charged by the issuer and the costs of coverage administered by the issuer as a third party administrator*. . . .;” (iii) the aggregate contribution amounts for all States shall . . . equal \$10,000,000,000 for plan years beginning in 2014, \$6,000,000,000 for plan years beginning 2015, and \$4,000,000,000 for plan years beginning in 2016;” and “(iv) in addition to the aggregate contribution amounts under clause (iii), *each issuer’s contribution amount* for any calendar year under clause (iii) reflects its proportionate share of an additional \$2,000,000,000 for 2014, an additional \$2,000,000,000 for 2015, and an additional \$1,000,000,000 for 2016.” 42 U.S.C. § 18061(b)(3)(B) (emphasis added).

54. The contribution provision demonstrates that insurance companies are required to pay the Contribution based on revenue from their insured products as well as their ASO line of business that they provide to group health plans, and that the Contribution does not apply to SMPs or SISAs, which are not administered by a health insurance issuer.

55. According to testimony before the House of Representatives by Mandy Cohen, Acting Deputy Administrator and Director of the Center for Consumer Information and Insurance Oversight, in June 2014:

The reinsurance program is designed to partially reimburse the costs of high-cost enrollees in the individual market and thereby reduce premiums for enrollees in the individual market, to ensure market stability . . . [and] is an important element in smoothing risk across the individual health

insurance market as the 2014 market reforms go into effect, and sets the foundation for the establishment of the Marketplace.³⁷

56. Cohen stated that the goal of the Transitional Reinsurance Program is “to help provide stability in the health insurance market as the Affordable Care Act extends new benefits to consumers” and the program is “designed to reduce uncertainty, which improves the pricing and functioning of the health insurance market.”³⁸ Thus, the program was implemented to “mitigate the impact of potential adverse selection inside and outside the Marketplace, while stabilizing premiums and encouraging plan participation . . . [and] encouraging *issuers* to participate in the Marketplace and compete on price and quality.”³⁹

57. Further, the Act does not provide a contribution method for SMPs or SISAs—as it does for issuers—and there is no specific statutory mechanism to calculate contribution amounts for SMPs or SISAs because Congress did not intend for those funds to be required to pay the Contribution. *See, e.g.*, 42 U.S.C. § 18061(b)(3)(B).

58. The Act’s legislative history further evidences Congress’s intent for the Contribution to be applied to health insurance issuers only. In or around September 2009, the Finance Committee released the Chairman’s Mark of the America’s Healthy Future Act of 2009.⁴⁰

³⁷ *Poised To Profit: How Obamacare Helps Insurance Companies Even If It Fails Patients: Hearing before the Subcomm. On Economic Growth, Job Creation and Regulatory Affairs, 113th Cong. 75-91 (2014)* (statement of Mandy Cohen, M.D., Acting Deputy Administrator and Director Center for Consumer Information and Insurance Oversight Centers for Medicare & Medicaid Services), <https://docs.house.gov/meetings/GO/GO28/20140618/102420/HHRG-113-GO28-Transcript-20140618.pdf> (the “Mandy Cohen Testimony”).

³⁸ *See id.*

³⁹ *See id.* (emphasis added).

⁴⁰ *See Legislation, H.R. 3590: Patient Protection and Affordable Care Act of 2009*, The United States Senate Committee on Finance, <http://www.finance.senate.gov/legislation/details/hr-3590> (last visited Sept. 14, 2021); Chairman’s Mark, America’s Healthy Future Act of 2009, The United States Senate Committee on Finance at 8-9, https://www.finance.senate.gov/imo/media/doc/091609%20Americas_Healthy_Future_Act.pdf (last visited Sept. 14, 2021).

The Chairman’s Mark contained the language that would create Section 1341 and demonstrates that Section 1341—from its inception—was meant to apply to health insurance issuers only. The Chairman’s Mark provided that:

As a condition of issuing commercial, major medical health insurance policies or administering benefit plans for major medical coverage in years 2013, 2014, and 2015, ***all health insurance issuers*** would be required to contribute to a reinsurance program for individual policies that is administered by a non-profit reinsurance entity that would function as described below.⁴¹

59. Further, it was intended that the “requirement would be enforced at the state level in a manner consistent with new the [(sic)] insurance market reforms” and the “National Association of Insurance Commissioners (NAIC) would be directed to develop a model for states to adopt.”⁴² Importantly, the Chairman’s Mark provided that in order to meet the requirement “***insurers shall contribute to a reinsurance entity*** that is a non-profit entity (referred to as the ‘Non Profit’).”⁴³ While explaining insurers’ contribution to the Non Profit, the Chairman’s Mark further provided “[t]he contribution amount must proportionally reflect each entity’s fully insured commercial book of business for all major medical products and third-party administrators (TPA) fees (e.g., based on percentage of revenue or flat, per enrollee amount).”⁴⁴

60. The Finance Committee held numerous hearings on the Chairman’s Mark, during which Senator John D. Rockefeller highlighted the fact that the Transitional Reinsurance Program applies to health insurance issuers only. Senator Rockefeller asked a Finance Committee

⁴¹ See *Chairman’s Mark, America’s Healthy Future Act of 2009*, The United States Senate Committee On Finance at 8-9, https://www.finance.senate.gov/imo/media/doc/091609%20Americas_Healthy_Future_Act.pdf (last visited Sept. 14, 2021) (emphasis added).

⁴² *Id.* at 9.

⁴³ *Id.* (emphasis added).

⁴⁴ *Id.*

Professional Staff Member to “[p]rovide the specific ways the *insurance companies* are sharing responsibility for the cost of reform like everybody else is.”⁴⁵ The Finance Committee Professional Staff Member responded that “the specific contribution that the *insurance industry* has agreed to make to the mark is approximately \$20 billion in reinsurance funding to alleviate any rate shock that we will see from the new rating rules that are being put into place.”⁴⁶

61. After the hearings on the Chairman’s Mark, the Finance Committee released Senate Bill S. 1796 and a markup report to accompany S. 1796. The markup report contains the following language regarding reinsurance: “Offerors of health benefit plans that *are offered in the individual market* would be required to contribute to a temporary reinsurance program for individual policies that is administered by a non-profit reinsurance entity.”⁴⁷ SMPs and SISAs do not offer health benefit plans in the individual market and were not intended by Congress to be required to contribute to the Transitional Reinsurance Program.

62. And, as stated above, SMPs and SISAs can in no way benefit from their payment of the Contribution. Pursuant to the Act, only health insurance issuers that offer insurance coverage in the individual market can receive reinsurance payments under the Transitional Reinsurance Program. *See* 42 U.S.C. § 18061(b)(1)(B) (“[T]he applicable reinsurance entity collects payments under subparagraph (A) and uses amounts so collected to make reinsurance payments to *health insurance issuers* described in subparagraph (A) *that cover high risk individuals in the individual*

⁴⁵ *Transcript of Senate Committee on Finance Holds a Markup on Health Care Reform, Part 5*, 2009 WL 3115850, at *6 (Sept. 29, 2009) (statement of Sen. John D. Rockefeller) (emphasis added).

⁴⁶ *Id.* (statement of Yvette Fontenot, Professional Staff Member, Senate Committee on Finance) (emphasis added).

⁴⁷ *America’s Healthy Future Act of 2009 Report*, The United States Senate Committee on Finance, at 15 (Oct. 19, 2009), <https://www.finance.senate.gov/imo/media/doc/prb102109a3.pdf> (emphasis added).

market.”) (emphasis added). Thus, although Defendant required SMPs and SISAs to contribute to the fund, SMPs cannot participate in the Act’s risk-spreading mechanism and no reinsurance payments will be made to SMPs under the Transitional Reinsurance Program. In testimony before Congress, HHS confirmed that reinsurance payments will be made to *issuers only* (not SMPs and SISAs), stating “[r]einsurance payments are made to *individual market issuers* that cover high-risk individuals.”⁴⁸

63. SMPs and SISAs do not sell insurance in the individual market, which is defined as “the market for health insurance coverage offered to individuals *other than in connection with a group health plan*, or other than coverage offered pursuant to a contract between the health insurance issuer with the Medicaid, Children’s Health Insurance Program, or Basic Health programs.” 45 C.F.R. § 144.103 (emphasis added). Thus, SMPs and SISAs cannot receive any benefit from their payment of the Contribution, and the application of the Contribution to SMPs and SISAs is both contrary to Congressional intent and violates the Due Process and Takings Clauses of the Fifth Amendment.

E. HHS and Secretary Burwell Illegally Applied the ACA

64. The aggregate contribution amounts, as estimated by the NAIC, are \$10 billion for 2014, \$6 billion for 2015 and \$4 billion for 2016—to be used to fund reinsurance payments to *health insurance issuers* that incur high costs during the transition period. *See* 42 U.S.C. § 18061(b)(3)(B)(iii). Under the Act, an additional aggregate contribution amount *for each issuer* of \$2 billion for 2014, \$2 billion for 2015 and \$1 billion for 2016 “shall be deposited into the general fund of the Treasury of the United States and may not be used for the program established under this section.” 42 U.S.C. § 18061(b)(3)(B)(iv); § 18061(b)(4)(B).

⁴⁸ Mandy Cohen Testimony (emphasis added).

65. As made clear by the unambiguous language of the Act, Congress intended the Contribution to be imposed on *health insurance issuers*—not SMPs or SISAs.

66. Despite the clear language of the Act applying contribution amounts to *health insurance issuers* and their ASO line of business only and requiring *issuers* only to pay the additional contribution amounts, Defendant promulgated a rule requiring all SMPs and SISAs, including members of the Exaction Class, to pay the Contribution (including the additional contribution amount) for benefit year 2014, and required SMPs that are administered by a third-party administrator that is not a health insurance issuer to pay the Contribution (including the additional contribution amount) for benefit years 2014 through 2016. Thus, Defendant has illegally exacted the Contribution from Plaintiffs and members of the Classes without due process and/or just compensation.

67. Pursuant to 42 U.S.C. § 18041(a)(1), Secretary Burwell was given the authority to issue rules and/or regulations setting standards for meeting the requirements under the ACA including “the establishment of the reinsurance and risk adjustment programs.” To the extent a state did not establish its own Exchange by January 1, 2014, Secretary Burwell was given the authority to “establish and operate such Exchange within the State” and “take such actions as are necessary to implement such other requirements.” 42 U.S.C. § 18041(c)(1).

68. Despite Congress’s clear intent, Secretary Burwell and HHS promulgated a rule, purporting to implement the Transitional Reinsurance Program, which included SMPs and SISAs as contributing entities and required them to pay the Contribution. *See* 45 C.F.R. § 153.

69. Pursuant to HHS Rule, 45 C.F.R § 153.20:

Contributing entity means—

(1) A health insurance issuer; or

- (2) ***For the 2014 benefit year, a self-insured group health plan*** (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage), ***whether or not it uses a third-party administrator***; and ***for the 2015 and 2016 benefit years, a self-insured group health plan*** (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage) ***that uses a third-party administrator in connection with claims processing or adjudication*** (including the management of internal appeals) ***or plan enrollment for services*** other than for pharmacy benefits or excepted benefits within the meaning of section 2791(c) of the PHS Act. Notwithstanding the foregoing, a self-insured group health plan that uses an unrelated third party to obtain provider network and related claim repricing services, or uses an unrelated third party for up to 5 percent of claims processing or adjudication or plan enrollment, will not be deemed to use a third party administrator, based on either the number of transactions processed by the third party, or the value of the claims processing and adjudication and plan enrollment services provided by the third party. A self-insured group health plan that is a contributing entity is responsible for the reinsurance contributions, although it may elect to use a third party administrator or administrative services-only contractor for transfer of the reinsurance contributions.

45 C.F.R § 153.20 (emphasis added).

70. Under this rule, Defendant required all SMPs and SISAs, including the Exaction Class, to pay the Contribution for benefit year 2014, and required SMPs that are administered by a third-party administrator that is not a health insurance issuer to pay the Contribution for benefit years 2014 through 2016.

71. Secretary Burwell and HHS's interpretation and application of Section 1341 was unlawful and Defendant's assessment and collection of the Contribution from SMPs and SISAs constituted an illegal deprivation of property without due process of law or without just compensation in violation of the Due Process and/or Takings clauses of the Fifth Amendment of the United States Constitution. Secretary Burwell and HHS misinterpreted the ACA when including SMPs and SISAs in the definition of "contributing entity" and overstepped the authority granted to Secretary Burwell under the Act by assessing and collecting the Contribution from SMPs and SISAs.

72. Further, HHS already has admitted that the Exaction Class should not be considered a contributing entity and should not be required to pay the Contribution, stating: "[f]ollowing this in-depth review, our view is that . . . *a self-insured, self-administered plan should not be a contributing entity* [to the Transitional Reinsurance Program]." 79 Fed. Reg. 13744, 13773 (Mar. 11, 2014) (emphasis added). However, HHS only modified the proposed definition of 'contributing entity' to exclude the Exaction Class from payment of the Contribution for benefit years 2015 and 2016, and unlawfully collected the Contribution from Plaintiff EWTF and the Exaction Class for benefit year 2014. Secretary Burwell and HHS provided no clear reason for requiring Plaintiff EWTF and the Exaction Class to pay the Contribution for benefit year 2014 but excluding them from paying the Contribution for 2015 and 2016. Rather, in December 2013, HHS stated that "it would be disruptive to plans and issuers to modify the definition of 'contributing entity' for the

2014 benefit year at this late date.” 78 Fed. Reg. 72322, 72341 (Dec. 2, 2013). However, the first payment of the Contribution was not due until over a year later in January 2015, and purported administrative convenience is no excuse to illegally exact Contributions from those entities that were not intended under the Act to contribute.

73. Secretary Burwell and HHS’s inclusion of Plaintiff EWTF and the Exaction Class in the definition of contributing entity for benefit year 2014 and illegal exaction of the Contribution from the Exaction Class for benefit year 2014 constituted: (1) a taking without just compensation in violation of the constitution; and/or (2) a deprivation of property without due process of law.

74. Secretary Burwell and HHS’s inclusion of SMPs and SISAs, including Plaintiffs and members of the Classes, in the definition of contributing entity and illegal exaction of the Contribution from such entities for benefit years 2014, 2015 and/or 2016 constituted: (1) a taking without just compensation in violation of the constitution; and/or (2) a deprivation of property without due process of law.

F. Defendant Illegally Assessed and Collected the Contribution from the Classes

75. Notwithstanding that the Act contemplated contributions from *health insurance issuers only*, Defendant collected and retained the Contribution for benefit years 2014, 2015 and/or 2016 from Plaintiffs and members of the Classes.⁴⁹

⁴⁹ On December 24, 2013, Plaintiff EWTF sent a letter to the Centers for Medicare and Medicaid Services, Department of Health and Human Services, stating its position that members of the Exaction Class, including EWTF, should not be included in the definition of “contributing entity” and should not be required to pay the Contribution. Despite EWTF’s objection, Defendant required EWTF to pay the Contribution for benefit year 2014. *See* Letters Submitted by Attorney William Dale on Behalf of IBEW Local 26 Electrical Welfare Trust Fund to Centers for Medicare and Medicaid Services, Department of Health and Human Services, re: CMS-9964-P: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2015; Proposed Rule; 78 FR 72322 (Dec. 2, 2013) (dated Dec. 24, 2013), <https://www.regulations.gov/document?D=CMS-2013-0253-0050>. The National Coordinating Committee for Multiemployer Plans also provided notice to the Government on behalf of the Class

76. Pursuant to HHS rule, “[e]ach contributing entity must make reinsurance contributions annually: at the national contribution rate for all reinsurance contribution enrollees, in a manner specified by HHS.” 45 C.F.R. § 153.400(a). According to HHS, the reinsurance contribution required from a “contributing entity” during a benefit year is calculated by multiplying “[t]he number of covered lives of reinsurance contribution enrollees during the applicable benefit year for all plans and coverage described in § 153.400(a)(1) of the contributing entity” by “[t]he contribution rate for the applicable benefit year.” 45 C.F.R. § 153.405.

77. Defendant required Plaintiffs and members of the Classes to pay the Contribution in the following manner: (1) no later than November 15 of the applicable benefit year, the contributing entity must submit an annual enrollment count of the number of covered lives of reinsurance contribution enrollees; (2) following the submission, HHS notifies the contributing entity of the amount of the reinsurance contribution to be allocated to reinsurance payments and administrative expenses for the applicable benefit year; (3) in the fourth quarter of the calendar year following the applicable benefit year, HHS notifies the contributing entity of the amount of the reinsurance contribution to be allocated for payment to the U.S. Treasury for the applicable

as early as December 30, 2012. See Letter Submitted by Executive Director Randy G. DeFrehn of The National Coordinating Committee for Multiemployer Plans to Centers for Medicare & Medicaid Services, Department of Health and Human Services, re: CMS-9964-P: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014 (dated Dec. 30, 2012), <https://www.regulations.gov/document?D=CMS-2012-0152-0384>; Letter Submitted by Executive Director Randy G. DeFrehn of The National Coordinating Committee for Multiemployer Plans to Centers for Medicare & Medicaid Services, Department of Health and Human Services, re: CMS-9957-P: Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, Premium Stabilization Programs, and Market Standards; Proposed Rule (dated July 19, 2013), <https://www.regulations.gov/document?D=CMS-2013-0130-0048>; Letter Submitted by Executive Director Randy G. DeFrehn of The National Coordinating Committee for Multiemployer Plans to Centers for Medicare & Medicaid Services, Department of Health and Human Services, re: CMS-9964-P: Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2015; Proposed Rule; 78 FR 72322 (Dec. 2, 2013) (dated Dec. 26, 2013), <https://www.regulations.gov/document?D=CMS-2013-0253-0034>.

benefit year; and (4) the contributing entity is required to remit the reinsurance contribution within thirty days of the HHS notification. *See* 45 C.F.R. 153.405(b) and (c).

78. SMPs and SISAs can either pay the entire contribution amount for the Contribution in: (1) one payment at the beginning of the calendar year following the applicable benefit year (no later than January 15); or (2) two payments—one by January 15 of the calendar year following the applicable benefit year and the second by November 15 of the calendar year following the applicable benefit year. Payment is made through the website www.pay.gov.

79. A percentage of the Contribution collected from SMPs and SISAs each year was allocated to the General Fund of the United States Treasury and was not intended to fund the Transitional Reinsurance Program, but rather was intended to fund federal programs unrelated to the central stated purpose of the Contribution. *See* 42 U.S.C. § 18061(b)(4)(B).

80. For benefit year 2014, Defendant required SMPs and SISAs to pay a Contribution of \$63 per covered life—which includes both plan participants and their dependents. For benefit years 2015 and 2016, Defendant required SMPs administered by a third-party administrator to pay a Contribution of \$44 and \$27 per covered life, respectively.

81. Defendant collected and retained the Contribution for benefit years 2014 through 2016 from Class members administered by a third-party administrator that is not a health insurance issuer. Defendant also collected and retained the Contribution for benefit year 2014 from members of the Exaction Class.

82. For example, Defendant or its agents took control of \$865,357.50 from Plaintiff EWTF on January 9, 2015 as EWTF's first payment of the Contribution for benefit year 2014.⁵⁰ This first payment was contributed towards the Transitional Reinsurance Program. *See* Exhibit

⁵⁰ Attached hereto as Exhibit D are true and correct copies of receipts reflecting payments made

D. Defendant or its agents took control of \$173,071.50 from Plaintiff EWTF on November 9, 2015 as EWTF's second payment of the Contribution for benefit year 2014. *See id.* This second payment was contributed toward the General Fund of the U.S. Treasury. *See id.* The contribution rate charged was \$63 per covered life for a gross enrollment amount of 16,483 covered lives, consisting of a contribution amount of \$52.50 per covered life for the Transitional Reinsurance Program and an additional contribution amount of \$10.50 per covered life for the General Fund of the U.S. Treasury. *See id.* In total, Defendant or its agents took control of and retained \$1,038,429 from Plaintiff EWTF for payment of the Contribution for benefit year 2014. *See id.*

83. On January 12, 2015, Defendant or its agents took control of and retained \$142,569 from Plaintiff OETF for payment of the Contribution for benefit year 2014. *See Exhibit E.*⁵¹ On January 8, 2016, Defendant or its agents took control of \$107,712 from Plaintiff OETF for payment of the Contribution for benefit year 2015. *See id.* For benefit year 2015, the contribution rate charged was \$44 per covered life for a gross enrollment amount of 2,448 covered lives, consisting of a contribution amount of \$33 per covered life for the Transitional Reinsurance Program and an additional contribution amount of \$11 per covered life for the General Fund of the U.S. Treasury. *See id.* Of the \$107,712 paid by Plaintiff OETF for benefit year 2015, \$80,784 was allocated to the Transitional Reinsurance Program and \$26,928 was allocated to the General Fund of the U.S. Treasury. *See id.* On January 10, 2017, Defendant or its agents took control of \$72,873.00 from Plaintiff OETF for payment of the Contribution for benefit year 2016. *See id.* For benefit year 2016, the contribution rate charged was \$27 per covered life for a gross enrollment amount of 2,699 covered lives, consisting of a contribution amount of \$21.60 per covered life for

on behalf of EWTF through www.pay.gov.

⁵¹ Attached hereto as Exhibit E are true and correct copies of receipts reflecting payments made on behalf of OETF through www.pay.gov.

the Transitional Reinsurance Program and an additional contribution amount of \$5.40 per covered life for the General Fund of the U.S. Treasury. *See id.* Of the \$72,873 paid by Plaintiff OETF for benefit year 2016, \$52,298.40 was allocated to the Transitional Reinsurance Program and \$14,574.60 was allocated to the General Fund of the U.S. Treasury. *See id.*

84. Similarly, Defendant or its agents took control of and retained \$20,664 from Plaintiff Stone Masons on January 14, 2015 for payment of the Contribution for benefit year 2014. *See Exhibit F.*⁵² Defendant or its agents took control of and retained \$14,476 from Plaintiff Stone Masons on January 14, 2016 for payment of the Contribution for benefit year 2015, and took control of and retained \$11,637 from Plaintiff Stone Masons on January 13, 2017 for payment of the Contribution for benefit year 2016. *See id.*

85. Defendant's unconstitutional taking of Plaintiffs' and the Classes' monies held in trust for the benefit of plan participants and their dependents deprived the funds of millions of dollars, which was to be used for the funds' general and exclusive purpose—providing health and welfare benefits to plan participants and their families—in violation of the Takings Clause of the Fifth Amendment.

86. Defendant's collection of the Contribution from SMPs and SISAs, including Plaintiffs and members of the Classes, for benefit years 2014, 2015 and/or 2016 constitutes an illegal exaction without due process and/or without just compensation, contrary to constitutional right, power, or privilege, in violation of the Due Process and/or Takings Clauses of the Fifth Amendment, and otherwise not in accordance with law. *See U.S. CONST. amend. V.*

⁵² Attached hereto as Exhibit F are true and correct copies of receipts reflecting payments made on behalf of Stone Masons through www.pay.gov.

87. In addition, Defendant's collection of the Contribution from Plaintiff EWTF and SISAs for benefit year 2014 constitutes an illegal exaction without due process and/or without just compensation, contrary to constitutional right, power, or privilege, in violation of the Due Process and/or Takings Clauses of the Fifth Amendment, and otherwise not in accordance with law. *See id.*

88. Any exhaustion of administrative remedies would be futile because such remedies do not exist and/or would not provide the relief requested in this action. There is no administrative process for Plaintiffs and members of the Classes to request a refund of the Contribution imposed by Defendant. Further, there is no administrative process for Plaintiffs and members of the Classes to request a review of Secretary Burwell and HHS's promulgation of 45 C.F.R. § 153.20 which includes the Exaction Class in the definition of "contributing entity" for benefit year 2014 and SMPs, which are not administered by a health insurance issuer, in the definition of "contributing entity" for benefit years 2014 through 2016.

V. CLASS ACTION ALLEGATIONS

89. Plaintiffs bring this action pursuant to Rule 23 of the Rules of the Court of Federal Claims ("RCFC") on behalf of the following Classes:

All self-insured multiemployer employee health and welfare benefit plans that are not administered by a third-party administrator that is a health insurance issuer, and are or were subject to the assessment and/or collection of the Transitional Reinsurance Contribution under Section 1341 of the Affordable Care Act for benefit years 2014, 2015 and/or 2016 (the "Takings Class").

All self-administered, self-insured employee health and welfare benefit plans that are or were subject to the assessment and collection of the Transitional Reinsurance Contribution under Section 1341 of the Affordable Care Act for benefit year 2014 (the "Exaction Class") (together with the Takings Class, the "Classes").

90. Excluded from the proposed Classes are Defendant, as well as its agents, officers, directors, and families. Any judicial officer assigned to this case is also excluded. Plaintiffs reserve the right to revise the definitions of the Classes based upon subsequently discovered information.

91. This action is brought and may be properly maintained as a class action under RCFC 23(a) and 23(b).

92. The Classes are so numerous that joinder of all members is impracticable.

93. Defendant has acted on grounds generally applicable to the Classes. The Classes received the same treatment at the hands of the United States, in that each member of the Classes was illegally assessed the Contribution without due process and/or without just compensation, in contravention of the unambiguous language of the ACA and in violation of the Due Process and/or Takings Clauses of the Fifth Amendment.

94. Common questions of law and fact exist as to all members of the Classes and predominate over any issues solely affecting individual members of the Classes. The common questions of law and fact include but are not limited to:

- (1) whether Defendant's collection of the Contribution appropriated members of the Classes' property without just compensation in violation of the Takings Clause of the Fifth Amendment of the United States Constitution;
- (2) whether Defendant's collection of the additional contribution of the Contribution under 42 U.S.C. § 18061(b)(3)(B)(iv) appropriated members of the Classes' property without just compensation in violation of the Takings Clause of the Fifth Amendment of the United States Constitution;
- (3) whether the exaction of the Contribution was illegal and contrary to the unambiguous language of the ACA, and without due process in violation

of the Due Process Clause of the Fifth Amendment of the United States Constitution;

- (4) whether the exaction of the additional contribution of the Contribution under 42 U.S.C. § 18061(b)(3)(B)(iv) was illegal and contrary to the unambiguous language of the ACA, and without due process in violation of the Due Process Clause of Fifth Amendment of the United States Constitution; and
- (5) whether Plaintiffs and members of the Classes are entitled to damages, including, *inter alia*: (i) just compensation under the Fifth Amendment for the government's taking of their property in an amount equal to the Contribution paid plus applicable interest, costs and fees; and/or (ii) a refund to Plaintiffs and Class members of the full amount of the Contribution illegally exacted from them for benefit years 2014, 2015 and/or 2016 plus applicable interest, costs and fees.

95. Plaintiffs' claims are typical of the claims of the Classes. As alleged herein, Plaintiffs and members of the Classes sustained damages arising out of the same illegal actions and conduct by Defendant.

96. Plaintiffs are willing and prepared to serve the Class in a representative capacity with all of the obligations and duties material thereto. Plaintiffs will fairly and adequately protect the interests of the Class and have no interests adverse to or in conflict with the interests of the other members of the Classes.

97. Plaintiffs' interests are co-extensive with and are not antagonistic to those of absent members of the Classes. Plaintiffs will undertake to represent and protect the interests of absent members of the Classes.

98. Plaintiffs have engaged the services of the undersigned counsel. Counsel is experienced in complex litigation, will adequately prosecute this action and will assert and protect the rights of, and otherwise represent, Plaintiffs and absent members of the Classes.

99. Class action status is superior to other available methods for fairly and efficiently adjudicating the controversy because there would be no interest on the part of any of the members of the Classes in individually controlling the prosecution of separate actions, and there should be no difficulties managing these claims as a Class action.

100. The interest of members of the Classes in individually controlling the prosecution of separate actions is theoretical and not practical. The Classes have a high degree of similarity and are cohesive, and Plaintiffs anticipate no difficulty in the management of this matter as a class action.

FIRST CLAIM

**UNCONSTITUTIONAL TAKING IN VIOLATION OF THE TAKINGS CLAUSE,
U.S. CONST. AMEND. V**

101. Plaintiffs incorporate and re-allege the allegations in the preceding paragraphs as if fully set forth herein.

102. The Takings Clause of the Fifth Amendment to the United States Constitution bars the government from taking Plaintiffs' and members of the Classes' private property for public use without just compensation. U.S. CONST. amend. V.

103. Funds held in self-insured health and welfare trust funds constitute identifiable property interests in specific funds of money protected by the Takings Clause of the Fifth Amendment.

104. Plaintiffs and members of the Classes had cognizable property interests in the funds held in the self-insured multiemployer health and welfare trust funds at issue and a reasonable expectation that the funds would be held for the exclusive benefit of fund participants and beneficiaries.

105. Plaintiffs and members of the Classes had cognizable property interests in the funds held in the self-insured multiemployer health and welfare trust funds at issue and a reasonable expectation that the funds held would not be taken for public use without just compensation.

106. Pursuant to ERISA, the funds maintained by SMPs are held exclusively for the benefit of plan participants and their dependents, and cannot be used for any other purpose. *See* 29 U.S.C. § 1103. In addition, pursuant to Plaintiffs' Trust Agreements, "the assets of the Fund and the Plan . . . shall be held for the exclusive purposes of providing for the payment of Plan benefits and of defraying reasonable expenses of administering the Fund and the Plan." EWTF Trust Agreement at 5; OETF Trust Agreement at 5; Stone Masons Trust Agreement at 10; *see also* 29 U.S.C. § 1103(c)(1).

107. The imposition of the Contribution on SMPs is contrary to ERISA and also the reasonable expectations of plan participants and beneficiaries that the value of their benefits under the ERISA plans will not be diminished.

108. Defendant's requirement that administrators of SMPs relinquish funds held in self-insured health and welfare trust funds to pay the Contribution is akin to the government's own invasion into and taking of the funds and constitutes a *per se* taking.

109. Defendant's requirement that administrators of SMPs relinquish funds held in self-insured multiemployer health and welfare trust funds to pay the Contribution is also and/or in the alternative is a regulatory taking.

110. Defendant's imposition and collection of the Contribution from Plaintiffs and members of the Classes, which was deposited into the Transitional Reinsurance Program and/or the General Fund of the United States Treasury, deprives Plaintiffs and members of the Classes of private property for public use without just compensation in violation of the Takings Clause of the Fifth Amendment.

111. Defendant's imposition and collection of the additional contribution amount of the Contribution under 42 U.S.C. § 18061(b)(3)(B)(iv) from Plaintiffs and members of the Classes, which was intended to be deposited into the General Fund of the United States Treasury, deprives Plaintiffs and members of the Classes of private property for public use without just compensation in violation of the Takings Clause of the Fifth Amendment.

112. As a direct and proximate result of Defendant's violation of the Takings Clause, Plaintiffs and members of the Classes have suffered actual damages in the amounts of the Contribution paid, interest, attorneys' fees and costs, and other damages to be determined at trial.

113. Moreover, Defendant and/or its agents already have admitted that Plaintiff EWTF and members of the Exaction Class should not be considered contributing entities and should not be required to pay the Contribution. Defendant has not imposed the Contribution on Plaintiff EWTF and members of the Exaction Class for benefit years 2015 and 2016. By requiring Plaintiff EWTF and members of the Exaction Class to pay the Contribution for benefit year 2014 and by collecting the Contribution for benefit year 2014 from Plaintiff EWTF and the Exaction Class members, Defendant has exceeded its statutory authority under the ACA and has exacted the

Contribution from Plaintiff EWTF and members of the Exaction Class without statutory authority in violation of the ACA and the Taking Clause of the Fifth Amendment to the United States Constitution.

114. Defendant’s unconstitutional taking of Plaintiffs’ and the Classes’ monies held in trust for the benefit of plan participants and their dependents deprived the funds of millions of dollars, which was to be used for the funds’ general and exclusive purpose—providing health and welfare benefits to plan participants and their families—in violation of the Takings Clause of the Fifth Amendment.

115. Plaintiffs and members of the Classes are entitled to just compensation, interest, attorneys’ fees and costs, and other damages to be determined at trial.

SECOND CLAIM

**ILLEGAL EXACTION IN VIOLATION OF THE DUE PROCESS CLAUSE,
U.S. CONST. AMEND. V (IN THE ALTERNATIVE)**

116. Plaintiffs incorporate and re-allege the allegations in the preceding paragraphs as if fully set forth herein.

117. The Due Process Clause of the Fifth Amendment to the United States Constitution bars the government from appropriating Plaintiffs’ and members of the Classes’ “property without due process of law.” U.S. CONST. amend. V.

118. The imposition of the Contribution on SMPs and SISAs is contrary to the reasonable expectations of plan participants and beneficiaries that the value of their benefits under the ERISA plans will not be diminished. Plaintiffs and members of the Classes have cognizable property interests in funds held in the self-insured health and welfare trust funds at issue.

119. An illegal exaction occurs where Plaintiffs and members of the Classes have “paid money over to the Government, directly or in effect, and seek[] return of all or part of that sum

that was improperly paid, exacted, or taken from the claimant in contravention of the Constitution, a statute or a regulation.” *Aerolineas Argentinas v. United States*, 77 F.3d 1564, 1572-73 (Fed. Cir. 1996).

120. Defendant and/or its agents have assessed and collected the Contribution from Plaintiffs and members of the Classes under the statutory authority provided by 42 U.S.C. § 18041 of the ACA. The statutory authority of Defendant and/or its agents to extract the Contribution from Plaintiffs and members of the Classes is subject to the limitations in 42 U.S.C. § 18061 of the ACA.

121. Defendant has disregarded the unambiguous language of Section 1341 of the ACA, which exempts SMPs and SISAs, including Plaintiffs and members of the Classes, from payment of the Contribution for benefit years 2014, 2015, and/or 2016. By requiring members of the Classes to pay the Contribution for benefit years 2014, 2015, and/or 2016 and by collecting the Contribution for benefit years 2014, 2015, and/or 2016 from members of the Classes, Defendant has exceeded its statutory authority under the ACA and has exacted the Contribution from Plaintiffs and members of the Classes without statutory authority in violation of the ACA and the Due Process Clause of the Fifth Amendment to the United States Constitution.

122. Moreover, Defendant and/or its agents already have admitted that Plaintiff EWTF and members of the Exaction Class should not be considered contributing entities and should not be required to pay the Contribution. Defendant has not imposed the Contribution on Plaintiff EWTF and members of the Exaction Class for benefit years 2015 and 2016. By requiring Plaintiff EWTF and members of the Exaction Class to pay the Contribution for benefit year 2014 and by collecting the Contribution for benefit year 2014 from Plaintiff EWTF and the Exaction Class members, Defendant has exceeded its statutory authority under the ACA and has exacted the

Contribution from Plaintiff EWTF and members of the Exaction Class without statutory authority in violation of the ACA and the Due Process Clause of the Fifth Amendment to the United States Constitution.

123. Because Defendant exacted the Contribution from Plaintiffs and members of the Classes in contravention of the limitations imposed by Section 1341 of the ACA, Defendant has illegally exacted monies from Plaintiffs and members of the Classes without statutory authority and in contravention of the ACA.

124. Defendant's imposition of the Contribution on SMPs and SISAs constitutes an illegal exaction that deprives Plaintiffs and members of the Classes of property without due process of law in violation of the Due Process Clause of the Fifth Amendment.

125. Defendant's imposition of the additional contribution amount of the Contribution under 42 U.S.C. § 18061(b)(3)(B)(iv) on SMPs and SISAs constitutes an illegal exaction that deprives Plaintiffs and members of the Classes of property without due process of law in violation of the Due Process Clause of the Fifth Amendment.

126. As a direct and proximate result of Defendant's imposition of an illegal exaction in violation of the Due Process Clause, Plaintiffs and members of the Classes have suffered actual damages in the amounts of the Contribution paid, interest, attorneys' fees and costs, and other damages to be determined at trial.

127. Plaintiffs and members of the Classes are entitled to a refund of the monies illegally exacted and held by Defendant in violation of Section 1341 of the ACA, interest, attorneys' fees and costs, and other damages to be determined at trial.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request that this Court enter judgment against Defendant and in favor of Plaintiffs and the Classes, and award the following relief:

- (1) certify this action as a class action pursuant to RCFC Rule 23, declaring Plaintiffs as the representatives of the Classes, and Plaintiffs' counsel as counsel for the Classes;
- (2) require Defendant to: (i) provide just compensation to Plaintiffs and members of the Classes under the Fifth Amendment for the government's taking of their property in an amount equal to the Contribution paid plus applicable interest; and/or (ii) refund to Plaintiffs members of the Classes the full amount of the Contribution illegally exacted from them for benefit years 2014, 2015 and/or 2016 plus applicable interest;
- (3) award all costs and fees, including attorneys' fees, pursuant to 28 U.S.C. § 2412; and
- (4) award such other and further relief to Plaintiffs and members of the Classes as this Court deems just and proper.

DATED: May 2, 2022

Respectfully submitted,

/s/ Joseph H. Meltzer

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Attorneys for Plaintiffs and the proposed Classes

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of May, 2022, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court, is available for viewing and downloading from the ECF system, and will be served by operation of the Court's electronic filing system (CM/ECF) upon all counsel of record.

/s/ Joseph H. Meltzer
Joseph H. Meltzer

EXHIBIT A

SECOND RESTATEMENT
OF THE
AGREEMENT AND DECLARATION OF TRUST
ESTABLISHING THE
ELECTRICAL WELFARE TRUST FUND

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SECOND RESTATEMENT,
OF THE
AGREEMENT AND DECLARATION OF TRUST
ESTABLISHING THE
ELECTRICAL WELFARE TRUST FUND

This SECOND RESTATEMENT of the Original AGREEMENT AND DECLARATION OF TRUST ESTABLISHING THE ELECTRICAL WELFARE TRUST FUND is made and entered into as of the ____ day of _____, 19__, in the City of Washington, District of Columbia, by and between Local Union No. 26 of the International Brotherhood of Electrical Workers (Union), the Washington D.C. Chapter National Electrical Contractors Association, formerly known as the Institute of Electrical Contractors of the District of Columbia, Inc., (Association), and various other employers in the electrical industry in the greater Washington, D.C. area who are or who may become parties hereto in the manner hereinafter provided (the Association and other employers are hereinafter referred to as Employers), and the Trustees of the Fund.

WITNESSETH:

WHEREAS, the Union and the Employers by Collective Bargaining Agreement dated June 28, 1949, established the Electrical Welfare Trust Fund (Fund) and included in said Collective Bargaining Agreement the initial provisions governing the operation of the Fund, and

WHEREAS, the Union and the Employers thereafter appointed Trustees for the administration and operation of the Fund, and

WHEREAS, the aforementioned Trustees on or about July 1, 1970 entered into an Agreement and Declaration of Trust in order to set forth further terms and conditions under which the Fund was established and has been administered, and

WHEREAS, the FIRST RESTATEMENT of the Agreement and Declaration of Trust Establishing the Electrical Welfare Trust Fund was made and entered into as of the 12th day of January 1981, and

WHEREAS, it is desired to set forth certain additional amended terms and conditions under which the Fund is to be administered and maintained, and

WHEREAS, in order to have in the record a single document comprising the complete Trust Instrument, the parties to this agreement have decided to incorporate all amendments made and entered into as of this day into this SECOND RESTATEMENT.

NOW, THEREFORE, in consideration of the premises, it is mutually understood and agreed, and the Agreement and Declaration of Trust Establishing the Electrical Welfare Trust Fund is hereby amended and restated as follows:

ARTICLE I - DEFINITIONS

Section 1. EMPLOYER.

The term "Employer" shall mean:

~~(a) An employer who contributes, or is required to contribute, to the Fund pursuant to the terms of a Collective Bargaining Agreement or other written agreement with the Union or the Fund.~~

(b) The Union, which shall be considered as the Employer of the employees of the Union for whom contributions are made, or required to be made, to the Fund pursuant to the terms of an agreement with the Fund, provided that coverage of such employees satisfies the requirements of the Internal Revenue Code relating to the tax-exempt status of the Fund.

(c) The Fund, the Electrical Workers Local No. 26 Pension Trust Fund, the Electrical Local No. 26 Joint Apprenticeship Training Trust Fund, or any other affiliated trust fund covering the same membership as covered under the Plan, which, if permitted by the Trustees, shall be considered as Employers of the employees of such trust fund for whom contributions are made, or required to be made, to the Fund pursuant to the terms of an agreement with the Fund, provided that coverage of such employees satisfies the requirements of the Internal Revenue Code relating to the tax-exempt status of the Fund.

(d) The Association, which, if permitted by the Trustees, shall be considered as the Employer of the employees of such Association for whom contributions are made, or required to be made, to the Fund pursuant to the terms of a written agreement with the Fund, provided that coverage of such employees satisfies the requirements of the Internal Revenue Code relating to the tax-exempt status of the fund.

(e) Notwithstanding subsections (a) - (d), an employer shall not be deemed to be an "Employer" solely by virtue of its membership in a controlled group of corporations (within the meaning of §1563 of the Internal Revenue Code), one of which is an "Employer".

Section 2. EMPLOYEE.

The term "Employee" shall mean:

(a) An employee of an Employer for whom contributions are made, or required to be made, to the Fund pursuant to a Collective Bargaining Agreement, Benefit Fund Agreement, Letter of Assent, or other written agreement with the Union or the Fund.

(b) Notwithstanding subsection (a), the term "Employee" shall not include anyone who is a sole proprietor of an entity or a partner of an entity, or anyone who is not permitted to participate in the Plan by any provision of applicable law.

Section 3. ELIGIBLE EMPLOYEE.

The term "Eligible Employee" shall mean an Employee who is eligible under the terms of the Plan for Plan benefits.

Section 4. DEPENDENT.

The term "Dependent" shall mean an Employee's spouse and such other individuals as the Trustees, in their discretion, shall select from Section 152(a) of the Internal Revenue Code and enumerate in the Plan.

Section 5. ELIGIBLE DEPENDENT.

The term "Eligible Dependent" shall mean a Dependent who is eligible under the terms of the Plan for Plan benefits.

Section 6. UNION.

The term "Union" shall mean Local Union No. 26 of the International Brotherhood of Electrical Workers.

Section 7. ASSOCIATION.

The term "Association" shall mean the Washington, D.C. Chapter, National Electrical Contractors Association.

Section 8. TRUSTEES.

(a) The term "Employer Trustees" shall mean the Trustees appointed and certified by the Association.

(b) The term "Union Trustees" shall mean the Trustees appointed and certified by the Union.

(c) The term "Impartial Trustee" shall mean a member of the public who is not employed by the Union or any Employer and who is appointed in the manner hereinafter provided by the Employer Trustees and Union Trustees or by the Chief Judge of the United States District Court for the District of Columbia.

(d) The term "Trustees" shall mean the Employer Trustees, the Union Trustees, and the Impartial Trustee collectively, and shall include their successors when acting as Trustees. The Trustees shall be the Plan's "named fiduciaries", within the meaning of Section 402(a) of ERISA, with respect to the operation and administration of the Plan and with respect to the management and control of the assets of the Plan and of the Fund.

Section 9. AGREEMENT AND DECLARATION OF TRUST.

The term "Agreement and Declaration of Trust" shall mean the Agreement and Declaration of Trust Establishing the Electrical Welfare Trust Fund, as amended from time to time.

Section 10. PLAN.

The term "Plan" shall mean the Electrical Welfare Trust Fund Health and Welfare Plan, as amended from time to time.

Section 11. FUND.

The term "Fund" shall mean the Electrical Welfare Trust Fund, and shall mean generally the moneys or other things of value which comprise the corpus and additions to the Fund.

Section 12. COLLECTIVE BARGAINING AGREEMENT.

The term "Collective Bargaining Agreement" shall mean any of the collective bargaining agreements entered into from time to time between the Union and any Employer, including, but not limited to, agreements between the Union and the Association, together with any modifications or amendments thereto.

Section 13. INTERNAL REVENUE CODE.

The term "Internal Revenue Code" shall mean the Internal Revenue Code of 1986, as amended.

Section 14. ERISA.

The term "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

Section 15. INVESTMENT MANAGER.

The term "Investment Manager" shall mean a fiduciary that meets the requirements specified in §3(38) of ERISA.

ARTICLE II - ELECTRICAL WELFARE TRUST FUND

Section 1. CONTINUATION OF FUND.

There is hereby continued the Electrical Welfare Trust Fund to be used for the purposes herein set forth.

Section 2. GENERAL PURPOSE.

The Fund shall be used for the purposes of providing for the payment of such life, sickness, accident and other benefits for Eligible Employees and Eligible Dependents as may be decided by the Trustees and permitted by law and of defraying the reasonable expenses incurred in the administration of the Plan and the Fund; provided, however, that the Fund shall not be used in any manner which would adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

Section 3. APPLICATION OF ASSETS.

Except as specifically permitted by ERISA, the Internal Revenue Code, and other applicable law, the assets of the Fund and the Plan shall never inure to the benefit of any Employer and shall be held for the exclusive purposes of providing for the payment of Plan benefits and of defraying reasonable expenses of administering the Fund and the Plan.

To the extent permitted by ERISA, the Internal Revenue Code, and other applicable law, Fund assets may be returned to Employers upon termination of the Fund and the plan in accordance with Article X.

Employer contributions to the Fund may be returned to the Employer, in the manner and to the extent approved by the Trustees, under circumstances satisfying the requirements of Section 403(c) of ERISA and other applicable law, provided that such action does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

Section 4. VESTED RIGHTS.

No Employer, Employee, Dependent, or other person claiming by or through such person or entity shall have any right, title, claim or interest in or to the Fund except as may be specifically provided for in the Agreement and Declaration of Trust or the Plan, as both are interpreted by the Trustees.

Section 5. ENCUMBRANCE OF BENEFITS.

Except as may be specifically provided by the Trustees and permitted by law, neither the Fund nor any part thereof, nor any of the benefits or moneys payable therefrom shall be subject in any manner by any Employer, Employee, Dependent, or other person claiming by or through such person or entity, by verbal agreement, assignment, or other written instrument, debt, expense, damage, or other claim, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void.

Section 6. BOOKS OF ACCOUNT.

The Trustees shall keep true and accurate books of account and records of all their transactions. Except to the extent required by law or approved by the Trustees, all books, records, papers, reports, documents or other information obtained with respect to the Fund or the Plan shall be confidential and shall not be made public. The Trustees may delegate all or part of their duty to keep such books and records to the Fund Manager or any other administrative personnel.

Section 7. AUDIT.

An annual audit shall be made of the Fund by one or more independent certified public accountant(s) selected by the Trustees. A statement of the result of such audit shall be available for inspection by interested persons at the principal office of the Fund and at such other places as may be designated by the Trustees.

Section 8. CERTAIN INVESTMENT INCOME.

At the conclusion of each Plan Year (as defined in the Plan), the Trustees shall determine the net investment income of the Fund and, on or before the date prescribed for filing the Exempt Organization Business Income Tax Return (Form 990 Series) for the taxable year (including any extensions of time), shall specify the amount so determined and require such amount to be set aside for the payment of life, sickness, accident and other benefits and the reasonable expenses incurred in the administration of the Plan.

ARTICLE III - TRUSTEES.

Section 1. APPOINTMENT AND TERM.

There shall be seven (7) Trustees appointed in the following manner. Three (3) Employer Trustees shall be appointed by the Association, three (3) Union Trustees shall be appointed by the Union and one (1) Impartial Trustee shall be appointed by a majority vote of the other Trustees. In the event a majority of the other Trustees cannot agree upon the choice of an Impartial Trustee, the selection shall be made by the Chief Judge of the United States District Court for the District of Columbia.

Each Trustee shall serve until his death or incapacity or the effective date of his resignation or removal, as herein provided.

Section 2. RESIGNATION AND REMOVAL.

A Trustee may resign at any time by giving thirty (30) days written notice to the other Trustees and such resignation shall take effect at the time specified therein, or if no time is specified, then thirty (30) days after receipt thereof; provided, however, that no Trustee may resign and no resignation shall be effective if such resignation would materially hinder the operation of the Fund and Plan, in which case the resignation shall not take effect until a successor Trustee has accepted appointment to the trusteeship pursuant to Section 3 of this Article. An Employer Trustee may be removed and replaced by the Association with or without cause at any time. A Union Trustee may be removed and replaced by the Union with or without cause at any time. The Impartial Trustee may be removed and replaced at will by a majority vote of either the three Employer Trustees or the three Union Trustees whereupon the Impartial Trustee's vacancy shall be filled in accordance with Section 1 of this Article. In the event of any contrary provision in the Collective Bargaining Agreement, the Collective Bargaining Agreement shall govern.

Section 3. SUCCESSOR TRUSTEES AND ACCEPTANCE OF TRUSTEESHIP.

Upon being appointed and certified, each successor Trustee shall execute a standard written "Acceptance of Trusteeship" in addition to a signature page to this Agreement and Declaration of Trust and by so doing shall agree to accept the trusteeship and act in accordance with the provisions hereof.

Section 4. CHANGE IN COMPOSITION OF BOARD OF TRUSTEES BY RESIGNATION, REMOVAL, INCAPACITY OR DEATH AND CERTIFICATION THEREOF TO THE TRUST FUND.

In the event of any change in the composition of the Board of Trustees by reason of the resignation, removal, incapacity or death of one or more Trustees, the Association (in the case of Employer Trustees) and/or the Union (in the case of Union Trustees) as the case may be, shall certify in writing to the Trust Fund as to the identity of the replacement Trustee(s) and said replacement Trustee(s)' term of office as Trustee(s). If no fixed term of office is to apply, then the term shall be considered indefinite. Employer Trustee certifications shall be executed by the President of the Association or his agent, duly appointed for this purpose; Union Trustee certifications shall be executed by the Business Manager or President of Union Local No. 26, IBEW. In the event that either the Association or the Union shall fail to certify a replacement Trustee to the Trust Fund within 45 Days of the event which creates a vacancy or vacancies, the remaining Employer Trustees, in the case of any Employer Trustee vacancy, or the remaining Union Trustees, in the case of any Union Trustee vacancy, shall have the right and power to appoint an interim Trustee(s). Such interim Trustee(s) shall serve only until such time as the respective appointing body acts to certify the appropriate replacement Trustee(s)

Section 5. OFFICERS OF TRUSTEES.

There shall be elected, by the Trustees, a Chairman and Vice-Chairman, one appointed from among the Union Trustees and one appointed from among the Employer Trustees.

The Chairman and Vice-Chairman, once elected, shall continue to serve as such until the conclusion of their terms as herein provided. The terms of the Chairman and Vice-Chairman shall be one year. Upon the occurrence of a vacancy in either office or upon the termination of an officer's term, the Trustees shall elect from their number a new such officer. At no time shall both offices be held by Trustees designated by the same group.

Section 6. MEETINGS OF TRUSTEES.

The Chairman and Vice-Chairman shall determine the time and place for the Trustees' regular or special meetings and shall give advance written notice thereof to the other Trustees. Any meeting at which all Trustees are present, or concerning which the absent Trustees waive notice in writing, shall be a valid meeting without the giving of any notice.

Section 7. ACTION BY TRUSTEES WITHOUT MEETING.

Any action required or permitted to be taken at a meeting of the Trustees may be taken without a meeting, provided that all Trustees concur in writing.

Section 8. QUORUM.

At any regular or special meeting of the Trustees, the physical presence of at least two (2) Employer Trustees and two (2) Union Trustees shall constitute a quorum.

Section 9. VOTING.

All action by the Trustees at a regular or special meeting shall be by majority vote of the Employer and Union Trustees present at such meeting, but in voting on any question, neither group of Trustees shall be permitted to cast more votes in the aggregate than the other. Such majority vote requirement shall govern any action of the Trustees under this Agreement and Declaration of Trust, except as otherwise specifically provided herein. ~~In the event any matter presented for decision cannot be decided because of a tie vote, or because of the lack of a quorum at two consecutive meetings, the matter may then be submitted to the Impartial Trustee provided herein. The Impartial Trustee shall be entitled to attend all meetings and participate in all respects as a Trustee, but shall not be counted for the establishment of a quorum and shall only vote in the event of a tie vote of the other Trustees or when a matter is submitted to him because of a lack of a quorum for two consecutive meetings. Said Impartial Trustee shall not vote on any matter in which he or his employer has an interest.~~

Section 10. MINUTES OF MEETINGS.

The Trustees shall keep written minutes of all meetings but such minutes need not be verbatim.

Section 11. CONDUCT OF BUSINESS.

The rules and procedures governing the conduct of business at Trustees' meetings shall be determined by the Trustees.

Section 12. DISPUTE RESOLUTION.

In the event any matter cannot be decided pursuant to Section 9 of this Article or because of the lack of a quorum at two (2) consecutive meetings, the Trustees shall appoint a neutral person to serve as an impartial umpire to decide the dispute. In the event the Trustees cannot agree upon an impartial umpire within 10 days, the Employer Trustees or the Union Trustees shall have the power and right to petition the United States District Court for the District of Columbia for an appointment of an impartial umpire.

The decision of the impartial umpire shall be final and binding upon the Trustees, the Employers, the Union, the Association, the Employees, the Dependents, and any person claiming by or through them. Any matter in dispute and to be resolved shall be submitted to the impartial umpire in writing, and in making his decision, the umpire shall be bound by the provisions of the Agreement and Declaration of Trust, the Plan, and the Collective Bargaining Agreements and other agreements between an Employer and the Union or the Fund and shall have no authority to alter or amend the terms of any such documents. If the Trustees cannot jointly agree upon a statement submitting said matter to dispute resolution, each group shall prepare and state in writing, its version of the dispute and the question or questions involved. In the discretion of the impartial umpire, a hearing may be held on the question or questions to be decided. Each group of Trustees, or their representative, may participate in any such hearing.

The reasonable expense of any such dispute resolution, including any necessary court proceedings to secure the appointment of an umpire or the enforcement of the impartial umpires decision and/or award, shall be a proper charge against the Fund to the extent approved by the Trustees and permitted by ERISA and other applicable law.

~~Section 13. COMPENSATION AND EXPENSES.~~

The Trustees may receive reasonable compensation in the amount determined by the Trustees for services rendered to the Fund, except that no Trustee who already receives full-time pay from an Employer, the Association, or the Union shall receive any compensation. Notwithstanding the preceding sentence, any Trustee who is not paid his usual wages or salary during an absence from his job caused by his being engaged in Fund business (including Trustees' meetings and educational conferences) may be reimbursed the amount of compensation he would have received had he worked during the period he was absent, provided such reimbursement is authorized by the Trustees.

Any Trustee or other Plan fiduciary shall be entitled to reimbursement for those direct expenses which are properly and actually incurred in performing duties for the Fund or the Plan provided such reimbursement is authorized by the Trustees. Moneys for such expenses may be advanced to the Trustees or other Plan fiduciaries, provided that the amount advanced is reasonable with respect to the anticipated amount of the expense and that after the expense has been incurred a full and complete accounting is provided and all moneys in excess of those relating to direct expenses which were properly and actually incurred are returned to the Fund.

ARTICLE IV - ADMINISTRATION AND MANAGEMENT OF ASSETS;
POWERS AND DUTIES OF TRUSTEES

Section 1. ADMINISTRATION.

The Trustees shall have the authority to control and manage the operation and administration of the Plan and the Fund and shall have all powers necessary or appropriate in connection therewith. To the extent permitted by ERISA and other applicable law, any person or group of persons may serve in more than one fiduciary capacity with respect to the Fund and the Plan.

Section 2. MANAGEMENT OF ASSETS.

All right, title and interest in and to the assets of the Plan and of the Fund shall at all times be vested in the Trustees. The Trustees jointly shall have the exclusive authority and discretion to manage, control, and invest assets of the Plan and of the Fund at their discretion in any legal manner, provided that any such action shall be consistent with their fiduciary duties under ERISA and shall not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code. The Trustees may delegate their authority to manage and control all or part of the assets of the Plan or of the Fund to one or more Investment Manager(s). In the event assets of the Plan or of the Fund are invested in any group trust or other similar vehicle, to the extent necessary to maintain the tax-exempt status of

the Fund under the Internal Revenue Code, the instrument pursuant to which said group trust or other similar vehicle is established and maintained shall be deemed to be incorporated by reference herein and adopted as a part hereof.

Section 3. FUNDING POLICY AND METHOD.

The Trustees shall meet periodically with the Fund Manager and their other advisors to discuss, establish, re-establish or amend and effect the Plan's funding policy and method. The Trustees shall determine at such meetings the Plan's short-term and long-term funding requirements and shall take such action as in their judgment is indicated to accomplish the objectives of the Plan consistent with the requirements of ERISA.

Section 4. ALLOCATION OF RESPONSIBILITIES.

The Trustees may allocate responsibilities, including fiduciary responsibilities, for the operation and administration of the Fund or of the Plan among themselves, or may designate others to carry out such responsibilities; provided, however, that the Trustees shall not allocate or designate the responsibility to manage or control Fund or Plan assets except in the case of the appointment of an Investment Manager. Any such allocation, designation or appointment shall be in writing and shall be approved by unanimous vote of the Trustees.

Section 5. GENERAL POWERS.

In addition to all other powers specified herein or conferred by law, the Trustees are hereby empowered:

(a) To enter into such contracts or agreements for carrying out the terms of the Agreement and Declaration of Trust or for the administration of the Plan or of the Fund, as they in their discretion, may deem necessary or appropriate.

(b) To compromise, settle, arbitrate, or release any claim in favor of or against the Plan, the Fund, or the Trustees on such terms and conditions as the Trustees may deem advisable and to determine which claims in favor of the Plan, the Fund, or the Trustees shall be prosecuted and the extent to which such claims shall be prosecuted, abandoned, compromised, released or otherwise concluded.

(c) To establish and accumulate as part of the Fund a reserve adequate in the opinion of the Trustees to carry out the purposes of the Plan and the Fund.

(d) To pay out of the Fund all real or personal property, income, or other taxes that may be levied or assessed under applicable laws upon or in respect to the Fund or the Plan or any money, property, or security forming a part thereof.

(e) To enter into reasonable arrangements which comply with ERISA and other applicable law with the Union or other employee benefit plans or trust funds for the sharing of administrative or other common expenses.

(f) To receive contributions (including contributions from Employees) or payments from any source to the extent permitted by law, provided that such receipt does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

(g) To appoint one or more Investment Manager(s) and to enter into and execute agreements with such Investment Manager(s) providing for the investment and reinvestment of assets of the Fund and/or of the Plan and the transfer to such Investment Manager(s) of all or any portion of such assets.

(h) To delegate any administrative powers or duties to agents, employees or representatives.

(i) To invest the assets of the Fund and/or of the Plan in any common, investment, including deposits which bear a reasonable interest rate in any FDIC insured bank or other financial institution or in such other accounts as the Trustees may from time to time select, to the extent permitted by ERISA and other applicable law, provided that such investment does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

(j) To invest assets of the Fund in any collective, commingled, group or pooled investment (as identified by written resolution of the Trustees authorizing such investment), which is exempt from taxation as a group trust under Sections 401(a) and 501(a) of the Internal Revenue Code to the extent permitted by ERISA and other applicable law, provided that such investment does not adversely affect the tax-exempt status of the Fund under the Code. In the event of such investment, the provisions of the collective, commingled, group or pooled investment trust shall be deemed to be a part of the Plan.

(k) To incur and pay out of the Fund the reasonable expenses of the Trustees' attendance at education programs or conferences relating to the administration and operation of the Fund and Plan.

(l) To make payments out of the Fund to Eligible Employees, Eligible Dependents, or any other person expressly authorized by such eligible individuals or by the terms of the Plan for benefits such persons may become entitled to under the Plan.

(m) To enter into group or individual insurance contracts with insurance companies for the purpose of providing for the funding and payment of Plan benefits and to pay any premiums relating thereto.

(n) To borrow money from any legal source in such amounts and upon such terms as the Trustees deem necessary or advisable in the administration of the Fund and Plan and to pledge the Fund for the repayment of any such loan to the extent permitted by law.

(o) To pay all reasonable costs, expenses and charges incurred in the administration and operation of the Fund and Plan.

(p) To open and maintain accounts of any type and in any banking institution as the Trustees may deem necessary or advisable in the administration and operation of the Fund and Plan, and to authorize anyone to sign checks upon such accounts.

(q) To construe the provisions of the Agreement and Declaration of Trust, and any such construction adopted by the Trustees shall be binding on the Association, the Union, the Employers, the Employees, the Dependents, and any person claiming by or through them.

(r) To authorize any single Trustee or group of Trustees to execute any document, instrument or other writing on behalf of all the Trustees, and any person or entity may rely upon such authority as having been duly authorized and such writing as being binding on all of the Trustees.

(s) To enter into reciprocity, merger, or other similar agreements with other trustees of other employment benefit plans or the trustees of other trust funds and to take all action necessary or appropriate in connection therewith; provided, however, that such action is consistent with the requirements of ERISA and other applicable law and does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

(t) To purchase, hold, or lease such premises, materials, supplies and equipment, and to hire, employ, and retain such legal counsel, Investment Manager, Fund Manager, accountant, actuary, and any other clerical, administrative, or professional personnel as in their discretion they may deem necessary or appropriate in the performance of their duties or in the administration of the Fund or Plan. Such persons shall be compensated from Fund assets in the amounts and in the manner determined by the Trustees.

(u) To form a Joint Administrative Committee with Trustees of other trust funds, provided that such other trust funds are sponsored by the same Union and Association as defined in Article I, Sections 6 and 7 of this Agreement and Declaration of Trust, to study, achieve consensus and make recommendation to the individual boards of Trustees of each trust fund on matters of policy, operation and administration that affect all of the trust funds in order to effect the most efficient and lowest cost administration feasible through the sharing of facilities, activities and costs.

(v) To do all acts and to adopt all rules and regulations for the administration and operation of the Plan and Fund, whether or not expressly authorized herein, as the Trustees may deem necessary or advisable to accomplish the general objectives and purposes set forth herein.

ARTICLE V - CONTRIBUTIONS TO THE FUND

Section 1. CONTRIBUTION REQUIREMENT.

(a) Each Employer shall contribute to the Fund the amount required by or specified in the Collective Bargaining Agreement, Letter of Assent, Benefit Fund Agreement, or by other agreement between the Employer and the Union or the Fund. By paying contributions into the Fund, an Employer shall be deemed to have

Section 3. PAYMENTS AND REPORTS.

All contributions shall be payable to the Fund. The Employer shall prepare and submit monthly reports which shall specify for each Employee, his name, social security number, hours for which contributions are due and such other pertinent information as may be required by the Trustees. The frequency with which Employers shall be obligated to submit such reports may be varied by the Trustees from time to time, consistent with the terms of the Collective Bargaining Agreement.

A Delinquent Employer may be required at the discretion of the Trustees to make contributions to the Fund and to file reports on a weekly or bi-weekly, rather than on a monthly, basis.

Employer contributions shall be paid in such form of legal tender as may be required at the discretion of the Trustees. Such form of payment may include cash payments, payment by check or money order, certified check, cashier's check, or such other form as the Trustees may from time to time require.

Section 4. DEFAULT IN PAYMENT; DELINQUENT EMPLOYER.

Contribution payments and reports shall be due on the date provided in the Collective Bargaining Agreement, Letter of Assent, Benefit Fund Agreement, or other written agreement between the Employer and the Union or the Fund. If no due date is specified in such agreement, contribution payments and reports shall be due within thirty (30) days of the end of the month in which the contribution obligation was incurred. If contribution payments are not received by such due date, the Employer shall be considered to be in default and to be a "Delinquent Employer" with respect to the relevant month. Failure of an Employer to pay contributions and submit reports in the manner and on the dates herein specified shall be deemed to be a violation of the Agreement and Declaration of Trust by such Employer, except in such situations where the Trustees shall agree in writing otherwise.

Section 5. LIQUIDATED DAMAGES.

The Union, the Association, and the Employers recognize and acknowledge that regular and timely submission of reports and timely payment of Employer contributions to the Fund are essential to the maintenance and efficient operation of the Fund. It is further recognized and acknowledged that when reports and contribution payments are not submitted in a timely fashion, the Fund is required to divert the time and energies of its agents and/or employees and to incur additional expenditures in an effort to obtain an Employers' compliance all of which are contrary to the purposes and objectives of allowing Eligible Employees and their Eligible Dependents to obtain maximum benefits from the Fund to which they are entitled; and that delinquency in paying contributions causes damages to the Fund which are uncertain in amount and not easily ascertainable. It is acknowledged that such damages include administrative costs of collecting, or attempting to collect, delinquent amounts, costs or potential costs of making claim on any applicable bond, the loss to the Fund of investment potential, and the potential threat to the Fund of having to make benefit payments to Eligible Employees and/or Eligible

Dependents without having received contributions on their behalf. Therefore, the amount of damage to the Fund resulting from each and every such failure shall be presumed to be the sum outlined below as liquidated damages (and not as a penalty).

In recognition of the foregoing, it is agreed that in addition to the other provisions and remedies available concerning delinquent payments, a Delinquent Employer shall be liable, as liquidated damages and not as a penalty, for twenty percent (20%) of the amount of the delinquent contribution, but in no event shall the amount for liquidated damages be less than \$50.00 as to any single month. The sums payable as liquidated damages shall be due and payable to the Fund on the day the Employer becomes a Delinquent Employer with respect to the relevant month.

Section 6. INTEREST.

A Delinquent Employer shall be liable, in addition to all other amounts due the Fund, for interest on delinquent contributions in an amount equal to the greater of the rate prescribed at the relevant time under:

- (a) Section 6621 of the Internal Revenue Code, or
- (b) Section 28-3301(a) of the District of Columbia Code, as amended from time to time,

such amount to be calculated from the date such Employer becomes a Delinquent Employer to the date the delinquent contribution is actually paid to the Fund.

Section 7. AUDITS.

(a) Delinquent Employers. The Trustees shall have the authority and power to require, at their discretion, a Delinquent Employer to submit to an audit of its payroll and other relevant records for the purpose of determining the amounts due the Fund. The Trustees shall have the authority to engage the services of a qualified auditor to perform such an audit. In addition to all other amounts due the fund, such Delinquent Employer shall be liable to the Fund for all actual auditing costs incurred by the Fund.

(b) Non-Delinquent Employers. The Trustees, the independent auditor acting at the request of the Trustees shall have the power and authority to examine or audit the payroll and other relevant records of any Employer whenever such examination is deemed necessary by the Trustees, in their discretion, in connection with the proper administration of the Fund. The Union, the Association and the Employers recognize and acknowledge that such audits of non-Delinquent Employers may be necessary to ensure that all amounts properly due the Fund are actually paid into the Fund and that such audits may be ordered without the necessity of a finding by the Trustees that any reasons exist indicating that an Employer has failed to report all required hours and pay all required amounts into the Fund.

The Trustees shall have the authority to engage the services of a qualified auditor to perform such an audit. In the event any such audit reveals a contribution deficiency for the audited period equalling five percent (5%) or more of the amount that was required by the terms of the Collective Bargaining Agreement, Letter of Assent, Benefit Fund Agreement, or other written agreement between the Employer and the Union or the Fund and the Agreement and

to be paid to the Fund for such period, the Employer shall be liable for all actual costs of such an audit in addition to all other amounts due the Fund. In cases where an overpayment or no deficiency or a deficiency smaller than five percent (5%) as described above is disclosed, the Fund shall bear the costs of the audit. Notwithstanding the foregoing, in the event legal proceedings are commenced against an Employer to recover amounts due the Fund, such Employer shall be liable for all audit costs in addition to all other amounts due the Fund.

(c) Scheduling of Audits. Audits of Delinquent or non-Delinquent Employers shall be scheduled upon reasonable notice and during regular business hours.

Section 8. BONDS.

In circumstances indicating to the Trustees that the future receipt of contribution payments from an Employer is uncertain, the Trustees, at their discretion, may require an Employer to provide a bond for the purpose of guaranteeing payment of the Employer's contribution obligations to the Fund. Such bond shall provide for the recovery by the Fund of all amounts due the Fund, including delinquent contribution payments, audit deficiencies, liquidated damages, interest, attorneys' fees, audit costs, court costs, and all other expenses of collection incurred by the Trustees. The amount of the bond shall be determined by the Trustees. In the event an Employer's Collective Bargaining Agreement or other agreement with the Union or the Fund contains a provision regarding surety bonds, such provision shall apply in the stead of the preceding paragraph to the extent inconsistent therewith.

In the event that the Trustees do not require an Employer to post a bond, such action shall not be deemed to waive any other obligations of such Employer or remedies available to the Trustees under the Agreement and Declaration of Trust.

Section 9. SECURITY DEPOSIT.

At the discretion of the Trustees, any Employer may be required to remit in advance a cash security deposit in an amount to be determined by the Trustees in any case when circumstances indicate to the Trustees uncertainty as to future receipt of Employer contributions from an Employer. The purpose of this security deposit shall be to secure the Fund for the full and faithful performance by the Employer of the Employer's obligations under the Agreement and Declaration of Trust and the Collective Bargaining Agreement or other agreement with the Union or the Fund, so as to ensure the stability of the Fund for the protection of the interests of the participants and their beneficiaries. The security deposit shall be held by the Trustees and shall be refunded to the Employer, with or without interest, according to the discretion of the Trustees, at the time the Trustees are reasonably certain that future receipt of required Employer contributions to the Fund is no longer doubtful.

Except at the option of the Trustees, the remission of a security deposit at the demand of the Trustees shall not relieve an Employer of its obligation to make its regularly required contributions to the Fund. Generally the security deposit shall be a payment made over and above an Employer's regularly required contribution and shall not be used to reduce any amounts otherwise owing to the Fund. In the absence of written notification from the Trustees expressing

a contrary intent, a security deposit shall not be considered by the employer as paid in lieu of payments which may otherwise be due the Fund. In the event that the Trustees do not require an Employer to remit a security deposit, such action shall not be deemed to waive any other obligations of such Employer or remedies available to the Trustees under the Agreement and Declaration of Trust.

Section 10. ATTORNEYS' FEES.

The Trustees shall have the authority to consult legal counsel and to initiate legal proceedings with respect to any matter relating to collecting amounts owed the Fund or enforcing the provisions of the Agreement and Declaration of Trust, including, but not limited to, collecting contributions, liquidated damages, interest, and/or audit deficiencies and compelling a Delinquent or non-Delinquent Employer to submit to an audit or to post a security deposit. In addition to all other amounts due the Fund, an Employer shall be liable to the Fund for all actual attorneys' fees so incurred by the Trustees whether or not legal proceedings are instituted.

Section 11. COLLECTION PROCEDURES AND EXPENSES.

The Trustees shall have the authority and power to establish procedures for the prompt and efficient collection of amounts owed the Fund as provided herein, to demand, collect and receive all payments due the Fund, and to take any other action they deem necessary or appropriate in connection with the collection of amounts owed the Fund. With respect to non-hourly Employees, the Trustees shall have the authority to establish and enforce a minimum number of hours per month (or such other period as determined by the Trustees) required to be reported and contributed on by such Employees' Employers. Such collection procedures shall be binding on all Employers.

In addition to amounts owed the fund in contributions, an Employer shall be liable for liquidated damages, interest, audit deficiencies, audit costs, and attorneys' fees, all as described in this Article, court costs if legal proceedings are initiated, and all other expenses actually incurred by the Trustees relating to the collection of amounts owed the Fund or the enforcement of the provisions of the Agreement and Declaration of Trust.

Section 12. WAIVER OF COLLECTION EXPENSES.

The Trustees shall have the authority and power to waive the above-described liquidated damages and/or interest and/or audit costs and/or attorneys' fees, and/or court costs provisions under the following circumstances:

(1) Upon the occurrence of an Employer's first delinquency; provided, however, that in the event such Employer again becomes delinquent within the continuous 12-month period next following said first delinquency, the Trustees shall have the right to reimpose and collect all such amounts (regardless of any earlier waiver) relating to the first delinquency.

(2) Upon a finding by the Trustees of reasonable cause for such delinquency. In determining what constitutes reasonable cause, the Trustees may consider:

(a) the amount and duration of the delinquency;

- (b) the Employer's past record with respect to delinquencies;
- (c) the explanation for the delinquency given by the Employer,
- (d) ~~the likelihood and projected expenses~~ of collection as compared to the amount owed, and
- (e) any other factors deemed by the Trustees to be relevant.

The decision of the Trustees, with respect to waiver or non-waiver of the collection expenses, is solely within the discretion of the Trustees and such decision is to be deemed final and binding on the employer. Additionally, any such decision made with respect to one Employer shall not relieve any other Employer of its obligations to make similar payments to the Fund.

Section 13. EXTENSION, SETTLEMENT AND RELEASE.

If, based on the likelihood of collection or the expense that would be incurred in an attempt to collect any amount owed the Fund, the Trustees reasonably believe that the interests of the Eligible Employees and Eligible Dependents would be better served by extending the time for payment, the Trustees may so elect, provided that the terms of any such arrangement, agreement, or understanding with an Employer are reasonable, in writing, and in the Fund's interest, and provided that the agreement, arrangement, or understanding is made for the exclusive purpose of facilitating the collection of such contributions. The Trustees may require that any such agreement be submitted to and approved by a court of appropriate competence and jurisdiction, and/or include language making due the entire amount owing upon default of any installment payment.

If, based on the likelihood of collection or the expense that would be incurred in an attempt to collect any amount owed the Fund, the Trustees reasonably believe that the interests of the Eligible Employees and Eligible Dependents would be better served by settling with an Employer for less than the entire amount due, the Trustees may so elect, provided that the terms of the agreement, arrangement or understanding are reasonable, in writing, and in the Fund's interest. The Trustees may require that any such agreement be submitted to and approved by a court of appropriate competence and jurisdiction, and/or include language making due the entire original amount upon default of any part or installment of the compromised amount due.

If, based on the likelihood of collection or the expense that would be incurred in an attempt to collect amounts owed the Fund, the Trustees reasonably believe that the interests of the Eligible Employees and Eligible Dependents would be better served by terminating efforts to collect such amounts and by regarding such amounts as uncollectible, the Trustees may so elect, provided such decision is reasonable, in writing, and in the interests of the Fund.

Any such decision made with respect to one Employer shall not relieve any other Employer of its obligations set forth in the Agreement and Declaration of Trust.

Notwithstanding the provisions of Article III, Section 7, the Chairman and the Co-Chairman of the Trustees shall be authorized to act in the absence of a meeting on behalf of the Fund, the Plan, and the Trustees with regard to any agreement or arrangement settling or otherwise relating to a claim of the Fund, the Plan, or the Trustees against a Delinquent Employer, provided that both such officers agree on such action.

Section 14. COLLECTION COMMITTEE.

The Trustees may establish a Collection Committee for the purpose of dealing with all Employers which are obligated to the Trust Fund and who are or may be late in making monthly contributions, or in paying audit deficiencies promptly after receipt of notification or in paying the correct amount after being notified of a computational error in the monthly reports filed with the Trust Fund.

The Collection Committee shall be composed of one member appointed by the Union representatives and one member appointed by the Management representatives on the Joint Administrative Committee.

ARTICLE VI - PROTECTION OF THE FUND AND PLAN;
LIABILITIES OF TRUSTEES AND OTHERS

Section 1. BONDS.

The Trustees, every other Plan fiduciary, and every person who handles funds or other property of the Fund shall be bonded. The amount of such bond shall be fixed by the Trustees at the beginning of each Plan Year (as defined in the Plan) and shall be not less than ten percent (10%) of the amount of funds handled; however, the amount of such bond shall not be less than \$1,000 nor more than \$500,000, except as otherwise provided by the Secretary of Labor. Such bond shall provide protection to the Fund and the Plan against loss by reason of acts of the bonded individual, directly or through connivance with others. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on federal bonds under authority granted the Secretary of Treasury pursuant to Sections 6 through 13 of Title 6, United States Code. The cost of the premium on such bonds shall be paid out of the Fund.

Section 2. LIABILITY OF TRUSTEES.

Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Fund or Plan or for the nonfulfillment of contracts, but the same shall be paid out of the Fund, and, to the extent permitted by law, the Fund is hereby charged with a first lien in favor of such Trustees for their security and indemnification against any liability of any kind incurred hereunder.

Notwithstanding any other provision of this Agreement and Declaration of Trust, neither the Trustees collectively nor any individual Trustee shall be liable for any loss to the Fund or Plan or any depreciation in value of Fund or Plan assets arising out of any act or omission in the execution of their duties or out of any act or omission of a co-Trustee or other Plan fiduciary, except to the extent imposed by ERISA or other applicable law.

~~In the event the Trustees allocate specific responsibilities, including fiduciary responsibilities, obligations or duties among themselves, or designate others to carry them out, to the extent permitted by ERISA and other applicable law, the Trustees to whom certain responsibilities, obligations or duties are not allocated, or, in the case of a designation to others, all of the Trustees, shall not be liable for a breach of duty by a co-Trustee or other person to whom such responsibilities, obligations or duties have been allocated or designated.~~

To the extent permitted by ERISA and other applicable law, the Trustees shall not be liable for the acts or omissions of any Investment Manager nor shall they be under an obligation to invest or otherwise manage any Fund or Plan asset which is subject to the management and control of such Investment Manager.

To the extent permitted by ERISA and other applicable law, successor Trustees shall not be liable for the acts or omissions of prior Trustees, and they shall not be obligated to examine the accounts, records, or acts of prior Trustees.

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

No person dealing with the Trustees shall be required or entitled to see to the application of any money paid or property delivered to the Trustees or to determine whether or not the Trustees are acting pursuant to authority granted or authorizations required in this Agreement and Declaration of Trust. The certificate of the Trustees that they are acting in accordance with the Plan or this Agreement and Declaration of Trust shall protect any person relying thereon.

The Trustees may from time to time consult with their advisors and shall be entitled to rely upon such advice as may be given to them with regard to legal, actuarial, administrative, investment or other matters, and they shall be fully protected in acting or refraining from acting in accordance with such advice, to the extent permitted by ERISA and other applicable law.

If any legal proceeding is brought against the Trustees or any individual Trustee whether or not a breach of any fiduciary duty is alleged, the Fund shall bear the cost of any legal expense incurred by the Trustee or Trustees to the extent not covered by insurance and permitted by ERISA and other applicable law.

Section 3. LIABILITY OF EMPLOYERS AND UNION.

The Employers (or any individual Employer), the Association, and the Union shall not in any respect be liable, directly or indirectly, for any of the acts or omissions of the Trustees (individually or collectively), for any of the obligations, debts, or liabilities of the fund or the Plan, or for the payment or funding of Plan benefits, except to the extent of Employer contribution obligations and as required by ERISA or other applicable law.

Section 4. FIDUCIARY LIABILITY INSURANCE.

The Trustees may purchase out of Fund assets insurance for the Trustees and/or other Plan fiduciaries to cover liability for losses occurring by reason of the act or omission of a Trustee or other Plan fiduciary, provided such insurance permits recourse by the insurer against the Trustee or other fiduciary in the case of a breach of fiduciary obligation by such Trustee or other fiduciary. Nothing in the Agreement and Declaration of Trust shall preclude a Trustee, other Plan fiduciary, the Union, an Employer, or the Association from purchasing non-recourse liability insurance to cover the Trustees or other Plan fiduciaries.

ARTICLE VII - PLAN OF BENEFITS

Section 1. WRITTEN PLAN.

The detailed basis upon which the health and welfare program is operated, administered, and maintained and health and welfare benefits are paid pursuant to the Agreement and Declaration of Trust shall be specified in writing by appropriate action of the Trustees. Such writings, and all written amendments made thereto from time to time by the Trustees, shall constitute the Plan.

Section 2. BENEFITS; ELIGIBILITY.

The Trustees shall have full authority to determine and prescribe the type and amount of Plan benefits and the eligibility requirements therefor, and to adopt any and all Plan provisions and other rules and regulations as they may deem necessary or appropriate for the operation and administration of the Plan, provided that any such action shall be consistent with the terms and purposes of the Agreement and Declaration of Trust and the requirements of law and shall not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code. The Trustees shall have the authority to terminate the eligibility of Employees, under the Plan, of a Delinquent Employer (as defined in Article V, Section 4) at such time and upon such terms as they determine in their discretion.

Section 3. AMENDMENTS TO PLAN; TERMINATION.

The Trustees shall have full authority to amend the Plan, from time to time, as they deem necessary and advisable, provided, however, that no Plan amendment may be adopted which will, in any way, conflict with the terms of the Collective Bargaining Agreement, and, furthermore, that such amendments shall be consistent with the terms and purposes of the Agreement and Declaration of Trust and shall not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code. If there is no longer in force and effect a Collective Bargaining Agreement

requiring contributions to the Fund, the Trustees shall have the authority to terminate the Plan in such manner and at such time as they deem advisable, provided that any such action is agreed upon by all Trustees and that such termination shall be consistent with the requirements of ERISA and other applicable law.

Section 4. INTERPRETATION OF PLAN.

The Trustees shall have full authority to interpret the terms of the Plan and to decide all questions pertaining to the operation and administration of the Plan. Such interpretations and decisions shall be binding on the Employers, the Union, the Association, the Employees, the Dependents, and any person claiming by or through them.

Section 5. INTERNAL REVENUE SERVICE APPROVAL.

The Trustees may apply to the Internal Revenue Service for a determination as to the continued tax-exempt status of the Plan and Fund at any time deemed necessary or advisable. The Trustees are authorized to execute any and all documents or applications as are necessary in connection with such determination requests.

Section 6. INCORPORATION BY REFERENCE.

All provisions of the Collective Bargaining Agreements, Letters of Assent, Benefit Fund Agreements, other agreements between Employers and the Union or the Fund, and the Electrical Welfare Trust Fund Health and Welfare Plan (Summary Plan Description) which relate to the operation and administration of the Fund are incorporated herein by reference for purposes of complying with the "written plan" requirement of Section 402(a) of ERISA.

ARTICLE VIII - PARTICIPATION OF EMPLOYERS

Section 1. ASSOCIATION MEMBERSHIP.

By becoming a member of the Association, an Employer shall be deemed to authorize and empower the Association to enter into, and agree to be bound by, a Collective Bargaining Agreement with the Union on its behalf. Such membership shall also authorize the Association to enter into, and agree to be bound by, the Agreement and Declaration of Trust on such Employer's behalf and to authorize and empower the Association to be its agent for purposes of designating, appointing, removing, and replacing Employer Trustees hereunder.

Section 2. EXECUTION OF WRITTEN INSTRUMENT.

By executing a copy of this Agreement and Declaration of Trust or by executing, or agreeing to be bound by the terms of, a Collective Bargaining Agreement, Letter of Assent, Benefit Fund Agreement, or other written agreement with the Union or the Fund, or, by having any of the foregoing documents signed by any agent acting on its behalf, an Employer shall become bound to the provisions of this Agreement and Declaration of Trust.

Section 3. OTHER.

Nothing in Section 1 or 2 of this Article shall be construed to preclude an Employer that does not or may not comply with the requirements of such Sections from contributing to the Fund for the purpose of rendering its Employees and their dependents eligible for Plan benefits, provided that contributions by such Employer satisfy the requirements of Section 302 of the Labor Management Relations Act, 1947, 29 U.S.C. Section 186; that the participation by such Employer in the Plan through the payment of contributions to the Fund does not violate any provision of a Collective Bargaining Agreement or adversely affect the tax-exempt status of the Fund under the Internal Revenue Code, and that such participation is permitted by the Trustees.

ARTICLE IX - AMENDMENT OF AGREEMENT AND DECLARATION OF TRUST

Section 1. AMENDMENT BY TRUSTEES.

This Agreement and Declaration of Trust may be amended in any respect from time to time by the Trustees, provided that each amendment shall be duly executed in writing by the Trustees and further provided that no amendment shall be adopted which would alter the basic principles of this Agreement and Declaration of Trust, alter the provisions of Article III regarding the appointment or removal of Employer or Union Trustees, change the requirement of an equal number of Union and Employer Trustees, be in conflict with the Collective Bargaining Agreements to the extent such Agreements affect contributions to the Fund created hereunder, be in conflict with laws governing trust funds of this nature or adversely affect the tax-exempt status of the Fund under the Internal Revenue Code. As to any such amendment the Trustees in their sole discretion shall have full power to fix the effective date thereof.

Section 2. AMENDMENT BY UNION AND THE ASSOCIATION.

The Union, as party of the first part and the Association and other Employers, as party of the second part, by mutual agreement, shall have the power to amend this Agreement and Declaration of Trust in any respect; provided, however, that no such amendment shall be adopted which would be in conflict with laws governing trust funds of this nature or adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

Section 3. NOTIFICATION OF AMENDMENT.

Whenever an amendment is adopted in accordance with this Article, a copy thereof shall be distributed to all Trustees, and the Trustees shall so notify the Union, the Association and the Employers, provided, however, that the amendment shall be effective, with regard to the Association and all employers, whether or not such parties shall have received actual notice of the amendment.

ARTICLE X - TERMINATION OF AGREEMENT AND DECLARATION OF TRUST

Section 1. BY THE TRUSTEES.

This Agreement and Declaration of Trust may be terminated by an instrument in writing executed by all the Trustees if there is no longer in force and effect a Collective Bargaining Agreement requiring contributions to the Fund.

Section 2. BY THE UNION AND THE ASSOCIATION.

This Agreement and Declaration of Trust may be terminated by an instrument in writing duly executed by the Union, as party of the first part, and the Association and other Employers, as party of the second part, by mutual agreement, specifically evidencing an intention to effect such a termination.

Section 3. EFFECT OF TERMINATION OF COLLECTIVE BARGAINING AGREEMENT ON AGREEMENT AND DECLARATION OF TRUST, FUND, AND PLAN.

The Union, the Association, and the Employers intend for the Fund, the Plan and the Agreement and Declaration of Trust to exist and be maintained and administered without regard to whether any Collective Bargaining Agreement terminates, either finally or pending negotiations between the collective bargaining parties. Termination of the Fund and the Agreement and Declaration of Trust shall only occur upon the taking of the appropriate action pursuant to this Article X.

Section 4. PROCEDURE ON TERMINATION.

In the event of the final termination of this Agreement and Declaration of Trust and the Fund, the Trustees may proceed with the termination of the Plan or take such other action as permitted by law. If the Plan is terminated, the Trustees shall have full authority to take any and all action required by law in connection with such termination and any other action permitted by law deemed by them to be necessary to accomplish the prompt and equitable completion of matters relating to such termination. The Trustees shall continue to serve as trustees and Fund assets shall continue to be held in trust until all matters relating to termination have been completed. Upon termination after payment of all pending benefit claims reasonable expenses, taxes, and proper charges, Fund assets shall be allocated and distributed in the manner, and to the persons, which the Trustees determine will best effectuate the purposes hereof, provided that such allocation and distribution shall be in the best interests of Eligible Employees and Eligible Dependents, shall not unduly impair the benefit rights of such eligible persons existing at the time of termination, and shall be consistent with the provisions of ERISA, the Internal Revenue Code and other applicable law.

Section 5. NOTIFICATION OF TERMINATION.

Upon termination of the Fund in accordance with this Article, the Trustees shall forthwith notify the Union, the Association, and each Employer.

ARTICLE XI - MISCELLANEOUS

Section 1. SITUS.

The City of Washington, District of Columbia, shall be deemed to be the situs of the Fund created hereunder and the jurisdiction in which the Fund and the Plan are administered. All questions pertaining to the validity, construction and administration of this Agreement and Declaration of Trust, the Fund, and the Plan shall be determined in accordance with the laws of the District of Columbia and of the United States.

Section 2. SEVERABILITY.

Should any provision in this Agreement and Declaration of Trust or in the Plan or rules and regulations adopted thereunder, or in any Collective Bargaining Agreement, Letter of Assent, Benefit Fund Agreement, or other agreement with the Union or the Fund, be deemed or held to be unlawful or invalid for any reason, such provision, rule or regulation shall be deemed to be stricken therefrom and of no force and effect and such fact shall not adversely affect the other provisions herein and therein contained unless such illegality shall make impossible or impractical the functioning of the Fund and the Plan, and in such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

Section 3. WORDS USED.

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

IN WITNESS WHEREOF, the Union, the Association, and the Trustees, pursuant to Article IX, Sections 1 and 2 of the Agreement and Declaration of Trust Establishing the Electrical Welfare Trust Fund, do hereby adopt the foregoing SECOND RESTATEMENT and the undersigned, being duly authorized, cause same to be duly executed. This SECOND RESTATEMENT shall be effective as of the _____ day of _____, 19__.

LOCAL NO. 26 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

By: Harry J. Carter
Title: President
Date: 9/28/88

WASHINGTON, D.C. CHAPTER
NATIONAL ELECTRICAL CONTRACTORS
ASSOCIATION

By: Andrew Carter
Title: Executive Director
Date: 9-28-88

The undersigned Trustees acknowledge having read the foregoing SECOND RESTATEMENT and by signing said document hereby agree to its terms, to act as Trustees hereunder, and to comply with said terms.

TRUSTEES:

<u>Harry A. Carter</u>	Date: <u>9/28/88</u>
<u>Richard A. White</u>	Date: <u>9/28/88</u>
<u>John E. Hansen</u>	Date: <u>9/28/88</u>
<u>Michael H. Walker</u>	Date: <u>9-28-88</u>
<u>Francis A. Wilson</u>	Date: <u>Oct. 6, 1988</u>
<u>George J. ...</u>	Date: <u>10-14-88</u>

EXHIBIT B

COPY

SECOND RESTATEMENT

OF THE

OPERATING ENGINEER TRUST FUND

OF WASHINGTON, D.C.

AGREEMENT AND DECLARATION OF TRUST

RESTATED MAY 12, 1988

SECOND RESTATEMENT
OF THE
OPERATING ENGINEER TRUST FUND
OF WASHINGTON, D.C.
AGREEMENT AND DECLARATION OF TRUST

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SECOND RESTATEMENT
OF THE
OPERATING ENGINEER TRUST FUND
OF WASHINGTON, D.C.
AGREEMENT AND DECLARATION OF TRUST

This second restatement of the OPERATING ENGINEERS TRUST FUND OF WASHINGTON, D.C. AGREEMENT AND DECLARATION OF TRUST is made and entered into as of the 16th day of February, 1988, by and between the International Union of Operating Engineers, Local No. 77 (Union) and the Construction Contractors Counsel/AGC Labor Division, Inc., the Washington, D.C. Excavating Contractors Association, the Equipment Rental Employers Association and the utility contractors (Associations), and such other employers who are or who may become signatory Employers to this Agreement, and the Trustees of the Fund.

WITNESSETH:

WHEREAS, the Union, the Associations, and other employers by collective bargaining agreements did authorize and direct the creation, establishment and continuation of the Operating Engineers Trust Fund (Fund) and the appointment of trustees to serve thereunder; and

WHEREAS, the trustees initially named to serve on the Fund did enter into and execute the Operating Engineers Trust Fund of Washington, D.C. Agreement and Declaration of Trust providing for the establishment of the Fund and setting forth the terms and conditions upon which the Fund was to be administered and maintained; and

WHEREAS, the parties desire to set forth certain amended terms and conditions upon which the Fund is to be henceforth administered and maintained; and

WHEREAS, in order to have in the record a single document comprising the complete Agreement and Declaration of Trust, the parties have decided to incorporate all amendments heretofore made and entered into as of this day, into this SECOND RESTATEMENT.

NOW, THEREFORE, in consideration of the premises, it is mutually understood and agreed, that the Operating Engineers Trust Fund of Washington, D.C. Agreement and Declaration of Trust is hereby amended and restated as follows:

ARTICLE I - DEFINITIONS.

Section 1. EMPLOYER.

The term "Employer" shall mean:

(a) An employer who contributes, or is required to contribute, to the Fund pursuant to the terms of a Collective Bargaining Agreement or other written agreement with the Union or the Fund.

(b) The Union, which shall be considered as the Employer of the employees of the Union for whom contributions are made, or required to be made, to the Fund pursuant to the terms of an agreement with the Fund, provided that coverage of such employees satisfies the requirements of the Internal Revenue Code relating to the tax-exempt status of the Fund.

(c) The Fund, the Operating Engineers Pension Trust Fund, the Operating Engineers Skill Improvement and Joint Apprenticeship Training Committee, or any other affiliated trust fund covering the same membership as covered under the Plan, which, if permitted by the Trustees, shall be considered as Employers of the employees of such trust fund for whom contributions are made, or required to be made, to the Fund pursuant to the terms of an agreement with the Fund, provided that coverage of such employees satisfies the requirements of the Internal Revenue Code relating to the tax-exempt status of the Fund.

(d) The Associations (or any Additional Associations), which, if permitted by the Trustees, shall be considered as the Employer of the employees of such Associations (or Additional Associations) for whom contributions are made, or required to be made, to the Fund pursuant to the terms of a written agreement with the Fund, provided that coverage of such employees satisfies the requirements of the Internal Revenue Code relating to the tax-exempt status of the Fund.

(e) Notwithstanding subsections (a) - (d), an employer shall not be deemed to be an "Employer" solely by virtue of its membership in a controlled group of corporations (within the meaning of §1563 of the Internal Revenue Code), one of which is an "Employer".

Section 2. EMPLOYEE.

(a) The term "Employee" shall mean:

(i) an employee of an Employer for whom contributions are made, or required to be made, to the Fund pursuant to a Collective Bargaining Agreement or other agreement with the Union or the Fund; or

(ii) an employee of an Employer whose participation in the Plan is permitted by the Trustees and does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

(b) Notwithstanding subsection (a), the term "Employee" shall not include anyone who is a sole proprietor or anyone who is not permitted to participate in the Plan by any provision of applicable law.

Section 3. ELIGIBLE EMPLOYEE.

The term "Eligible Employee" shall mean an Employee who is eligible under the terms of the Plan for benefits.

Section 4. DEPENDENT.

The term "Dependent" shall mean an Employee's spouse and other such individuals as the Trustees, in their discretion, shall select from Section 152(a) of the Internal Revenue Code and enumerate in the Plan.

Section 5. ELIGIBLE DEPENDENT.

The term "Eligible Dependent" shall mean a Dependent who is eligible under the terms of the Plan for benefits.

Section 6. UNION.

The term "Union" shall mean the International Union of Operating Engineers, Local No. 77 and its subordinate branches.

Section 7. ASSOCIATIONS.

The term "Associations" shall mean the Construction Contractors Council/AGC Labor Division, Inc., the Washington, D.C. Excavating Contractors Association, the Equipment Rental Employers Association and the utility contractors or their successor organizations.

Section 8. ADDITIONAL ASSOCIATIONS.

The term "Additional Associations" shall mean any association or group of Employers, other than the Associations named in Section 7 of this Article, which is, or becomes a party to a collective bargaining or other written agreement with the Union, or which represents Employers that are parties to such an agreement with the Union, which agreement requires the payment of contributions into the Fund.

Section 9. TRUSTEES.

(a) The term "Employer Trustees" shall mean the Trustees appointed and certified by the Associations.

(b) The term "Union Trustees" shall mean the Trustees appointed and certified by the Union.

(c) The term "Trustees" shall mean the Employer Trustees and the Union Trustees, collectively, and shall include their successors when acting as Trustees. The Trustees shall be the Plan's "named fiduciaries", within the meaning of Section 402(a) of ERISA, with respect to the operation and administration of the Plan and with respect to the management and control of the assets of the Plan and of the Fund.

Section 10. AGREEMENT AND DECLARATION OF TRUST.

The term "Agreement and Declaration of Trust" shall mean the Operating Engineers Trust Fund of Washington, D.C. Agreement and Declaration of Trust, as amended from time to time.

Section 11. PLAN.

The term "Plan" shall mean the Operating Engineers Trust Fund of Washington, D.C. Health and Welfare Plan, as amended from time to time.

Section 12. FUND.

The term "Fund" shall mean the Operating Engineers Trust Fund of Washington, D.C., and shall mean generally the moneys or other things of value which comprise the corpus and additions to the Fund.

Section 13. COLLECTIVE BARGAINING AGREEMENT.

The term "Collective Bargaining Agreement" shall mean any of the collective bargaining agreements entered into from time to time between the Union and any Employer or any association of Employers, together with any modifications or amendments thereto.

Section 14. INTERNAL REVENUE CODE.

The term "Internal Revenue Code" shall mean the Internal Revenue Code of 1986, as amended.

Section 15. ERISA.

The term "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

Section 16. INVESTMENT MANAGER.

The term "Investment Manager" shall mean a fiduciary that meets the requirements specified in §3(38) of ERISA.

Section 17. ADMINISTRATIVE AGENT.

The term "Administrative Agent" shall mean any independent private consultant retained by the Trust Fund under contract for the purpose of assisting in the administration of the trust fund.

ARTICLE II - OPERATING ENGINEERS TRUST FUND OF WASHINGTON, D.C.

Section 1. CONTINUATION OF FUND.

There is hereby continued the Operating Engineers Trust Fund of Washington, D.C. to be used for the purposes herein set forth.

Section 2. GENERAL PURPOSE.

The Fund shall be used for the purposes of providing for the payment of such life, sickness, accident and other benefits for Eligible Employees and Eligible Dependents as may be decided by the Trustees and permitted by law and of defraying the reasonable expenses incurred in the administration of the Plan and the Fund; provided, however, that the Fund shall not be used in any manner which would adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

Section 3. APPLICATION OF ASSETS.

Except as specifically permitted by ERISA, the Internal Revenue Code, and other applicable law, the assets of the Fund and the Plan shall never inure to the benefit of any Employer and shall be held for the exclusive purposes of providing for the payment of Plan benefits and of defraying reasonable expenses of administering the Fund and the Plan.

To the extent permitted by ERISA, the Internal Revenue Code, and other applicable law, Fund assets may be returned to Employers upon termination of the Fund and the Plan in accordance with Article X.

Employer contributions to the Fund may be returned to the Employer, in the manner and to the extent approved by the Trustees, under circumstances satisfying the requirements of Section 403(c) of ERISA and other applicable law, provided that such action does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

Section 4. VESTED RIGHTS.

No Employer, Employee, Dependent, or other person claiming by or through such person or entity shall have any right, title, claim or interest in or to the Fund except as may be specifically provided for in the Agreement and Declaration of Trust or the Plan, as both are interpreted by the Trustees.

Section 5. ENCUMBRANCE OF BENEFITS.

Except as may be specifically provided by the Trustees and permitted by law, neither the Fund nor any part thereof, nor any of the benefits or moneys payable therefrom shall be subject in any manner by any Employer, Employee, Dependent, or other person claiming by or through such person or entity, by verbal agreement, assignment, or other written instrument, debt, expense, damage, or other claim, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void.

Section 6. BOOKS OF ACCOUNT.

The Trustees shall keep true and accurate books of account and records of all their transactions. Except to the extent required by law or approved by the Trustees, all books, records, papers, reports, documents or other information obtained with respect to the Fund or the Plan shall be confidential and shall not be made public. The Trustees may delegate all or part of their duty to keep such books and records to the administrative agent or other administrative personnel.

Section 7. AUDIT.

An annual audit shall be made of the Fund by one or more independent certified public accountant(s) selected by the Trustees. A statement of the result of such audit shall be available for inspection by interested persons at the principal office of the Fund and at such other places as may be designated by the Trustees.

Section 8. CERTAIN INVESTMENT INCOME.

At the conclusion of each Plan Year (as defined in the Plan), the Trustees shall determine the net investment income of the Fund and, on or before the date prescribed for filing the Exempt Organization Business Income Tax Return (Form 990 Series) for the taxable year (including any extensions of time), shall specify the amount so determined and require such amount to be set aside for the payment of life, sickness, accident and other benefits and the reasonable expenses incurred in the administration of the Plan.

ARTICLE III - TRUSTEES.

Section 1. APPOINTMENT AND TERM.

There shall be eight (8) regular and two (2) alternate Trustees appointed in the following manner. Four (4) Employer Trustees shall be appointed by the Associations and four (4) Union Trustees shall be appointed by the Union. The Associations and the Union may each appoint one (1) alternate Trustee who may attend all meetings of the Trustees and participate in all discussions at such meetings. If all four regular Trustees of either group are present at a meeting, such group's alternate Trustee shall have no vote on any action taken at such meeting. Otherwise, the alternate Trustees shall have full authority to act and vote as would a regular Trustee and shall be counted for purposes of establishing a quorum. Each regular or alternate Trustee shall serve until his death or incapacity or the effective date of his resignation or removal, as herein provided.

Section 2. RESIGNATION AND REMOVAL.

A Trustee may resign at any time by giving thirty (30) days written notice to the other Trustees and such resignation shall take effect at the time specified therein, or if no time is specified, then thirty (30) days after receipt thereof; provided, however; that no Trustee may resign and no resignation shall be effective if such resignation would materially hinder the operation of the Fund and Plan, in which case the resignation shall not take effect until a successor Trustee has accepted appointment to the trusteeship pursuant to Section 3 of this Article. An Employer Trustee may be removed and replaced by the respective Association which appointed such Trustee with or without cause at any time. A Union Trustee may be removed and replaced by the Union with or without cause at any time. In the event that there is a contrary provision in the Collective Bargaining Agreement, the Collective Bargaining Agreement shall govern.

Section 3. SUCCESSOR TRUSTEES AND ACCEPTANCE OF TRUSTEESHIP.

Upon being appointed and certified, each successor Trustee shall execute a standard written "Acceptance of Trusteeship" in addition to a signature page to this Agreement and Declaration of Trust and by so doing shall agree to accept the trusteeship and act in accordance with the provisions hereof.

Section 4. CHANGE IN COMPOSITION OF BOARD OF TRUSTEES BY RESIGNATION, REMOVAL, INCAPACITY OR DEATH AND CERTIFICATION THEREOF TO THE TRUST FUND.

In the event of any change in the composition of the Board of Trustees by reason of the resignation, removal, incapacity or death of one or more Trustees, the Associations (in the case of Employer Trustees) and/or the Union (in the case of Union Trustees) as the case may be, shall certify in writing to the Trust Fund as to the identity of the replacement Trustee(s) and said replacement Trustee(s)' term of office as Trustee(s). If no fixed term of office is to apply, then the term shall be considered indefinite. The Associations' certifications shall be executed by the Board of Directors or Officer(s) of the respective Association effecting the change; Union certifications shall be executed by the Business Manager of Union Local No. 77, Operating Engineers. In the event an Employer Trustee resigns, dies, or becomes incapacitated, the remaining Employer Trustees shall have the right and power to appoint an interim Employer Trustee to serve until such time as a new Employer Trustee is appointed, provided that there is a delay of at least 15 days in the making of the new appointment.

Section 5. OFFICERS OF TRUSTEES.

There shall be elected, by the Trustees, a Chairman and Secretary, one appointed from among the Union Trustees and one appointed from among the Employer Trustees.

The Chairman and Secretary, once elected, shall continue to serve as such until the conclusion of their terms as herein provided. The terms of the Chairman and Secretary shall be four (4) years. At the conclusion of each term of office, the group whose Trustee was the Chairman shall nominate a Trustee from their group to be the next Secretary and the group whose Trustee was the Secretary shall nominate a Trustee from their group to be the next Chairman. Upon the occurrence of a vacancy in either office, the Trustees shall elect from their number a new such officer for the same office as the vacating Trustee. At no time shall both offices be held by Trustees designated by the same group.

Section 6. MEETINGS OF TRUSTEES.

The Trustees shall determine the time and place for their regular periodic meetings. Either the Chairman or the Secretary, or any two Trustees, may call a special meeting of the Trustees by giving written notice to all other Trustees of the time and place of such meeting at least four (4) days before the date set for the meeting. Any meeting at which all Trustees are present, or concerning which the absent Trustees waive notice in writing, shall be a valid meeting without the giving of any notice.

Section 7. ACTION BY TRUSTEES WITHOUT MEETING.

Any action required or permitted to be taken at a meeting of the Trustees may be taken without a meeting, provided that all Trustees concur in writing.

Section 8. QUORUM.

At any regular or special meeting of the Trustees, the physical presence of at least two (2) Employer Trustees and two (2) Union Trustees shall constitute a quorum.

Section 9. VOTING.

All action by the Trustees at a regular or special meeting shall be by majority vote of the Employer and Union Trustees present at such meeting, but in voting on any question, neither group of Trustees shall be permitted to cast more votes in the aggregate than the other. Such majority vote requirement shall govern any action of the Trustees under this Agreement and Declaration of Trust, except as otherwise specifically provided herein.

Section 10. MINUTES OF MEETINGS.

The Trustees shall keep written minutes of all meetings but such minutes need not be verbatim.

Section 11. CONDUCT OF BUSINESS.

The rules and procedures governing the conduct of business at Trustees' meetings shall be determined by the Trustees.

Section 12. DISPUTE RESOLUTION.

In the event any matter cannot be decided pursuant to Section 9 of this Article or because of the lack of a quorum at two (2) consecutive meetings, the Trustees shall appoint a neutral person to serve as an impartial umpire to decide the dispute. In the event the Trustees cannot agree upon an impartial umpire within 10 days, the Employer Trustees or the Union Trustees shall have the power and right to petition the United States District Court for the District of Columbia for an appointment of an impartial umpire.

The decision of the impartial umpire shall be final and binding upon the Trustees, the Employers, the Union, any Association, the Employees, the Dependents, and any person claiming by or through them. Any matter in dispute and to be resolved shall be submitted to the impartial umpire in writing, and in making his decision, the umpire shall be bound by the provisions of the Agreement and Declaration of Trust, the Plan, and the Collective Bargaining Agreements and other agreements between an Employer and the Union or the Fund and shall have no authority to alter or amend the terms of any such documents. If the Trustees cannot jointly agree upon a statement submitting said matter to dispute resolution, each group shall prepare and state in writing, its version of the dispute and the question or questions involved. In the discretion of the impartial umpire, a hearing may be held on the question or questions to be decided. Each group of Trustees, or their representative, may participate in any such hearing.

The reasonable expense of any such dispute resolution, including any necessary court proceedings to secure the appointment of an umpire or the enforcement of the impartial umpires decision and/or award, shall be a proper charge against the Fund to the extent approved by the Trustees and permitted by ERISA and other applicable law.

Section 13. COMPENSATION AND EXPENSES.

The Trustees may receive reasonable compensation in the amount determined by the Trustees for services rendered to the Fund, except that no Trustee who already receives full-time pay from an Employer, any Association, or the Union shall receive any compensation. Notwithstanding the preceding sentence, any Trustee who is not paid his usual wages or salary during an absence from his job caused by his being engaged in Fund business (including Trustees' meetings and educational conferences) may be reimbursed the amount of compensation he would have received had he worked during the period he was absent, provided such reimbursement is authorized by the Trustees.

Any Trustee or other Plan fiduciary shall be entitled to reimbursement for those direct expenses which are properly and actually incurred in performing duties for the Fund or the Plan provided such reimbursement is authorized by the Trustees. Moneys for such expenses may be advanced to the Trustees or other Plan fiduciaries, provided that the amount advanced is reasonable with respect to the anticipated amount of the expense and that after the expense has been incurred a full and complete accounting is provided and all moneys in excess of those relating to direct expenses which were properly and actually incurred are returned to the Fund.

ARTICLE IV -ADMINISTRATION AND MANAGEMENT OF ASSETS; POWERS AND DUTIES OF TRUSTEES.

Section 1. ADMINISTRATION.

The Trustees shall have the authority to control and manage the operation and administration of the Plan and the Fund and shall have all powers necessary or appropriate in connection therewith. To the extent permitted by ERISA and other applicable law, any person or group of persons may serve in more than one fiduciary capacity with respect to the Fund and the Plan.

Section 2. MANAGEMENT OF ASSETS.

All right, title and interest in and to the assets of the Plan and of the Fund shall at all times be vested in the Trustees. The Trustees jointly shall have the exclusive authority and discretion to manage, control, and invest assets of the Plan and of the Fund at their discretion in any legal manner, provided that any such action shall be consistent with their fiduciary duties under ERISA and shall not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code. The Trustees may delegate their authority to manage and control all or part of the assets of the Plan or of the Fund to one or more Investment Manager(s). In the event assets of the Plan or of the Fund are invested in any group trust or other similar vehicle, to the extent necessary to maintain the tax-exempt status of the Fund under the Internal Revenue Code, the instrument pursuant to which said

group trust or other similar vehicle is established and maintained shall be deemed to be incorporated by reference herein and adopted as a part hereof.

Section 3. FUNDING POLICY AND METHOD.

The Trustees shall meet periodically with the administrative agent and their other advisors to discuss, establish, re-establish or amend and effect the Plan's funding policy and method. The Trustees shall determine at such meetings the Plan's short-term and long-term funding requirements and shall take such action as in their judgment is indicated to accomplish the objectives of the Plan consistent with the requirements of ERISA.

Section 4. ALLOCATION OF RESPONSIBILITIES.

The Trustees may allocate responsibilities, including fiduciary responsibilities, for the operation and administration of the Fund or of the Plan among themselves, or may designate others to carry out such responsibilities; provided, however, that the Trustees shall not allocate or designate the responsibility to manage or control Fund or Plan assets except in the case of the appointment of an Investment Manager. Any such allocation, designation or appointment shall be in writing and shall be approved by unanimous vote of the Trustees.

Section 5. GENERAL POWERS.

In addition to all other powers specified herein or conferred by law, the Trustees are hereby empowered:

(a) To enter into such contracts or agreements for carrying out the terms of the Agreement and Declaration of Trust or for the administration of the Plan or of the Fund, as they in their discretion, may deem necessary or appropriate.

(b) To compromise, settle, arbitrate, or release any claim in favor of or against the Plan, the Fund, or the Trustees on such terms and conditions as the Trustees may deem advisable and to determine which claims in favor of the Plan, the Fund, or the Trustees shall be prosecuted and the extent to which such claims shall be prosecuted, abandoned, compromised, released or otherwise concluded.

(c) To establish and accumulate as part of the Fund a reserve adequate in the opinion of the Trustees to carry out the purposes of the Plan and the Fund.

(d) To pay out of the Fund all real or personal property, income, or other taxes that may be levied or assessed under applicable laws upon or in respect to the Fund or the Plan or any money, property, or security forming a part thereof.

(e) To enter into reasonable arrangements which comply with ERISA and other applicable law with the Union or other employee benefit plans or trust funds for the sharing of administrative or other common expenses.

(f) To receive contributions (including contributions from Employees) or payments from any source to the extent permitted by law, provided that such receipt does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

(g) To appoint one or more Investment Manager(s) and to enter into and execute agreements with such Investment Manager(s) providing for the investment and reinvestment of assets of the Fund and/or of the Plan and the transfer to such Investment Manager(s) of all or any portion of such assets.

(h) To delegate any administrative powers or duties to agents, employees or representatives.

(i) To invest the assets of the Fund and/or of the Plan in any common, collective, commingled, group or pooled investment, including deposits which bear a reasonable interest rate in any FDIC insured bank or other financial institution or in such other accounts as the Trustees may from time to time select, to the extent permitted by ERISA and other applicable law, provided that such investment does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

(j) To invest assets of the Fund in any collective, commingled, group or pooled investment (as identified by written resolution of the Trustees authorizing such investment), which is exempt from taxation as a group trust under Sections 401(a) and 501(a) of the Internal Revenue Code to the extent permitted by ERISA and other applicable law, provided that such investment does not adversely affect the tax-exempt status of the Fund under the Code. In the event of such investment, the provisions of the collective, commingled, group or pooled investment trust shall be deemed to be a part of the Plan.

(k) To incur and pay out of the Fund the reasonable expenses of the Trustees' attendance at education programs or conferences relating to the administration and operation of the Fund and Plan.

(l) To make payments out of the Fund to Eligible Employees, Eligible Dependents, or any other person expressly authorized by such eligible individuals or by the terms of the Plan for benefits such persons may become entitled to under the Plan.

(m) To enter into group or individual insurance contracts with insurance companies for the purpose of providing for the funding and payment of Plan benefits and to pay any premiums relating thereto.

(n) To borrow money from any legal source in such amounts and upon such terms as the Trustees deem necessary or advisable in the administration of the Fund and Plan and to pledge the Fund for the repayment of any such loan to the extent permitted by law.

(o) To pay all reasonable costs, expenses and charges incurred in the administration and operation of the Fund and Plan.

(p) To open and maintain accounts of any type and in any banking institution as the Trustees may deem necessary or advisable in the administration and operation of the Fund and Plan, and to authorize anyone to sign checks upon such accounts.

(q) To construe the provisions of the Agreement and Declaration of Trust, and any such construction adopted by the Trustees shall be binding on any Association, the Union, the Employers, the Employees, the Dependents, and any person claiming by or through them.

(r) To authorize any single Trustee or group of Trustees to execute any document, instrument or other writing on behalf of all the Trustees, and any person or entity may rely upon such authority as having been duly authorized and such writing as being binding on all of the Trustees.

(s) To enter into reciprocity, merger, or other similar agreements with other trustees of other employment benefit plans or the trustees of other trust funds and to take all action necessary or appropriate in connection therewith; provided, however, that such action is consistent with the requirements of ERISA and other applicable law and does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

(t) To Purchase, hold, or lease such premises, materials, supplies and equipment, and to hire, employ, and retain such legal counsel, Investment Manager, administrative agent, accountant, actuary, and any other clerical, administrative, or professional personnel as in their discretion they may deem necessary or appropriate in the performance of their duties or in the administration of the Fund or Plan. Such persons shall be compensated from Fund assets in the amounts and in the manner determined by the Trustees.

(u) To do all acts and to adopt all rules and regulations for the administration and operation of the Plan and Fund, whether or not expressly authorized herein, as the Trustees may deem necessary or advisable to accomplish the general objectives and purposes set forth herein.

ARTICLE V - CONTRIBUTIONS TO THE FUND

Section 1. CONTRIBUTION REQUIREMENT.

Each Employer shall contribute to the Fund the amount required by or specified in the Collective Bargaining Agreement, or by other agreement between the Employer and the Union or the Fund. By paying contributions into the Fund, an Employer shall be deemed to have accepted and agreed to be bound by the terms of the Agreement and Declaration of Trust. Employer contributions shall constitute an absolute obligation to the Fund, and such obligation shall not be subject to any defense, set-off, or counterclaim which the Employer may have with respect to the Union or any Employee or the Fund. Delayed payment, partial payment, or nonpayment by any Employer of any amount due the Fund in contributions, liquidated damages, interest, audit deficiencies, audit costs, attorneys fees or other costs of collection shall not relieve any other Employer from its obligation to make similar payments to the Fund. To the extent permitted by law, the entire obligation of an Employer hereunder shall be limited to the payment of such amounts as are required by the aforesaid agreements and by the Agreement and Declaration of Trust.

Section 2. EMPLOYERS' PAYROLL RECORDS.

All Employers shall be required to maintain proper bookkeeping procedures and records in order to facilitate payroll audits by the Trustees. Said proper bookkeeping procedures and records shall include the maintenance of a clear record of the total hours for which all Employees are paid by the Employer, whether or not for the performance of duties or services for the Employer. Such records shall include hours for which Employees are paid due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, leave of absence, back pay, and all other paid hours.

The Trustees shall have the right to require an Employer to furnish such payroll reports, time cards, withholding statements, and other relevant records as they deem necessary to ensure compliance with the Collective Bargaining Agreement, or other written agreement between the Union or the Fund and the Employer and the Agreement and Declaration of Trust. The Trustees, their agent, or the independent auditor acting at the request of the Trustees, shall have the right to inspect, at reasonable times during business hours, the above-described records of any Employer.

Section 3. PAYMENTS AND REPORTS.

All contributions shall be payable to the Fund. The Employer shall prepare and submit monthly reports which shall specify for each Employee, his name, social security number, hours for which contributions are due and such other pertinent information as may be required by the Trustees. The frequency with which Employers shall be obligated to submit such reports may be varied by the Trustees from time to time, consistent with the terms of the Collective Bargaining Agreement.

A Delinquent Employer may be required at the discretion of the Trustees to make contributions to the Fund and to file reports on a weekly or bi-weekly, rather than on a monthly, basis.

Employer contributions shall be paid in such form of legal tender as may be required at the discretion of the Trustees. Such form of payment may include cash payments, payment by check or money order, certified check, cashier's check, or such other form as the Trustees may from time to time require.

Section 4. DEFAULT IN PAYMENT; DELINQUENT EMPLOYER.

Contribution payments and reports shall be due on the date specified in the Collective Bargaining Agreement or other written agreement between the Employer and the Union or the Fund. If no due date is specified in such agreement, contribution payments and reports shall be due within thirty (30) days of the end of the month in which the contribution obligation was incurred. If contribution payments are not received by such due date, the Employer shall be considered to be in default and to be a "Delinquent Employer" with respect to the relevant month. Failure of an Employer to pay contributions and submit reports in the manner and on the dates herein specified shall be deemed to be a violation of the Agreement and Declaration of Trust by such Employer, except in situations in which the Trustees shall agree in writing otherwise.

Section 5. LIQUIDATED DAMAGES.

The Union, the Associations (and any Additional Associations), and the Employers recognize and acknowledge that regular and timely submission of reports and timely payment of Employer contributions to the Fund are essential to the maintenance and efficient operation of the Fund. It is further recognized and acknowledged that when reports and contribution payments are not submitted in a timely fashion, the Fund is required to divert the time and energies of its agents and/or employees and to incur additional expenditures in an effort to obtain Employers' compliance, all of which are contrary to the purposes and objectives of allowing Eligible Employees and their Eligible Dependents to obtain maximum benefits from the Fund to which they are entitled; and that delinquency in paying contributions causes damages to the Fund which are uncertain in amount and not easily ascertainable. It is acknowledged that such damages include administrative costs of collecting, or attempting to collect, delinquent amounts, costs or potential costs of making claim on any applicable bond, the loss to the Fund of investment potential, and the potential threat to the Fund of having to make benefit payments to Eligible Employees and/or Eligible Dependents without having received contributions on their behalf. Therefore, the amount of damage to the Fund resulting from each and every such failure shall be presumed to be the sum outlined below as liquidated damages (and not as a penalty).

In recognition of the foregoing, it is agreed that in addition to the other provisions and remedies available concerning delinquent payments, a Delinquent Employer shall be liable, as liquidated damages and not as a penalty, for twenty percent (20%) of the amount of the delinquent contribution, but in no event shall the amount for liquidated damages be less than \$50.00 as to any single month. The sums payable as liquidated damages shall be due and payable to the Fund on the day the Employer becomes a Delinquent Employer with respect to the relevant month.

Section 6. INTEREST.

A Delinquent Employer shall be liable, in addition to all other amounts due the Fund, for interest on delinquent contributions in an amount equal to that prescribed under the applicable Collective Bargaining Agreement.

In the event that no interest rate is stated in the applicable Collective Bargaining Agreement, then the amount of interest on the delinquent contributions shall be in an amount equal to the greater of the rate prescribed at the relevant time under:

- (a) Section 6621 of the Internal Revenue Code, or
- (b) Section 28-3301(a) of the District of Columbia Code, as amended from time to time,

such amount to be calculated from the date such Employer becomes a Delinquent Employer to the date the delinquent contribution is actually paid to the Fund.

Section 7. AUDITS.

(a) Delinquent Employers. The Trustees shall have the authority and power to require, at their discretion, a Delinquent Employer to submit to an audit of its payroll and other relevant records for the purpose of determining the amounts due

the Fund. The Trustees shall have the authority to engage the services of a qualified auditor to perform such an audit. In addition to all other amounts due the fund, such Delinquent Employer shall be liable to the Fund for all actual auditing costs incurred by the Fund.

(b) Non-Delinquent Employers. The Trustees or the independent auditor acting at the request of the Trustees, shall have the power and authority to examine or audit the payroll and other relevant records of any Employer whenever such examination is deemed necessary by the Trustees, in their discretion, in connection with the proper administration of the Fund. The Union, the Associations (and any Additional Association) and the Employers recognize and acknowledge that such audits of non-Delinquent Employers may be necessary to ensure that all amounts properly due the Fund are actually paid into the Fund and that such audits may be ordered without the necessity of a finding by the Trustees that any reasons exist indicating that an Employer has failed to report all required hours and pay all required amounts into the Fund.

The Trustees shall have the authority to engage the services of a qualified auditor to perform such an audit. In the event any such audit reveals a contribution deficiency for the audited period equalling ten percent (10%) or more of the amount that was required by the terms of the Collective Bargaining Agreement, or other written agreement between the Employer and the Union or the Fund and the Agreement and Declaration of Trust to be paid to the Fund for such period, the Employer shall be liable for all actual costs of such an audit in addition to all other amounts due the Fund. In cases where an overpayment or no deficiency or a deficiency smaller than ten percent (10%) as described above is disclosed, the Fund shall bear the costs of the audit. Notwithstanding the foregoing, in the event legal proceedings are commenced against an Employer to recover amounts due the Fund, such Employer shall be liable for all audit costs in addition to all other amounts due the Fund.

(c) Scheduling of Audits. Audits of Delinquent or non-Delinquent Employers shall be scheduled upon reasonable notice and during regular business hours.

Section 8. BONDS.

In circumstances indicating to the Trustees that the future receipt of contribution payments from an Employer is uncertain, the Trustees, at their discretion, may require an Employer to provide a bond for the purpose of guaranteeing payment of the Employer's contribution obligations to the Fund. Such bond shall provide for the recovery by the Fund of all amounts due the Fund, including delinquent contribution payments, audit deficiencies, liquidated damages, interest, attorneys' fees, audit costs, court costs, and all other expenses of collection incurred by the Trustees. The amount of the bond shall be determined by the Trustees. In the event an Employer's Collective Bargaining Agreement or other agreement with the Union or the Fund contains a provision regarding surety bonds, such provision shall apply in the stead of the preceding paragraph to the extent inconsistent therewith.

In the event that the Trustees do not require an Employer to post a bond, such action shall not be deemed to waive any other obligations of such Employer or remedies available to the Trustees under the Agreement and Declaration of Trust.

Section 9. SECURITY DEPOSIT.

At the discretion of the Trustees, any Employer may be required to remit in advance a cash security deposit in an amount to be determined by the Trustees in any case when circumstances indicate to the Trustees uncertainty as to future receipt of Employer contributions from an Employer. The purpose of this security deposit shall be to secure the Fund for the full and faithful performance by the Employer of the Employer's obligations under the Agreement and Declaration of Trust and the Collective Bargaining Agreement or other written agreement with the Union or the Fund, so as to ensure the stability of the Fund for the protection of the interests of the Employees and their Dependents. The security deposit shall be held by the Trustees and shall be refunded to the Employer, in the Trustee's discretion, with or without interest, according to the discretion of the Trustees, at the time the Trustees are reasonably certain that future receipt of required Employer contributions to the Fund is no longer doubtful.

Except at the option of the Trustees, the remission of a security deposit at the demand of the Trustees shall not relieve an Employer of its obligation to make its regularly required contributions to the Fund. Generally the security deposit shall be a payment made over and above an Employer's regularly required contribution and shall not be used to reduce any amounts otherwise owing to the Fund. In the absence of written notification from the Trustees expressing a contrary intent, a security deposit shall not be considered by the employer as paid in lieu of payments which may otherwise be due the Fund. In the event that the Trustees do not require an Employer to remit a security deposit, such action shall not be deemed to waive any other obligations of such Employer or remedies available to the Trustees under the Agreement and Declaration of Trust.

Section 10. ATTORNEYS' FEES.

The Trustees shall have the authority to consult legal counsel and to initiate legal proceedings with respect to any matter relating to collecting amounts owed the Fund or enforcing the provisions of the Agreement and Declaration of Trust, including, but not limited to, collecting contributions, liquidated damages, interest, and/or audit deficiencies and compelling a Delinquent or non-Delinquent Employer to submit to an audit or to post a security deposit. In addition to all other amounts due the Fund, an Employer shall be liable to the Fund for all actual attorneys' fees so incurred by the Trustees whether or not legal proceedings are instituted.

Section 11. COLLECTION PROCEDURES AND EXPENSES.

The Trustees shall have the authority and power to establish procedures for the prompt and efficient collection of amounts owed the Fund as provided herein, to demand, collect and receive all payments due the Fund, and to take any other action they deem necessary or appropriate in connection with the collection of amounts owed the Fund. With respect to non-hourly Employees, the Trustees shall have the authority to establish and enforce a minimum number of hours per month (or such other period as determined by the Trustees) required to be reported and contributed on by such Employees' Employers. Such collection procedures shall be binding on all Employers.

In addition to amounts owed the fund in contributions, an Employer shall be liable for liquidated damages, interest, audit deficiencies, audit costs, and attorneys' fees, all as described in this Article, court costs if legal proceedings are initiated, and all other expenses actually incurred by the Trustees relating to the collection of amounts owed the Fund or the enforcement of the provisions of the Agreement and Declaration of Trust.

Section 12. WAIVER OF COLLECTION EXPENSES.

The Trustees shall have the authority and power to waive the above-described liquidated damages and/or interest and/or audit costs and/or attorneys' fees, and/or court costs provisions under the following circumstances:

(1) Upon the occurrence of an Employer's first delinquency; provided, however, that in the event such Employer again becomes delinquent within the continuous 12-month period next following said first delinquency, the Trustees shall have the right to reimpose and collect all such amounts (regardless of any earlier waiver) relating to the first delinquency.

(2) Upon a finding by the Trustees of reasonable cause for such delinquency. In determining what constitutes reasonable cause, the Trustees may consider:

- (a) the amount and duration of the delinquency;
- (b) the Employer's past record with respect to delinquencies;
- (c) the explanation for the delinquency given by the Employer,
- (d) the likelihood and projected expenses of collection as compared to the amount owed, and
- (e) any other factors deemed by the Trustees to be relevant.

The decision of the Trustees, with respect to waiver or non-waiver of the collection expenses, is solely within the discretion of the Trustees and such decision is to be deemed final and binding on the employer. Additionally, any such decision made with respect to one Employer shall not relieve any other Employer of its obligations to make similar payments to the Funds.

Section 13. EXTENSION, SETTLEMENT AND RELEASE.

If, based on the likelihood of collection or the expense that would be incurred in an attempt to collect any amount owed the Fund, the Trustees reasonably believe that the interests of the Eligible Employees and Eligible Dependents would be better served by extending the time for payment, the Trustees may so elect, provided that the terms of any such arrangement, agreement, or understanding with an Employer are reasonable, in writing, and in the Fund's interest, and provided that the agreement, arrangement, or understanding is made for the exclusive purpose of facilitating the collection of such contributions. The Trustees may require that any

such agreement be submitted to and approved by a court of appropriate competence and jurisdiction, and/or include language making due the entire amount owing upon default of any installment payment.

If, based on the likelihood of collection or the expense that would be incurred in an attempt to collect any amount owed the Fund, the Trustees reasonably believe that the interests of the Eligible Employees and Eligible Dependents would be better served by settling with an Employer for less than the entire amount due, the Trustees may so elect, provided that the terms of the agreement, arrangement or understanding are reasonable, in writing, and in the Fund's interest. The Trustees may require that any such agreement be submitted to and approved by a court of appropriate competence and jurisdiction, and/or include language making due the entire original amount upon default of any part or installment of the compromised amount due.

If, based on the likelihood of collection or the expense that would be incurred in an attempt to collect amounts owed the Fund, the Trustees reasonably believe that the interests of the Eligible Employees and Eligible Dependents would be better served by terminating efforts to collect such amounts and by regarding such amounts as uncollectible, the Trustees may so elect, provided such decision is reasonable, in writing, and in the interests of the Fund.

Any such decision made with respect to one Employer shall not relieve any other Employer of its obligations set forth in the Agreement and Declaration of Trust.

Notwithstanding the provisions of Article III, Section 7, the Chairman and the Secretary of the Trustees shall be authorized to act in the absence of a meeting on behalf of the Fund, the Plan, and the Trustees with regard to any agreement or arrangement settling or otherwise relating to a claim of the Fund, the Plan, or the Trustees against a Delinquent Employer, provided that both such officers agree on such action.

Section 14. DELINQUENCY COMMITTEE.

The Trustees may establish a Delinquency Committee for the purpose of dealing with all Employers which are obligated to the Trust Fund and who are or may be late in making monthly contributions, or in paying audit deficiencies promptly after receipt of notification or in paying the correct amount after being notified of a computational error in the monthly reports filed with the Trust Fund.

The Delinquency Committee shall be composed of one member appointed by the Union Trustees and one member appointed by the Employer Trustees.

ARTICLE VI - PROTECTION OF THE FUND AND PLAN; LIABILITIES OF TRUSTEES AND OTHERS

Section 1. BONDS.

The Trustees, every other Plan fiduciary, and every person who handles funds or other property of the Fund shall be bonded. The amount of such bond shall be fixed by the Trustees at the beginning of each Plan Year (as defined in the Plan) and shall be not less than ten percent(10%) of the amount of funds handled;

however, the amount of such bond shall not be less than \$1,000 nor more than \$500,000, except as otherwise provided by the Secretary of Labor. Such bond shall provide protection to the Fund and the Plan against loss by reason of acts of the bonded individual, directly or through connivance with others. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on federal bonds under authority granted the Secretary of Treasury pursuant to Sections 6 through 13 of Title 6, United States Code. The cost of the premium on such bonds shall be paid out of the Fund.

Section 2. LIABILITY OF TRUSTEES.

Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Fund or Plan or for the nonfulfillment of contracts, but the same shall be paid out of the Fund, and, to the extent permitted by law, the Fund is hereby charged with a first lien in favor of such Trustees for their security and indemnification against any liability of any kind incurred hereunder.

Notwithstanding any other provision of this Agreement and Declaration of Trust, neither the Trustees collectively nor any individual Trustee shall be liable for any loss to the Fund or Plan or any depreciation in value of Fund or Plan assets arising out of any act or omission in the execution of their duties or out of any act or omission of a co-Trustee or other Plan fiduciary, except to the extent imposed by ERISA or other applicable law.

In the event the Trustees allocate specific responsibilities, including fiduciary responsibilities, obligations or duties among themselves, or designate others to carry them out, to the extent permitted by ERISA and other applicable law, the Trustees to whom certain responsibilities, obligations or duties are not allocated, or, in the case of a designation to others, all of the Trustees, shall not be liable for a breach of duty by a co-Trustee or other person to whom such responsibilities, obligations or duties have been allocated or designated.

To the extent permitted by ERISA and other applicable law, the Trustees shall not be liable for the acts or omissions of any Investment Manager nor shall they be under an obligation to invest or otherwise manage any Fund or Plan asset which is subject to the management and control of such Investment Manager.

To the extent permitted by ERISA and other applicable law, successor Trustees shall not be liable for the acts or omissions of prior Trustees, and they shall not be obligated to examine the accounts, records, or acts of prior Trustees.

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

No person dealing with the Trustees shall be required or entitled to see to the application of any money paid or property delivered to the Trustees or to determine whether or not the Trustees are acting pursuant to authority granted or authorizations required in this Agreement and Declaration of Trust. The certificate

of the Trustees that they are acting in accordance with the Plan or this Agreement and Declaration of Trust shall protect any person relying thereon.

The Trustees may from time to time consult with their advisors and shall be entitled to rely upon such advice as may be given to them with regard to legal, actuarial, administrative, investment or other matters, and they shall be fully protected in acting or refraining from acting in accordance with such advice, to the extent permitted by ERISA and other applicable law.

If any legal proceeding is brought against the Trustees or any individual Trustee whether or not a breach of any fiduciary duty is alleged, the Fund shall bear the cost of any legal expense incurred by the Trustee or Trustees to the extent not covered by insurance and permitted by ERISA and other applicable law.

Section 3. LIABILITY OF EMPLOYERS AND UNION.

Neither the Employers (or any individual Employer), the Association, (or any Additional Association), nor the Union shall in any respect be liable, directly or indirectly, for any of the acts or omissions of the Trustees (individually or collectively), for any of the obligations, debts, or liabilities of the fund or the Plan, or for the payment or funding of Plan benefits, except to the extent of Employer contribution obligations and as required by ERISA and other applicable law.

Section 4. FIDUCIARY LIABILITY INSURANCE.

The Trustees may purchase out of Fund assets insurance for the Trustees and/or other Plan fiduciaries to cover liability for losses occurring by reason of the act or omission of a Trustee or other Plan fiduciary, provided such insurance permits recourse by the insurer against the Trustee or other fiduciary in the case of a breach of fiduciary obligation by such Trustee or other fiduciary. Nothing in the Agreement and Declaration of Trust shall preclude a Trustee, other Plan fiduciary, the Union, an Employer, or the Associations (or any Additional Association) from purchasing non-recourse liability insurance to cover the Trustees or other Plan fiduciaries.

ARTICLE VII - PLAN OF BENEFITS

Section 1. WRITTEN PLAN.

The detailed basis upon which the health and welfare program is operated, administered, and maintained and health and welfare benefits are paid pursuant to the Agreement and Declaration of Trust shall be specified in writing by appropriate action of the Trustees. Such writings, and all written amendments made thereto from time to time by the Trustees, shall constitute the Plan.

Section 2. BENEFITS; ELIGIBILITY.

The Trustees shall have full authority to determine and prescribe the type and amount of Plan benefits and the eligibility requirements therefor, and to adopt any and all Plan provisions and other rules and regulations as they may deem necessary or appropriate for the operation and administration of the Plan, provided that any such action shall be consistent with the terms and purposes of the Agreement and Declaration of Trust and the requirements of law and shall not adversely affect the

tax-exempt status of the Fund under the Internal Revenue Code. The Trustees shall have the authority to terminate the eligibility of Employees, under the Plan, of a Delinquent Employer (as defined in Article V, Section 4) at such time and upon such terms as they determine in their discretion.

Section 3. AMENDMENTS TO PLAN; TERMINATION.

The Trustees shall have full authority to amend the Plan, from time to time as they deem necessary and advisable, provided, however, that no Plan amendment may be adopted which will, in any way, conflict with the terms of the Collective Bargaining Agreement, and, furthermore, that such amendments shall be consistent with the terms and purposes of the Agreement and Declaration of Trust and the requirements of law and that no such amendment adversely affects the tax-exempt status of the Fund under the Internal Revenue Code. If there is no longer in force and effect a Collective Bargaining Agreement requiring contributions to the Fund, the Trustees shall have the authority to terminate the Plan in such manner and at such time as they deem advisable, provided that any such action is agreed upon by all Trustees and that such termination shall be consistent with the requirements of ERISA and other applicable law.

Section 4. INTERPRETATION OF PLAN.

The Trustees shall have full authority to interpret the terms of the Plan and to decide all questions pertaining to the operation and administration of the Plan. Such interpretations and decisions shall be binding on the Employers, the Union, the Associations (and any Additional Associations), the Employees, the Dependents, and any person claiming by or through them.

Section 5. INTERNAL REVENUE SERVICE APPROVAL.

The Trustees may apply to the Internal Revenue Service for a determination as to the continued tax-exempt status of the Plan and Fund at any time deemed necessary or advisable. The Trustees are authorized to execute any and all documents or applications as are necessary in connection with such determination requests.

Section 6. INCORPORATION BY REFERENCE.

All provisions of the Collective Bargaining Agreements, other written agreements between Employers and the Union or the Fund, and the Operating Engineers Trust Fund of Washington, D.C. Health and Welfare Plan (Summary Plan Description) which relate to the operation and administration of the Fund are incorporated herein by reference for purposes of complying with the "written plan" requirement of Section 402(a) of ERISA.

ARTICLE VIII - PARTICIPATION OF EMPLOYERS

Section 1. ASSOCIATION MEMBERSHIP.

Any employer who authorizes one of the Associations, named in Section 6 of Article I, to enter into a Collective Bargaining Agreement with the Union on its behalf, shall be deemed also to authorize and empower such Association to enter

into and agree to be bound by the Agreement and Declaration of Trust on its behalf and to authorize and empower the Association to be its agent for purposes of designating, appointing, removing, and replacing Employer Trustees.

Any employer who authorizes an Additional Association of Employers to enter into a Collective Bargaining Agreement with the Union on its behalf, shall be deemed also to authorize and empower such Additional Association to enter into and agree to be bound by the Agreement and Declaration of Trust on its behalf.

Section 2. EXECUTION OF WRITTEN INSTRUMENT.

An Employer may agree to become bound by the provisions of the Agreement and Declaration of Trust by executing a copy hereof or by executing, or becoming a party to, a Collective Bargaining Agreement, or other written agreement with the Union or the Fund.

Section 3. OTHER.

Nothing in Section 1 or 2 of this Article shall be construed to preclude an Employer that does not or may not comply with the requirements of such Sections from contributing to the Fund for the purpose of rendering its Employees and their dependents eligible for Plan benefits, provided that contributions by such Employer satisfy the requirements of Section 302 of the Labor Management Relations Act, 1947, 29 U.S.C. Section 186; that the participation by such Employer in the Plan through the payment of contributions to the Fund does not violate any provision of a Collective Bargaining Agreement or adversely affect the tax-exempt status of the Fund under the Internal Revenue Code, and that such participation is permitted by the Trustees.

ARTICLE IX - AMENDMENT OF AGREEMENT AND DECLARATION OF TRUST.

Section 1. AMENDMENT BY TRUSTEES.

This Agreement and Declaration of Trust may be amended in any respect from time to time by the Trustees, provided that each amendment shall be duly executed in writing by the Trustees and further provided that no amendment shall be adopted which would alter the basic principles of this Agreement and Declaration of Trust, alter the provisions of Article III regarding the appointment or removal of Employer or Union Trustees, change the requirement of an equal number of Union and Employer Trustees, be in conflict with the Collective Bargaining Agreements to the extent such Agreements affect contributions to the Fund created hereunder, be in conflict with laws governing trust funds of this nature or adversely affect the tax-exempt status of the Fund under the Internal Revenue Code. As to any such amendment the Trustees in their sole discretion shall have full power to fix the effective date thereof.

Section 2. AMENDMENT BY UNION AND THE ASSOCIATIONS.

The Union and the Associations, by mutual agreement, shall have the power to amend this Agreement and Declaration of Trust in any respect; provided, however, that no such amendment shall be adopted which would be in conflict with laws governing trust funds of this nature or adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

Section 3. NOTIFICATION OF AMENDMENT.

Whenever an amendment is adopted in accordance with this Article, a copy thereof shall be distributed to all Trustees, and the Trustees shall so notify the Union, the Associations (and any Additional Associations) and the Employers, provided, however, that the amendment shall be effective, with regard to the Association and all employers, whether or not such parties shall have received actual notice of the amendment.

ARTICLE X - TERMINATION OF AGREEMENT AND DECLARATION OF TRUST.

Section 1. BY THE TRUSTEES.

This Agreement and Declaration of Trust may be terminated by an instrument in writing executed by all the Trustees if there is no longer in force and effect a Collective Bargaining Agreement requiring contributions to the Fund.

Section 2. BY THE UNION AND THE ASSOCIATIONS.

This Agreement and Declaration of Trust may be terminated by an instrument in writing duly executed by the Associations and the Union, by mutual agreement, specifically evidencing an intention to effect such a termination.

Section 3. EFFECT OF TERMINATION OF COLLECTIVE BARGAINING AGREEMENT ON AGREEMENT AND DECLARATION OF TRUST, FUND, AND PLAN.

The Union, the Associations (and any Additional Associations) and the Employers intend for the Fund, the Plan and the Agreement and Declaration of Trust to exist and be maintained and administered without regard to whether any Collective Bargaining Agreement terminates, either finally or pending negotiations between the collective bargaining parties. Termination of the Fund and the Agreement and Declaration of Trust shall only occur upon the taking of the appropriate action pursuant to this Article X.

Section 4. PROCEDURE ON TERMINATION.

In the event of the final termination of this Agreement and Declaration of Trust and the Fund, the Trustees may proceed with the termination of the Plan or take such other action as permitted by applicable law. If the Plan is terminated, the Trustees shall have full authority to take any and all action required by law in connection with such termination and any other action permitted by law deemed by them to be necessary to accomplish the prompt and equitable completion of matters relating to such termination. The Trustees shall continue to serve as trustees and Fund assets shall continue to be held in trust until all matters relating to termination have been completed. Upon termination, after payment of all pending benefit claims, reasonable expenses, taxes, and proper charges, Fund assets shall be allocated and distributed in the manner, and to the persons, which the Trustees determine will best effectuate the purposes hereof, provided that such allocation and distribution shall be in the best interests of Eligible Employees and Eligible Dependents, shall not unduly impair the benefit rights of such eligible persons existing at the time of termination, and shall be consistent with the provisions of ERISA, the Internal Revenue Code and other applicable law.

Section 5. NOTIFICATION OF TERMINATION.

Upon termination of the Fund in accordance with this Article, the Trustees shall forthwith notify the Union, the Associations (and all Additional Associations), and each Employer.

ARTICLE XI - MISCELLANEOUS

Section 1. SITUS.

The City of Washington, District of Columbia, shall be deemed to be the situs of the Fund created hereunder and the jurisdiction in which the Fund and the Plan are administered. All questions pertaining to the validity, construction and administration of this Agreement and Declaration of Trust, the Fund, and the Plan shall be determined in accordance with the laws of the District of Columbia and of the United States.

Section 2. SEVERABILITY.

Should any provision in this Agreement and Declaration of Trust or in the Plan or rules and regulations adopted thereunder, or in any Collective Bargaining Agreement or other written agreement with the Union or the Fund, be deemed or held to be unlawful or invalid for any reason, such provision, rule or regulation shall be deemed to be stricken therefrom and of no force and effect and such fact shall not adversely affect the other provisions herein and therein contained unless such illegality shall make impossible or impractical the functioning of the Fund and the Plan, and in such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

Section 3. WORDS USED.

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

IN WITNESS WHEREOF, the Union, the Associations, and the Trustees, pursuant to Sections 1 of Article X of the Operating Engineers Trust Fund of Washington, D.C. Agreement and Declaration of Trust, executed on or about May 12, 1988, do hereby adopt the foregoing SECOND RESTATEMENT and the undersigned, being duly authorized, cause same to be duly executed. This SECOND RESTATEMENT shall be effective as of the 16th day of February, 1988.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 77

By: Charles J. Stevens
Title: Business Manager
Date: 10/20/88

CONSTRUCTION CONTRACTORS COUNCIL/AGC LABOR DIVISION, INC.

By: [Signature]
Title: Pres.
Date: 11/9/88

WASHINGTON, D.C. EXCAVATING CONTRACTORS ASSOCIATION

By: Jack Baker
Title: MEMBER
Date: 11/10/88

EQUIPMENT RENTAL EMPLOYERS ASSOCIATION

By: Charles Thomas Linn
Title: Pres.
Date: 8/16/88

UTILITY CONTRACTORS ASSOCIATION

By: John F. McClellan
Title: Chairman
Date: 11/15/88

The undersigned duly appointed and certified Trustees acknowledge having read the foregoing SECOND RESTATEMENT and by signing said document hereby agree to its terms, to act as Trustees hereunder, and to comply with said terms.

TRUSTEES:

<u><i>Richard Thomas</i></u>	Date: <u>5/12/88</u>
<u><i>Colin L. Thomas</i></u>	Date: <u>May 12, 1988</u>
<u><i>Harold W. Thomas</i></u>	Date: <u>MAY 12, 1988</u>
<u><i>Matthew W. Platt</i></u>	Date: <u>MAY 12, 1988</u>
<u><i>Louis F. Sanborn</i></u>	Date: <u>May 12, 1988</u>
<u><i>Arthur Taylor</i></u>	Date: <u>May 12, 1988</u>
<u><i>John E. Divil</i></u>	Date: <u>May 20, 1988</u>
<u><i>Harry Schmehl, Jr.</i></u>	Date: <u>Aug. 16, 1988</u>

The undersigned Employer hereby agrees to be bound by all of the terms and conditions of the foregoing Operating Engineers Trust Fund of Washington, D.C. Agreement and Declaration of Trust designates as its representatives on the Board of Trustees the persons currently serving as Employer Trustees together with their successors appointed in the manner provided in said Agreement and Declaration of Trust, agrees to be bound by all actions taken by said Employer Trustees and their successors, and acknowledges receipt of a copy of said instrument.

EMPLOYER

By: _____

Title: _____

Address: _____

Telephone No: _____

Date: _____

EXHIBIT C

FOURTH RESTATEMENT

OF THE

AGREEMENT AND DECLARATION OF TRUST

ESTABLISHING THE

STONE AND MARBLE MASONS

UNION OF METROPOLITAN WASHINGTON D.C.

HEALTH AND WELFARE TRUST FUND

RESTATED OCTOBER 13, 2006

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**FOURTH RESTATEMENT OF THE
AGREEMENT AND DECLARATION OF TRUST
ESTABLISHING THE
STONE AND MARBLE MASONS
UNION OF METROPOLITAN WASHINGTON D.C.
HEALTH AND WELFARE TRUST FUND
RESTATED OCTOBER 13, 2006**

This Fourth Restatement of the original AGREEMENT AND DECLARATION OF TRUST ESTABLISHING THE STONE AND MARBLE MASONS SUBORDINATE UNION #1, D.C., B.A.C. HEALTH AND WELFARE TRUST FUND is made and entered into as of the 13th day of October, 2006, by and between the Stone and Marble Masons Union of Metropolitan Washington, D.C., the contributing employers signatory hereto (hereinafter referred to as “Employers”), and the Trustees of the Fund.

WITNESSETH:

WHEREAS, the Union and Employers by collective bargaining agreements did authorize and direct the creation and establishment of the Stone and Marble Masons Subordinate Union No. 2, D.C., B.A.C. Health and Welfare Trust Fund (Fund) and the appointment of trustees to serve thereunder; and

WHEREAS, the Union, the Employers and the trustees initially named to serve on the Fund did thereafter enter into and execute the Agreement and Declaration of Trust Establishing the Stone and Marble Masons Subordinate Union No. 2, D.C., B.A.C. Health and Welfare Trust Fund providing for the establishment of the Fund and setting forth the terms and conditions upon which the Fund was to be administered and maintained; and

WHEREAS, the Union and the Employers did by amendment to the collective bargaining agreements of May 1, 1979 provide for certain procedures for the appointment, removal, resignation, and replacement of Employer Trustees; and

WHEREAS, the parties desire to set forth certain amended terms and conditions upon which the Fund is to be henceforth administered and maintained; and

WHEREAS, in order to have in the record a single document comprising the complete Agreement and Declaration of Trust, the parties have decided to incorporate all amendments heretofore made and entered into as of this day, into this FOURTH RESTATEMENT.

NOW, THEREFORE, in consideration of the premises, it is mutually understood and agreed, that the Agreement and Declaration of Trust Establishing the Stone and Marble

Masons Subordinate Union No. 2, D.C., B.A.C. Health and Welfare Trust Fund is hereby amended and restated as follows:

ARTICLE I DEFINITIONS.

Section 1. EMPLOYER.

The term “Employer” shall, mean:

(a) An employer who contributes, or is required to contribute, to the Fund pursuant to the terms of a Collective Bargaining Agreement or other written agreement with the Union or the Fund.

(b) The Union, which shall be considered as the Employer of the employees of the Union for whom contributions are made, or required to be made, to the Fund pursuant to the terms of an agreement with the Fund, provided that coverage of such employees satisfies the requirements of the Internal Revenue Code relating to the tax-qualified status of the Plan and the tax-exempt status of the Fund.

(c) The Fund, the Stone and Marble Masons Subordinate Union No. 2, D.C., B.A.C. Pension Trust Fund or any other affiliated trust fund maintained under a Collective Bargaining Agreement covering the same membership as covered under the Plan, which, if permitted by the Trustees, shall be considered as Employers of the employees of such trust fund for whom contributions are made, or required to be made, to the Fund pursuant to the terms of an agreement with the Fund, provided that coverage of such employees satisfies the requirements of the Internal Revenue Code relating to the tax-exempt status of the Fund.

(d) (i) An agency, department or other entity of any branch of the United States Government that employs persons within the trade and geographical jurisdiction of the Union on whose behalf contributions to the Fund would be made but for its inability or refusal to make such contributions directly to the Fund; provided that an amount based on the then current contribution rate to the Fund is paid to such persons by such agency, department, or other entity by way of supplement to their wages, that such amount is remitted by such persons to the Fund, that the Trustees permit such contributions to be made to the Fund, and that such practice satisfies all requirements of law.

(ii) An employer which, employs persons who are within the trade jurisdiction of the Union, but who are outside its geographical jurisdiction, on whose behalf contributions to the Fund would be made but for its inability or refusal to make such contributions directly to the Fund; provided that an amount based on the then current contribution rate to the Fund is paid to such persons by such employer by way of supplement to their wages, that such amount is remitted by such persons to the Fund, that the Trustees permit such contributions to be made to the Fund, and that such practice satisfies all requirements of law.

(e) Notwithstanding subsections (a) – (d) above, an employer shall not be deemed to

be an “Employer” solely by virtue of its membership in a controlled group of corporations (within the meaning of §1563 of the Internal Revenue Code), one of which is an “Employer”.

Section 2. EMPLOYEE.

(a) The term “Employee” shall mean:

(i) an employee of an Employer for whom contributions are made, or required to be made, to the Fund pursuant to a Collective Bargaining Agreement or other agreement with the Union or the Fund;

(ii) an employee of an Employer whose participation in the Plan is permitted by the Trustees and does not adversely affect the tax—exempt status of the Fund under the Internal Revenue Code; or

(iii) the term “Employee” shall also mean an employee of an Employer as defined in §1(d) of this Article provided that all conditions specified therein are satisfied.

(b) Notwithstanding subsection (a), the term “Employee” shall not include anyone who is a sole proprietor or anyone who is not permitted to participate in the Plan by any provision of applicable law.

Section 3. ELIGIBLE EMPLOYEE.

The term “Eligible Employee” shall mean an Employee who is eligible under the terms of the Plan for Plan benefits.

Section 4. DEPENDENT.

The term “Dependent” shall mean an Employee’s spouse and such other individuals as the Trustees, in their discretion, shall select from Section 152(a) of the Internal Revenue Code and enumerate in the Plan.

Section 5. ELIGIBLE DEPENDENT.

The term “Eligible Dependent” shall mean a Dependent who is eligible under the terms of the Plan for Plan benefits.

Section 6. UNION.

The term “Union” shall mean the Stone and Marble Masons Subordinate Union No. 2, D.C., B.A.C.

Section 7. ASSOCIATION.

The term “Association” shall mean any association or group of Employers, which is, or becomes, a party to a collective bargaining or other written agreement with the Union, or which represents Employers that are parties to such an agreement with the Union, which agreement requires the payment of contributions into the Fund.

Section 8. TRUSTEES.

(a) The term “Employer Trustees” shall mean the Trustees appointed and certified by the Associations or the Employers as the case may be.

(b) The term “Union Trustees” shall mean the Trustees appointed and certified by the Union.

(c) The term “Trustees” shall mean the Employer Trustees and the Union Trustees, collectively, and shall include their successors when acting as Trustees. The Trustees shall be the Plan’s “named fiduciaries”, within the meaning of Section 402(a) of ERISA, with respect to the operation and administration of the Plan and with respect to the management and control of the assets of the Plan and of the Fund.

Section 9. AGREEMENT AND DECLARATION OF TRUST.

The term “Agreement and Declaration of Trust” shall mean the Agreement and Declaration of Trust Establishing the Stone and Marble Masons Subordinate Union No. 2, D.C., B.A.C. Health and Welfare Trust Fund, as amended.

Section 10. PLAN.

The term “Plan” shall mean the Stone and Marble Masons Subordinate Union No. 2, D.C., B.A.C. Health and Welfare Plan, as amended from time to time.

Section 11. FUND.

The term “Fund” shall mean the Stone and Marble Masons Subordinate Union No. 2,

D.C., B.A.C. Health and Welfare Trust Fund, and shall mean generally the moneys or other things of value which comprise the corpus and additions to the Fund.

Section 12. COLLECTIVE BARGAINING AGREEMENT.

The term “Collective Bargaining Agreement” shall mean any of the collective bargaining agreements entered into from time to time between the Union and any Employer or any association of Employers, together with any modifications or amendments thereto.

Section 13. INTERNAL REVENUE CODE.

The term “Internal Revenue Code” shall mean the Internal Revenue Code of 1986, as amended.

Section 14. ERISA.

The term “ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

Section 15. INVESTMENT MANAGER.

The term “Investment Manager” shall mean a fiduciary that meets the requirements specified in §3(38) of ERISA.

Section 16. ADMINISTRATIVE AGENT.

The term “Administrative Agent” shall mean any independent private consultant retained by the Trust Fund under contract for the purpose of assisting in the administration of the trust fund.

ARTICLE II STONE AND MARBLE MASONS UNION OF METROPOLITAN WASHINGTON, D.C., HEALTH AND WELFARE TRUST FUND.

Section 1. CONTINUATION OF FUND.

There is hereby continued the Stone and Marble Masons Subordinate Union No. 2, D.C., B.A.C. Health and Welfare Trust Fund, to be used for the purposes set forth in the Agreement and Declaration of Trust.

Section 2. GENERAL PURPOSE.

The Fund shall be used for the purposes of providing for the payment of such life, sickness, accident and other benefits for Eligible Employees and Eligible Dependents as may be decided by the Trustees and permitted by law and of defraying the reasonable expenses incurred in the administration of the Plan and the Fund; provided, however, that the Fund shall not be used in any manner which would adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

Section 3. APPLICATION OF ASSETS.

Except as specifically permitted by ERISA, the Internal Revenue Code, and other applicable law, the assets of the Fund and the Plan shall never inure to the benefit of any Employer and shall be held for the exclusive purposes of providing for the payment of Plan benefits and of defraying reasonable expenses of administering the Fund and the Plan.

To the extent permitted by ERISA, the Internal Revenue Code, and other applicable law, Fund assets may be returned to Employers upon termination of the Fund and the plan in accordance with Article X.

Employer contributions to the Fund may be returned to the Employer, in the manner and to the extent approved by the Trustees, under circumstances satisfying the requirements of Section 403(c) of ERISA and other applicable law, provided that such action does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

Section 4. VESTED RIGHTS.

No Employer, Employee, Dependent, or other person claiming by or through such person or entity shall have any right, title, claim or interest in or to the Fund except as may be specifically provided for in the Agreement and Declaration of Trust or the Plan, as both are interpreted by the Trustees.

Section 5. ENCUMBRANCE OF BENEFITS.

Except as may be specifically provided by the Trustees and permitted by law, neither the Fund nor any part thereof, nor any of the benefits or moneys payable therefrom shall be subject in any manner by any Employer, Employee, Dependent, or other person claiming by or through such person or entity, by verbal agreement, assignment, or other written instrument, debt, expense, damage, or other claim, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien or charge, and any attempt to

cause the same to be subject thereto shall be null and void.

Section 6. BOOKS OF ACCOUNT.

The Trustees shall keep true and accurate books of account and records of all their transactions. Except to the extent required by law or approved by the Trustees, all books, records, papers, reports, documents or other information obtained with respect to the Fund or the Plan shall be confidential and shall not be made public. The Trustees may delegate all or part of their duty to keep such books and records to the Administrative Agent or other administrative personnel.

Section 7. AUDIT.

An annual audit shall be made of the Fund by one or more independent certified public accountant(s) selected by the Trustees. A statement of the result of such audit shall be available for inspection by interested persons at the principal office of the Fund and at such other places as may be designated by the Trustees.

Section 8. CERTAIN INVESTMENT INCOME.

At the conclusion of each Plan Year (as defined in the Plan), the Trustees shall determine the net investment income of the Fund and, on or before the date prescribed for filing the Exempt Organization Business Income Tax Return (Form 990 Series) for the taxable year (including any extensions of time), shall specify the amount so determined and require such amount to be set aside for the payment of life, sickness, accident and other benefits and the reasonable expenses incurred in the administration of the Plan.

ARTICLE III TRUSTEES.

Section 1. APPOINTMENT AND TERM.

There shall be six (6) regular and two (2) alternate Trustees appointed in the following manner. Three (3) Employer Trustees shall be appointed by the Employers and three (3) Union Trustees shall be appointed by the Union. In order to qualify as an Employer Trustee, each potential Employer Trustee must be an employee, officer or director of a contributing Employer to the Plan. In order to qualify for appointment as a Union Trustee, each Union Trustee must have been an eligible participant in the Plan for 5 years, and have been eligible under the Welfare Plan for two of the five years immediately prior to appointment. The Employers and the Union may each appoint one (1) alternate Trustee who may attend all meetings of the Trustees and participate in all discussions at such meetings. If all three regular Trustees of either group are present at a meeting, such group's alternate Trustee shall

have no vote on any action taken at such meeting. Otherwise, the alternate Trustees shall have full authority to act and vote as would a regular Trustee and shall be counted for purposes of establishing a quorum. Each regular or alternate Trustee shall serve until his death or incapacity or the effective date of his resignation or removal, as herein provided.

Section 2. RESIGNATION AND REMOVAL.

A Trustee may resign at any time by giving thirty (30) days written notice to the other Trustees and such resignation shall take effect at the time specified therein, or if no time is specified, then thirty (30) days after receipt thereof; provided, however, that no Trustee may resign and no resignation shall be effective if such resignation would materially hinder the operation of the Fund and Plan, in which case the resignation shall not take effect until a successor Trustee has accepted appointment to the trusteeship pursuant to Section 4 of this Article. An Employer Trustee may be removed and replaced by the Employers with or without cause provided that a replacement Trustee is properly appointed and meets the qualifications detailed in Section 1 of this Article. A Union Trustee may be removed and replaced by the Union with or without cause at any time provided that a replacement Trustee is properly appointed and meets the qualifications detailed in Section 1 of this Article. In the event that there is a contrary provision in the Collective Bargaining Agreement, the Collective Bargaining Agreement shall govern.

Section 3. REMOVAL OF A TRUSTEE FOR CAUSE.

In those situations which are deemed proper by a majority of the existing Trustees of both the Employers and the Union, a Trustee can be removed for cause. Removal would be justified in those situations where:

- (1) A Trustee ceases to be able to carry out his/her functions as a Trustee due to the presence of physical or mental infirmity as determined by all the remaining Trustees, after consultation with appropriate medical authority; or
- (2) The conduct of the Trustee involves acts of moral turpitude; or
- (3) A Trustee has engaged in any unauthorized acts as a Trustee which impedes the functioning of the Fund or Plan; or
- (4) Any acts have occurred which clearly demonstrate the Trustee has engaged in proven breaches of fiduciary responsibility. Examples of such conduct would include, but not be limited to, taking loans or other unauthorized distributions of Funds from the Plan for their own personal benefit, directing the Fund to make payments which are improper, or preventing the administrator or its agents from carrying out the activities of the Plan or Fund.

When a Trustee is removed for cause, the Trustee must be replaced by an individual who satisfies the requirements of a Trustee detailed in Section 1 of this Article.

Section 4. SUCCESSOR TRUSTEES AND ACCEPTANCE OF TRUSTEESHIP.

Upon being appointed and certified, each successor Trustee shall execute a standard written "Acceptance of Trusteeship" in addition to a signature page to this Agreement and Declaration of Trust and by so doing shall agree to accept the trusteeship and act in accordance with the provisions hereof.

Section 5. CHANGE IN COMPOSITION OF BOARD OF TRUSTEES BY RESIGNATION, REMOVAL, INCAPACITY OR DEATH AND CERTIFICATION THEREOF TO THE TRUST FUND.

In the event of any change in the composition of the Board of Trustees by reason of the resignation, removal, incapacity or death of one or more Trustees, the Employers (in the case of Employer Trustees) and/or the Union (In the case of Union Trustees) as the case may be, shall certify in writing to the Trust Fund as to the identity of the replacement Trustee(s). Employer certifications shall be in the form of a written acceptance, by each Employer, of the replacement Trustee(s); Union certifications shall be executed by the Business Manager. In the event an Employer Trustee resigns, dies, or becomes incapacitated, the remaining Employer Trustees shall have the right and power to appoint an interim Employer Trustee to serve until such time as a new Employer Trustee Is appointed.

Section 6. OFFICERS OF TRUSTEES.

There shall be elected, by the Trustees, a Chairman and Co-Chairman, one appointed from among the Union Trustees and one appointed from among the Employer Trustees.

The Chairman and Co-Chairman, once elected, shall continue to serve as such until the conclusion of their terms as herein provided. The terms of the Chairman and Co-Chairman shall be determined by the Trustees. Upon the occurrence of a vacancy in either office or upon the termination of an officer's term, the Trustees shall elect from their number a new such officer. At no time shall both offices be held by Trustees designated by the same group.

Section 7. MEETINGS OF TRUSTEES.

The Trustees shall determine the time and place for their regular periodic meetings. Either the Chairman or the Co-chairman, or any two Trustees may call a special meeting of the Trustees by giving written notice to all other Trustees of the time and place of such meeting at least five (5) days before the date set for the meeting. Any meeting at which all Trustees are present, or concerning which the absent Trustees waive notice in writing, shall be a valid meeting without the giving of any notice.

Section 8. ACTION BY TRUSTEES WITHOUT MEETING.

Any action required or permitted to be taken at a meeting of the Trustees may be taken without a meeting, provided that all Trustees concur in writing.

Section 9. QUORUM.

At any regular or special meeting of the Trustees, the physical presence of at least one (1) Employer Trustee and one (1) Union Trustee shall constitute a quorum.

Section 10. VOTING.

All action by the Trustees at a regular or special meeting shall be by majority vote of the Employer and Union Trustees present at such meeting, but in voting on any question, neither group of Trustees shall be permitted to cast more votes in the aggregate than the other. Such majority vote requirement shall govern any action of the Trustees under this Agreement and Declaration of Trust, except as otherwise specifically provided herein.

Section 11. MINUTES OF MEETINGS.

The Trustees shall keep written minutes of all meetings but such minutes need not be verbatim.

Section 12. CONDUCT OF BUSINESS.

The rules and procedures governing the conduct of business at Trustees' meetings shall be determined by the Trustees.

Section 13. DISPUTE RESOLUTION.

In the event any matter cannot be decided pursuant to Section 9 of this Article or because of the lack of a quorum at two (2) consecutive meetings, the Trustees shall appoint a neutral person to serve as an impartial umpire to decide the dispute. In the event the Trustees cannot agree upon an impartial umpire within 10 days, the Employer Trustees or the Union Trustees shall have the power and right to petition the United States District Court for the District of Columbia for an appointment of an impartial umpire.

The decision of the impartial umpire shall be final and binding upon the Trustees, the Employers, the Union, any Association, the Employees, the Dependents, and any person claiming by or through them. Any matter in dispute and to be resolved shall be submitted to the impartial umpire in writing, and in making his decision, the umpire shall be bound by the provisions of the Agreement and Declaration of Trust, the Plan, and the Collective Bargaining Agreements and other agreements between an Employer and the Union or the Fund and shall have no authority to alter or amend the terms of any such documents. If the Trustees cannot jointly agree upon a statement submitting said matter to dispute resolution before the impartial umpire, each group shall prepare and state in writing its version of the dispute and the question or questions involved. In the discretion of the impartial umpire, a hearing may be held on the question or questions to be decided. Each group of Trustees, or their representative, may participate in any such hearing.

The reasonable expense of any such dispute resolution including any necessary court proceedings to secure the appointment of an impartial umpire or the enforcement of the impartial umpire's decision and/or award shall be a proper charge against the Fund to the extent approved by the Trustees and permitted by ERISA and other applicable law.

Section 14. COMPENSATION AND EXPENSES.

The Trustees may receive reasonable compensation in the amount determined by the Trustees for services rendered to the Fund, except that no Trustee who already receives full-time pay from an Employer, any Association, or the Union shall receive any compensation. Notwithstanding the preceding sentence, any Trustee who is not paid his usual wages or salary during an absence from his job caused by his being engaged in Fund business (including Trustees' meetings and educational conferences) may be reimbursed the amount of compensation he would have received had he worked during the period he was absent, provided such reimbursement is authorized by the Trustees.

Any Trustee or other Plan fiduciary shall be entitled to reimbursement for those direct expenses which are properly and actually incurred in performing duties for the Fund or the Plan provided such, reimbursement is authorized by the Trustees. Moneys for such expenses may be advanced to the Trustees or other Plan fiduciaries, provided that the amount advanced is reasonable with respect to the anticipated amount of the expense and that after the expense has been incurred a full and complete accounting is provided and all moneys in excess of those relating to direct expenses which were properly and actually incurred are returned to the Fund.

ARTICLE IV ADMINISTRATION AND MANAGEMENT OF ASSETS; POWERS AND DUTIES OF TRUSTEES.

Section 1. ADMINISTRATION.

The Trustees shall have the authority to control and manage the operation and administration of the Plan and the Fund and shall have all powers necessary or appropriate in connection therewith. To the extent permitted by ERISA and other applicable law, any person or group of persons may serve in more than one fiduciary capacity with respect to the Fund and the Plan.

Section 2. MANAGEMENT OF ASSETS.

All right, title and interest in and to the assets of the Plan and of the Fund shall at all times be vested in the Trustees. The Trustees jointly shall have the exclusive authority and discretion to manage, control, and invest assets of the Plan and of the Fund at their discretion in any legal manner, provided that any such action shall be consistent with their fiduciary duties under ERISA and shall not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code. The Trustees may delegate their authority to manage and control all or part of the assets of the Plan or of the Fund to one or more Investment Manager(s). In the event assets of the Plan or of the Fund are invested in any group trust or other similar vehicle, to the extent necessary to maintain the tax-exempt status of the Fund under the Internal Revenue Code, the instrument pursuant to which said group trust or other similar vehicle is established and maintained shall be deemed to be incorporated by reference herein and adopted as a part hereof.

Section 3. FUNDING POLICY AND METHOD.

The Trustees shall meet periodically with the administrative agent and their other advisors to discuss, establish, re-establish or amend and effect the Plan's funding policy and method. The Trustees shall determine at such meetings the Plan's short-term and long-term funding requirements and shall take such action as in their judgment is indicated to accomplish the objectives of the Plan consistent with the requirements of ERISA.

Section 4. ALLOCATION OF RESPONSIBILITIES.

The Trustees may allocate responsibilities, including fiduciary responsibilities, for the operation and administration of the Fund or of the Plan among themselves, or may designate others to carry out such responsibilities; provided, however, that the Trustees shall not allocate or designate the responsibility to manage or control Fund or Plan assets except in the case of the appointment of an Investment Manager. Any such allocation, designation or appointment shall be in writing and shall be approved by unanimous vote of the Trustees.

Section 5. GENERAL POWERS.

In addition to all other powers specified herein or conferred by law, the Trustees are hereby empowered:

(a) To enter into such contracts or agreements for carrying out the terms of the Agreement and Declaration of Trust or for the administration of the Plan or of the Fund, as they in their discretion, may deem necessary or appropriate.

(b) To compromise, settle, arbitrate, or release any claim in favor of or against the Plan, the Fund, or the Trustees on such terms and conditions as the Trustees may deem advisable and to determine which claims in favor of the Plan, the Fund, or the Trustees shall be prosecuted and the extent to which such claims shall be prosecuted, abandoned, compromised, released or otherwise concluded.

(c) To establish and accumulate as part of the Fund a reserve adequate in the opinion of the Trustees to carry out the purposes of the Plan and the Fund.

(d) To pay out of the Fund all real or personal property, income, or other taxes that may be levied or assessed under applicable laws upon or in respect to the Fund or the Plan or any money, property, or security forming a part hereof.

(e) To enter into reasonable arrangements which comply with ERISA and other applicable law with the Union or other employee benefit plans or trust funds for the sharing of administrative or other common expenses.

(f) To receive contributions (including contributions from Employees) or payments from any source to the extent permitted by law, provided that such receipt does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

(g) To appoint one or more Investment Manager(s) and to enter into and execute agreements with such Investment Manager(s) providing for the investment and reinvestment of assets of the Fund and/or of the Plan and the transfer to such Investment Manager(s) of all or any portion of such assets.

(h) To delegate any administrative powers or duties to agents, employees or representatives.

(i) To invest the assets of the Fund and/or Plan in any common, collective, commingled, group, or pooled investment including deposits which bear a reasonable interest rate in any FDIC insured bank or other financial institution or in such other accounts as the Trustees may from time to time select, to the extent permitted by ERISA and other applicable law, provided that such investment does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

(j) To incur and pay out of the Fund the reasonable expenses of the Trustees' attendance

at education programs or conferences relating to the administration and operation of the Fund and Plan.

(k) To make payments out of the 'Fund to Eligible Employees, Eligible Dependents, or any other person expressly authorized by such eligible individuals or by the terms of the Plan for benefits such persons may become entitled to under the Plan.

(l) To enter into group or individual insurance contracts with insurance companies for the purpose of providing for the funding and payment of Plan benefits and to pay any premiums relating thereto.

(m) To borrow money from any legal source in such amounts and upon such terms as the Trustees deem necessary or advisable in the administration of the Fund and Plan and to pledge the Fund for the repayment of any such loan to the extent permitted by law.

(n) To pay all reasonable costs, expenses and charges incurred in the administration and operation of the Fund and Plan.

(o) To open and maintain accounts of any type and in any banking institution as the Trustees may deem necessary or advisable in the administration and operation of the Fund and Plan, and to authorize anyone to sign checks upon such accounts.

(p) To construe the provisions of the Agreement and Declaration of Trust, and any such construction adopted by the Trustees shall be binding on any Association, the Union, the Employers, the Employees, the Dependents, and any person claiming by or through them.

(q) To authorize any single Trustee or group of Trustees to execute any document, instrument or other writing on behalf of all the Trustees, and any person or entity may rely upon such authority as having been duly authorized and such writing as being binding on all of the Trustees.

(r) To enter into reciprocity, merger, or other similar agreements with other trustees of other employment benefit plans or the trustees of other trust funds and to take all action necessary or appropriate in connection therewith; provided, however, that such action is consistent with the requirements of ERISA and other applicable law and does not adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

(s) To purchase, hold, or lease such premises, materials, supplies and equipment, and to hire, employ, and retain such legal counsel, investment manager, administrative agent, accountant, actuary, and any other clerical, administrative, or professional personnel as in their discretion they may deem necessary or appropriate in the performance of their duties or in the administration of the Fund or Plan. Such persons shall be compensated from Fund assets in the amounts and in the manner determined by the Trustees.

(t) To do all acts and to adopt all rules and regulations for the administration and operation of the Plan and Fund, whether or not expressly authorized herein, as the Trustees

may deem necessary or advisable to accomplish the general objectives and purposes set forth herein.

(u) To estimate for any and all purposes, including the collection of delinquencies in the amount of contributions, liquidated damages, and interest due and owing, in the event the Employer fails to file a monthly payroll report or reports, based upon the contribution amounts for work performed in the most recent month or months in which a monthly payroll report was filed, plus such other relevant information which the Trustees, in their sole discretion, deem appropriate.

(v) To allocate any payment by any Employer among contributions, liquidated damages, interest, or attorneys' fees, either current or delinquent, and among various Trust Funds to which the Employer may be obligated in such amounts as the Trustees, in their sole discretion, shall deem reasonable and appropriate after consideration of all the facts and circumstances which the Trustees deem appropriate.

ARTICLE V CONTRIBUTIONS TO THE FUND.

Section 1. CONTRIBUTION REQUIREMENT.

Each Employer shall contribute to the Fund the amount required by or specified in the Collective Bargaining Agreement, or by other agreement between the Employer and the Union or the Fund. By paying contributions into the Fund, an Employer shall be deemed to have accepted and agreed to be bound by the terms of the Agreement and Declaration of Trust. Employer contributions shall constitute an absolute obligation to the Fund, and such obligation shall not be subject to any defense, set-off, or counterclaim which the Employer may have with respect to the Union or any Employee or the Fund. Delayed payment, partial payment, or nonpayment by any Employer of any amount due the Fund in contributions, liquidated damages, interest, audit deficiencies, audit costs, attorneys fees or other costs of collection shall not relieve any other Employer from its obligation to make similar payments to the Fund. To the extent permitted by law, the entire obligation of an Employer hereunder shall be limited to the payment of such amounts as are required by the aforesaid agreements and by the Agreement and Declaration of Trust.

Section 2. EMPLOYERS' PAYROLL RECORDS.

All Employers shall be required to maintain proper bookkeeping procedures and records in order to facilitate payroll audits by the Trustees. Said proper bookkeeping procedures and records shall include the maintenance of a clear record of the total hours for which all Employees are paid by the Employer, whether or not for the performance of duties or services for the Employer. Such records shall include hours for which Employees are paid due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty,

leave of absence, back pay, and all other paid hours.

The Trustees shall have the right to require an Employer to furnish such payroll reports, time cards, withholding statements, and other relevant records as they deem necessary to ensure compliance with the Collective Bargaining Agreement, or other written agreement between the Union or the Fund and the Employer and the Agreement and Declaration of Trust. The Trustees, their agent, or the independent auditor acting at the request of the Trustees, shall have the right to inspect, at reasonable times during business hours, the above-described records of any Employer.

Section 3. PAYMENTS AND REPORTS.

All contributions shall be payable to the Fund. The Employer shall prepare and submit monthly reports which shall specify for each Employee, his name, social security number, hours for which contributions are due and such other pertinent information as may be required by the Trustees. The frequency with which Employers shall be obligated to submit such reports may be varied by the Trustees from time to time, consistent with the terms of the Collective Bargaining Agreement.

A delinquent Employer may be required at the discretion of the Trustees to make contributions to the Fund and to file reports on a weekly or bi-weekly, rather than on a monthly, basis.

Employer contributions shall be paid in such form of legal tender as may be required at the discretion of the Trustees. Such form of payment may include cash payments, payment by check or money order, certified check, cashier's check, or such other form as the Trustees may from time to time require.

Section 4. DEFAULT IN PAYMENT; DELINQUENT EMPLOYER.

Contribution payments and reports shall be due on the date specified in the Collective Bargaining Agreement or other written agreement between the Employer and the Union or the Fund. If no due date is specified in such agreement, contribution payments and reports shall be due within twenty-five (25) days of the end of the month in which the contribution obligation was Incurred. If contribution payments are not received by such due date, the Employer shall be considered to be in default and to be a "Delinquent Employer" with respect to the relevant month.

Failure of an Employer to pay contributions and submit reports in the manner and on the dates herein specified shall be deemed to be a violation of the Agreement and Declaration of Trust by such Employer, except in such situations where the Trustees shall agree in writing otherwise.

Section 5. LIQUIDATED DAMAGES.

The Union, the Employers and any Association recognize and acknowledge that regular and timely submission of reports and timely payment of Employer contributions to the Fund are essential to the maintenance and efficient operation of the Fund. It is further recognized and acknowledged that when reports and contribution payments are not submitted in a timely fashion, the Fund is required to divert the time and energies of its agents and/or employees and to incur additional expenditures in an effort to obtain Employers' compliance, all of which are contrary to the purposes and objectives of allowing Eligible Employees and their Eligible Dependents to obtain maximum benefits from the Fund to which they are entitled; and that delinquency in paying contributions causes damages to the Fund which are uncertain in amount and not easily ascertainable. It is acknowledged that such damages include administrative costs of collecting, or attempting to collect, delinquent amounts, costs or potential costs of making claim on any applicable bond, the loss to the Fund of investment potential, and the potential threat to the Fund of having to make benefit payments to Eligible Employees and/or Eligible Dependents without having received contributions on their behalf. Therefore, the amount of damage to the Fund resulting from each and every such failure shall be presumed to be the sum outlined below as liquidated damages (and not as a penalty).

In recognition of the foregoing, it is agreed that in addition to the other provisions and remedies available concerning delinquent payments, a Delinquent Employer shall be liable, as liquidated damages and not as a penalty, for twenty percent (20%) of the amount of the delinquent contribution, but in no event shall the amount for liquidated damages be less than \$50.00 as to any single month. The sums payable as liquidated damages shall be due and payable to the Fund on the day the Employer becomes a Delinquent Employer with respect to the relevant month.

Section 6. INTEREST.

A Delinquent Employer shall be liable, in addition to all other amounts due the Fund, for interest on delinquent contributions in an amount equal to one percent (1%) per month, or twelve percent (12%) per year, calculated from the date such Employer becomes a Delinquent Employer to the date the delinquent contribution is actually paid to the Fund.

Section 7. AUDITS.

(a) Delinquent Employers. The Trustees shall have the authority and power to require, at their discretion, a Delinquent Employer to submit to an audit of its payroll and other relevant records for the purpose of determining the amounts due the Fund. The Trustees shall have the authority to engage the services of a qualified auditor to perform such an audit. In addition to all other amounts due the fund, such Delinquent Employer shall be liable to the Fund for all actual auditing costs incurred by the Fund.

(b) Non-Delinquent Employers. The Trustees or the independent auditor acting at the

request of the Trustees, shall have the power and authority to examine or audit the payroll and other relevant records of any Employer whenever such examination is deemed necessary by the Trustees, In their discretion, in connection with the proper administration of the Fund. The Union and the Employers recognize and acknowledge that such audits of non-delinquent Employers may be necessary to ensure that all amounts properly due the Fund are actually paid into the Fund and that such audits may be ordered without the necessity of a finding by the Trustees that any reasons exist indicating that an Employer has failed to report all required hours and pay all required amounts into the Fund.

The Trustees shall have the authority to engage the services of a qualified auditor to perform such an audit. In the event any such audit reveals a contribution deficiency for the audited period equaling five percent (5%) or more of the amount that was required by the terms of the Collective Bargaining Agreement, or other written agreement between the Employer and the Union or the Fund and the Agreement and Declaration of Trust to be paid to the Fund for such period, the Employer shall be liable for all actual costs of such an audit in addition to all other amounts due the Fund. In cases where an overpayment or no deficiency or a deficiency smaller than five percent (5%) as described above is disclosed, the Fund shall bear the costs of the audit. Notwithstanding the foregoing, in the event legal proceedings are commenced against an Employer to recover amounts due the Fund, such Employer shall be liable for all audit costs in addition to all other amounts due the Fund,

(c) Scheduling of Audits. Audits of Delinquent or non-Delinquent Employers shall be scheduled upon reasonable notice and during regular business hours.

Section 8. BONDS.

In circumstances indicating to the Trustees that the future receipt of contribution payments from an Employer is uncertain, the Trustees, at their discretion, may require an Employer to provide a bond for the purpose of guaranteeing payment of the Employer's contribution obligations to the Fund. Such bond shall provide for the recovery by the Fund of all amounts due the Fund, including delinquent contribution payments, audit deficiencies, liquidated damages, interest, attorneys' fees, audit costs, court costs, and all other expenses of collection incurred by the Trustees. The amount of the bond shall be determined by the Trustees. In the event an Employer's Collective Bargaining Agreement or other agreement with the Union or the Fund contains a provision regarding surety bonds, such provision shall apply instead of the preceding paragraph to the extent inconsistent therewith.

In the event that the Trustees do not require an Employer to post a bond, such action shall not be deemed to waive any other obligations of such Employer or remedies available to the Trustees under the Agreement and Declaration of Trust.

Section 9. SECURITY DEPOSIT.

At the discretion of the Trustees, any Employer may be required to remit in advance a

cash security deposit in an amount to be determined by the Trustees in any case when circumstances indicate to the Trustees uncertainty as to future receipt of Employer contributions from an Employer. The purpose of this security deposit shall be to secure the Fund for the full and faithful performance by the Employer of the Employer's obligations under the Agreement and Declaration of Trust and the Collective Bargaining Agreement or other written agreement with the Union or the Fund, so as to ensure the stability of the Fund for the protection of the interests of the Employees and their Dependents. The security deposit shall be held by the Trustees and shall be refunded to the Employer with or without interest, according to the discretion of the Trustees, at the time the Trustees are reasonably certain that future receipt of required Employer contributions to the Fund is no longer doubtful.

Except at the option of the Trustees, the remission of a security deposit at the demand of the Trustees shall not relieve an Employer of its obligation to make its regularly required contributions to the Fund. Generally the security deposit shall be a payment made over and above an Employer's regularly required contribution and shall not be used to reduce any amounts otherwise owing to the Fund. In the absence of written notification from the Trustees expressing a contrary intent, a security deposit shall not be considered by the employer as paid in lieu of payments which may otherwise be due the Fund. In the event that the Trustees do not require an Employer to remit a security deposit, such action shall not be deemed to waive any other obligations of such Employer or remedies available to the Trustees under the Agreement and Declaration of Trust.

Section 10. ATTORNEYS' FEES.

The Trustees shall have the authority to consult legal counsel and to initiate legal proceedings with respect to any matter relating to collecting amounts owed the Fund or enforcing the provisions of the Agreement and Declaration of Trust, including, but not limited to, collecting contributions, liquidated damages, interest, and/or audit deficiencies and compelling a Delinquent or non-delinquent Employer to submit to an audit or to post a security deposit. In addition to all other amounts due the Fund, an Employer shall be liable to the Fund for all actual attorneys' fees so incurred by the Trustees whether or not legal proceedings are instituted.

Section 11. COLLECTION PROCEDURES AND EXPENSES.

The Trustees shall have the authority and power to establish procedures for the prompt and efficient collection of amounts owed the Fund as provided herein, to demand, collect and receive all payments due the Fund, and to take any other action they deem necessary or appropriate in connection with the collection of amounts owed the Fund. With respect to non-hourly Employees, the Trustees shall have the authority to establish and enforce a minimum number of hours per month (or such other period as determined by the Trustees) required to be reported and contributed on by such Employees' Employers. Such collection procedures shall be binding on all Employers. In addition to amounts owed the fund in contributions, an Employer shall be liable for liquidated damages, interest, audit deficiencies, audit costs, and attorneys' fees, all as described in this Article, court costs if legal proceedings are initiated, and all other expenses actually incurred by the Trustees relating to the collection of amounts

owed the Fund or the enforcement of the provisions of the Agreement and Declaration of Trust.

Section 12. WAIVER OF COLLECTION EXPENSES.

The Trustees shall have the authority and power to waive the above-described liquidated damages and/or interest and/or audit costs and/or attorneys' fees, and/or court costs provisions under the following circumstances:

(1) Upon the occurrence of an Employer's first delinquency; provided, however, that in the event such Employer again becomes delinquent within the continuous 12-month period next following said first delinquency, the Trustees shall have the right to re-impose and collect all such amounts (regardless of any earlier waiver) relating to the first delinquency.

(2) Upon a finding by the Trustees of reasonable cause for such delinquency. In determining what constitutes reasonable cause, the Trustees may consider:

- (a) the amount and duration of the delinquency;
- (b) the Employer's past record with respect to delinquencies;
- (c) the explanation for the delinquency given by the Employer;
- (d) the likelihood and projected expenses of collection as compared to the amount owed, and
- (e) any other factors deemed by the Trustees to be relevant.

The decision of the Trustees, with respect to waiver or non-waiver of the collection expenses, is solely within the discretion of the Trustees and such decision is to be deemed final and binding on the Employer. Additionally, any such decision made with respect to one Employer shall not relieve any other Employer of its obligations to make similar payments to the Fund.

Section 13. EXTENSION, SETTLEMENT AND RELEASE.

If, based on the likelihood of collection or the expense that would be incurred in an attempt to collect any amount owed the Fund, the Trustees reasonably believe that the interests of the Eligible Employees and Eligible Dependents would be better served by extending the time for payment, the Trustees may so elect, provided that the terms of any such arrangement, agreement, or understanding with an Employer are reasonable, in writing, and in the Fund's interest, and provided that the agreement, arrangement, or understanding is made for the exclusive purpose of facilitating the collection of such contributions. The Trustees may require that any such agreement be submitted to and approved by a court of appropriate competence and jurisdiction, and/or include language making due the entire amount owing

upon default of any installment payment.

If, based on the likelihood of collection or the expense that would be incurred in an attempt to collect any amount owed the Fund, the Trustees reasonably believe that the interests of the Eligible Employees and Eligible Dependents would be better served by settling with an Employer for less than the entire amount due, the Trustees may so elect, provided that the terms of the agreement, arrangement or understanding are reasonable, in writing, and in the Fund's interest. The Trustees may require that any such agreement be submitted to and approved by a court of appropriate competence and jurisdiction, and/or include language making due the entire original amount due upon default of any part or installment of the compromised amount due.

If, based on the likelihood of collection or the expense that would be incurred in an attempt to collect any amount owed the Fund, the Trustees reasonably believe that the interests of the Eligible Employees and Beneficiaries would be better served by terminating efforts to collect such amounts and by regarding such amounts as uncollectible, the Trustees may so elect, provided such decision is reasonable, in writing, and In the interests of the Fund.

Any such decision made with respect to one Employer shall not relieve any other Employer of its obligations set forth in the Agreement and Declaration of Trust.

Notwithstanding the provisions of Article III, Section 7, the Chairman and the Co-Chairman of the Trustees shall be authorized to act in the absence of a meeting on behalf of the Fund, the Plan, and the Trustees with regard to any agreement or arrangement settling or otherwise relating to a claim of the Fund, the Plan, or the Trustees against a Delinquent Employer, provided that both such officers agree on such action.

Section 14. DELINQUENCY COMMITTEE.

The Trustees may establish a Delinquency Committee for the purpose of dealing with all Employers which are obligated to the Trust Fund and who are or may be late in making monthly contributions, or in paying audit deficiencies promptly after receipt of notification or in paying the correct amount after being notified of a computational error in the monthly reports filed with the Trust Fund.

The Delinquency Committee shall be composed of one member appointed by the Union Trustees and one member appointed by the Employer Trustees.

ARTICLE VI - PROTECTION OF THE FUND AND PLAN; LIABILITIES OF TRUSTEES AND OTHERS.

Section 1. BONDS.

The Trustees, every other Plan fiduciary, and every person who handles funds or other property of the Fund shall be bonded. The amount of such bond shall be fixed by the Trustees at the beginning of each Plan Year (as defined in the Plan) and shall be not less than ten percent(10%) of the amount of funds handled; however, the amount of such bond shall not be less than \$1,000 nor more than \$500,000, except as otherwise provided by the Secretary of Labor. Such bond shall provide protection to the Fund and the Plan against loss by reason of acts of the bonded individual, directly or through connivance with others. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on federal bonds under authority granted the Secretary of Treasury pursuant to Sections 6 through 13 of Title 6, United States Code. The cost of the premium on such bonds shall be paid out of the Fund.

Section 2. LIABILITY OF TRUSTEES.

Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Fund or Plan or for the non-fulfillment of contracts, but the same shall be paid out of the Fund, and, to the extent permitted by law, the Fund is hereby charged with a first lien in favor of such Trustees for their security and indemnification against any liability of any kind incurred hereunder.

Notwithstanding any other provision of this Agreement and Declaration of Trust, neither the Trustees collectively nor any individual Trustee shall be liable for any loss to the Fund or Plan or any depreciation in value of Fund or Plan assets arising out of any act or omission in the execution of their duties or out of any act or omission of a co-Trustee or other Plan fiduciary, except to the extent imposed by ERISA or other applicable law.

In the event the Trustees allocate specific responsibilities, including fiduciary responsibilities, obligations or duties among themselves, or designate others to carry them out, to the extent permitted by ERISA and other applicable law, the Trustees to whom certain responsibilities, obligations or duties are not allocated, or, in the case of a designation to others, all of the Trustees, shall not be liable for a breach of duty by a co-Trustee or other person to whom such responsibilities, obligations or duties have been allocated or designated.

To the extent permitted by ERISA and other applicable law, the Trustees shall not be liable for the acts or omissions of any Investment Manager nor shall they be under an obligation to invest or otherwise manage any Fund or Plan asset which is subject to the management and control of such Investment Manager.

To the extent permitted by ERISA and other applicable law, successor Trustees shall not be liable for the acts or omissions of prior Trustees, and they shall not be obligated to examine the accounts, records, or acts of prior Trustees.

The Trustees shall be entitled to rely upon any instrument, certificate or paper

reasonably believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained. No person dealing with the Trustees shall be required or entitled to see to the application of any money paid or property delivered to the Trustees or to determine whether or not the Trustees are acting pursuant to authority granted or authorizations required in this Agreement and Declaration of Trust. The certificate of the Trustees that they are acting in accordance with the Plan or this Agreement and Declaration of Trust shall protect any person relying thereon.

The Trustees may from time to time consult with their advisors and shall be entitled to rely upon such advice as may be given to them with regard to legal, actuarial, administrative, investment or other matters, and they shall be fully protected in acting or refraining from acting in accordance with such advice, to the extent permitted by ERISA and other applicable law.

If any legal proceeding is brought against the Trustees or any individual Trustee whether or not a breach of any fiduciary duty is alleged, the Fund shall bear the cost of any legal expense incurred by the Trustee or Trustees to the extent not covered by insurance and permitted by ERISA and other applicable law.

Section 3. LIABILITY OF EMPLOYERS AND UNION.

Neither the Employers (or any individual Employer) nor the Union shall in any respect be liable, directly or indirectly, for any of the acts or omissions of the Trustees (individually or collectively), for any of the obligations, debts, or liabilities of the fund or the Plan, or for the payment or funding of Plan benefits, except to the extent of Employer contribution obligations and as required by ERISA and other applicable law.

Section 4. FIDUCIARY LIABILITY INSURANCE.

The Trustees may purchase out of Fund assets insurance for the Trustees and/or other Plan fiduciaries to cover liability for losses occurring by reason of the act or omission of a Trustee or other Plan fiduciary provided such insurance permits recourse by the insurer against the Trustee or other fiduciary in the case of a breach of fiduciary obligation by such Trustee or other fiduciary. Nothing in the Agreement and Declaration of Trust shall preclude a Trustee, other Plan fiduciary, the Union, an Employer, or any Association from purchasing non-recourse liability insurance to cover the Trustees or other Plan fiduciaries.

ARTICLE VII PLAN OF BENEFITS.

Section 1. WRITTEN PLAN.

The detailed basis upon which the health and welfare program is operated, administered, and maintained and health and welfare benefits are paid pursuant to the Agreement and Declaration of Trust shall be specified in writing by appropriate action of the Trustees. Such writings, and all written amendments made thereto from time to time by the Trustees, shall constitute the Plan.

Section 2. BENEFITS; ELIGIBILITY.

The Trustees shall have full authority to determine and prescribe the type and amount of Plan benefits and the eligibility requirements therefore, and to adopt any and all Plan provisions and other rules and regulations as they may deem necessary or appropriate for the operation and administration of the Plan, provided that any such action shall be consistent with the terms and purposes of the Agreement and Declaration of Trust and the requirements of law and shall not adversely affect the tax-qualified status of the Plan or the tax-exempt status of the Fund under the Internal Revenue Code. The Trustees shall have the authority to terminate the eligibility of Employees, under the Plan, of a Delinquent Employer (as defined in Article V, Section 4) at such time and upon such terms as they determine in their discretion.

Section 3. AMENDMENTS TO PLAN; TERMINATION.

The Trustees shall have full authority to amend the Plan, from time to time as they deem necessary and advisable, provided, however, that no Plan amendment may be adopted which will, in any way, conflict with the terms of the Collective Bargaining Agreement, and, furthermore, that such amendments shall be consistent with the terms and purposes of the Agreement and Declaration of Trust and the requirements of law and that no such amendment adversely affects the tax-exempt status of the Fund under the Internal Revenue Code. If there is no longer in force and effect a Collective Bargaining Agreement requiring contributions to the Fund, the Trustees shall have the authority to terminate the Plan in such manner and at such time as they deem advisable, provided that any such action is agreed upon by all Trustees and that such termination shall be consistent with the requirements of ERISA and other applicable law.

Section 4. INTERPRETATION OF PLAN.

The Trustees shall have full authority to interpret the terms of the Plan and to decide all questions pertaining to the operation and administration of the Plan. Such interpretations and decisions shall be binding on the Employers, the Union, any Association, the Employees, the Dependents, and any person claiming by or through them.

Section 5. INTERNAL REVENUE SERVICE APPROVAL

The Trustees may apply to the Internal Revenue Service for a determination as to the continued tax-exempt status of the Plan and Fund at any time deemed necessary or advisable. The Trustees are authorized to execute any and all documents or applications as are necessary in connection with such determination requests.

Section 6. INCORPORATION BY REFERENCE

All provisions of the Collective Bargaining Agreements, other written agreements between Employers and the Union or the Fund, the Plan, and the Plan's Summary Plan Description which relate to the operation and administration of the Fund are incorporated herein by reference for purposes of complying with the "written plan" requirement of Section 402(a) of ERISA.

ARTICLE VIII PARTICIPATION OF EMPLOYERS.

Section 1. ASSOCIATION MEMBERSHIP.

By becoming a member of any Association of Employers that enters into a Collective Bargaining Agreement with the Union (in the manner prescribed by such organization), an Employer shall be deemed to authorize and empower such association to enter into and agree to be bound by the Agreement and Declaration of Trust on its behalf and to authorize and empower the association to be its agent for purposes of designating, appointing, removing, and replacing Employer Trustees.

Section 2. EXECUTION OF WRITTEN INSTRUMENT.

An Employer may agree to become bound by the provisions of the Agreement and Declaration of Trust by executing a copy hereof or by executing, or becoming a party to, a Collective Bargaining Agreement, or other written agreement with the Union or the Fund.

Section 3. OTHER.

Nothing in Sections 1 or 2 of this Article shall be construed to preclude an Employer that does not or may not comply with the requirements of such Sections from contributing to the Fund for the purpose of rendering its Employees and their dependents eligible for Plan benefits, provided that contributions by such Employer satisfy the requirements of Section 302 of the Labor Management Relations Act, 1947, 29 U.S.C. Section 186; that the participation by such Employer in the Plan through the payment of contributions to the Fund

does not violate any provision of a Collective Bargaining Agreement or adversely affect the tax-exempt status of the Fund under the Internal Revenue Code, and that such participation is permitted by the Trustees.

ARTICLE IX AMENDMENT OF AGREEMENT AND DECLARATION OF TRUST.

Section 1. AMENDMENT BY TRUSTEES.

This Agreement and Declaration of Trust may be amended in any respect from time to time by the Trustees, provided that each amendment shall be duly executed in writing by the Trustees and further provided that no amendment shall be adopted that would alter the basic principles of this Agreement and Declaration of Trust, alter the provisions of Article III regarding the appointment or removal of Employer or Union Trustees, change the requirement of an equal number of Union and Employer Trustees, be in conflict with the Collective Bargaining Agreements to the extent such Agreements affect contributions to the Fund created hereunder, be in conflict with laws governing trust funds of this nature or adversely affect the tax-exempt status of the Fund under the Internal Revenue Code. As to any such amendment the Trustees in their sole discretion shall have full power to fix the effective date thereof.

Section 2. AMENDMENT BY UNION AND THE EMPLOYERS.

The Union and the Employers, by mutual agreement, shall have the power to amend this Agreement and Declaration of Trust in any respect; provided, however, that no such amendment shall be adopted which would be in conflict with laws governing trust funds of this nature or adversely affect the tax-exempt status of the Fund under the Internal Revenue Code.

Section 3. NOTIFICATION OF AMENDMENT.

Whenever an amendment is adopted in accordance with this Article, a copy thereof shall be distributed to all Trustees, and the Trustees shall so notify the Union, any Associations and the Employers, provided, however, that the amendment shall be effective, with regard to the Association and all Employers, whether or not such parties shall have received actual notice of the amendment.

ARTICLE X TERMINATION OF AGREEMENT AND DECLARATION OF TRUST.

Section 1. BY THE TRUSTEES.

This Agreement and Declaration of Trust may be terminated by an instrument in writing executed by all the Trustees if there is no longer in force and effect a Collective Bargaining Agreement requiring contributions to the Fund.

Section 2. BY THE UNION AND THE EMPLOYERS.

This Agreement and Declaration of Trust may be terminated by an instrument In writing duly executed by the Union and all the Employers, by mutual agreement, specifically evidencing an intention to effect such a termination.

Section 3. EFFECT OF TERMINATION OF COLLECTIVE BARGAINING AGREEMENT ON AGREEMENT AND DECLARATION OF TRUST, FUND, AND PLAN.

The Union and the Employers intend for the Fund, the Plan and the Agreement and Declaration of Trust to exist and be maintained and administered without regard to whether any Collective Bargaining Agreement terminates, either finally or pending negotiations between the collective bargaining parties. Termination of the Fund and the Agreement and Declaration of Trust shall only occur upon the taking of the appropriate action pursuant to this Article X.

Section 4. PROCEDURE ON TERMINATION.

In the event of the final termination of this Agreement and Declaration of Trust and the Fund, the Trustees may proceed with the termination of the Plan or take such other action as permitted by law. If the Plan is terminated, the Trustees shall have full authority to take any and all action required by law in connection with such termination and any other action permitted by law deemed by them to be necessary to accomplish the prompt and equitable completion of matters relating to such termination. The Trustees shall continue to serve as trustees and Fund assets shall continue to be held in trust until all matters relating to termination have been completed. Upon termination, after payment of all pending benefit claims, reasonable expenses, taxes, and proper charges, Fund assets shall be allocated and distributed in the manner, and to the persons, which the Trustees determine will best effectuate the purposes hereof, provided that such allocation and distribution shall be in the best interests of Eligible Employees and Eligible Dependents, shall not unduly impair the benefit rights of such eligible persons existing at the time of termination, and shall be consistent with the provisions of ERISA, the Internal Revenue Code and other applicable law.

Section 5. NOTIFICATION OF TERMINATION.

Upon termination of the Fund in accordance with this Article, the Trustees shall forthwith notify the Union and each Employer.

ARTICLE XI MISCELLANEOUS.

Section 1. SITUS.

The City of Washington, District of Columbia, shall be deemed to be the situs of the Fund created hereunder and the jurisdiction in which the Fund and the Plan are administered. All questions pertaining to the validity, construction and administration of this Agreement and Declaration of Trust, the Fund, and the Plan shall be determined in accordance with the laws of the District of Columbia and of the United States.

Section 2. SEVERABILITY.

Should any provision in this Agreement and Declaration of Trust or in the Plan or rules and regulations adopted thereunder, or in any Collective Bargaining Agreement or other written agreement with the Union or the Fund, be deemed or held to be unlawful or invalid for any reason, such provision, rule or regulation shall be deemed to be stricken therefrom and of no force and effect and such fact shall not adversely affect the other provisions herein and therein contained unless such illegality shall make impossible or impractical the functioning of the Fund and the Plan, and in such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

Section 3. WORDS USED.

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

IN WITNESS WHEREOF, the Union, the Employers, and the Trustees, pursuant to Article XIV of the Agreement and Declaration of Trust Establishing the Stone and Marble Masons Subordinate Union #1, D.C., B.A.C. Health and Welfare Trust Fund, executed on or about July 14, 1959, do hereby adopt the foregoing FOURTH RESTATEMENT and the

undersigned, being duly authorized, cause same to be duly executed. This FOURTH RESTATEMENT shall be effective as of the 13TH day of October, 2006.

The undersigned duly appointed and certified Trustees acknowledge having read the foregoing FOURTH RESTATEMENT and by signing said document hereby agree to its terms, to act as Trustees hereunder, and to comply with said terms.

TRUSTEES:

_____ Date: _____

_____ Date: _____

_____ Date: _____

_____ Date: _____

_____ Date: _____

_____ Date: _____

STONE AND MARBLE MASONS UNION of Metropolitan Washington, D.C.

By: _____

Title: _____

Date: _____

The undersigned Employer hereby agrees to be bound by all of the terms and conditions of the foregoing Agreement and Declaration of Trust Establishing the Stone and Marble Masons Union of Metropolitan Washington, D.C., Health and Welfare Trust Fund, designates as its representatives on the Board of Trustees the persons currently serving as Employer Trustees together with their successors appointed in the manner provided in said Agreement and Declaration of Trust, agrees to be bound by all actions taken by said Employer Trustees and their successors, and acknowledges receipt of a copy of said instrument.

EMPLOYER

By: _____

Title: _____

Address: _____

Telephone No.: _____

Date: _____

\\Mds\taft hartley\BAC\Docs-Welfare\Trust Agreement\FOURTH RESTATEMENT of the Agreement and Declaration of Trust_H&W.doc

EXHIBIT D

[REDACTED]

From: CMS ReinsuranceContributions [ReinsuranceContributions@cms.hhs.gov]
Sent: Thursday, January 8, 2015 10:14 AM
To: [REDACTED]
Subject: REMINDER - ACA Transitional Reinsurance Program - Removal of ACH Debit Block

Thank you for your recent filing of the ACA Transitional Reinsurance Program Annual Enrollment and Contribution Submission Form through Pay.gov. Your payment amount of \$865,357.50 is scheduled for 01/09/2015. Your transaction will be processed on the scheduled day or the day after. The Pay.gov tracking ID associated with your payment is 2517A71L.

Prior to your scheduled payment date, please take the following steps to ensure your ACH payment transaction completes successfully:

1. Verify that the account you provided will have sufficient funds to cover the amount of your Pay.gov transaction on your scheduled payment date.
2. Contact your financial institution to verify that the account you provided does not have an ACH Debit Block. Automatic debits to a business account may be blocked by the bank through a security feature called an ACH Debit Block, ACH Positive Pay, or ACH Fraud Prevention Filters. To remove an ACH Debit Block, contact your financial institution to add the Transitional Reinsurance Program to your list of allowed ACH Company IDs.

The Transitional Reinsurance Program's Company ID (also known as Agency Location Code (ALC+2)) is **7505008015**.

The Company Name is **USDEPTHHSCMS**.

The Originating Depository Financial Institution (ODFI) is FRB-C. FRB-C is the payment processor for ACH payments made through Pay.gov and will appear as the ACH ODFI. FRB-C processes Pay.gov ACH transactions under ABA routing numbers [REDACTED] and [REDACTED].

3. We note that CMS will not be providing a W-9 for this payment. The following information should be used to document for your financial records that a payment was made to CMS:

CMS TIN
52-0883104

CMS Official Address
Department of Health and Human Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

If you are unable to contact your financial institution before your scheduled payment date and the payment is rejected or retired, you must complete a refiling. For additional information, please contact us at reinsurancecontributions@cms.hhs.gov.

Thank You,

Division of Reinsurance Operations
Center for Consumer Information & Insurance Oversight
Centers for Medicare & Medicaid Services

[REDACTED]

From: pay.gov.clev@clev.frb.org
Sent: Wednesday, November 5, 2014 1:19 PM
To: [REDACTED]
Subject: Pay.gov Payment Confirmation: Transitional Reinsurance Contributions

Your payment has been submitted to Pay.gov and the details are below. If you chose the option to receive payment reminders in your user profile and this is a deferred or recurring payment, you will receive a reminder email several days before the payment is processed. You may change your payment reminder preferences and email address in your user profile at any time.

If you wish to cancel this transaction, log in to your account at <https://www.pay.gov/> and choose the Pending tab of the Payment Activity page. If you have any questions regarding this payment, please contact Transitional Reinsurance Contributions at 1-855-CMS-1515 or by email at reinsurancecontributions@cms.hhs.gov.

Application Name: Transitional Reinsurance Contributions
Pay.gov Tracking ID: 25IACU2M
Agency Tracking ID: 74703076918

Account Holder Name: Electrical Welfare Trust Fund
Transaction Type: ACH Debit
Transaction Amount: \$173,071.50
Payment Date: 11/09/2015
Account Type: Business Checking
Routing Number: [REDACTED]
Account Number: [REDACTED]

Transaction Date: 11/05/2014 01:18:57 PM EST
Total Payments Scheduled: 1
Frequency: OneTime

THIS IS AN AUTOMATED MESSAGE. PLEASE DO NOT REPLY.

[REDACTED]

From: Division of Reinsurance Operations [reinsurancecontributions@cms.hhs.gov]
Sent: Wednesday, November 5, 2014 7:34 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: ACTION REQUIRED - 2014 Transitional Reinsurance Program - Pay.gov Tracking ID # 2517A71L: Form Filing Required

Categories: [REDACTED]

Thank you for your recent filing of the ACA Transitional Reinsurance Program Annual Enrollment and Contribution Submission Form on Pay.gov: Pay.gov Tracking ID #2517A71L

Our records indicate that you have not completed a Pay.gov Form filing for the following ACA Transition Reinsurance Payment Contributions:

- Second Contribution for 2014.

A Contributing Entity is required to submit an Annual Enrollment Count only once for each benefit year under 45 CFR 153.405(b) by no later than November 15th of the benefit year.

To resolve this issue, you must complete the Form filing identified above within five (5) business days of receipt of this notice.

Once you have completed your filing, CMS will review the completed Pay.gov filing. If additional action is required, you will receive further notification.

Detailed instructions on how to complete a Form are available in the "Annual Enrollment and Contributions Form Submission Instructions" and how to complete the Supporting Documentation Job Aid Template are available in the "Job Aid Instructions for Completing Reinsurance Contributions' Supporting Documentation." These materials can be found on:

- Pay.gov at <http://www.pay.gov>
- CCIIO's Transitional Reinsurance Program webpage at <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/The-Transitional-Reinsurance-Program/Reinsurance-Contributions.html>
- REGTAP at <https://www.regtap.info>

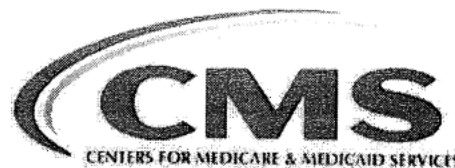
For additional information, please contact us at reinsurancecontributions@cms.hhs.gov.

Thank you,

Division of Reinsurance Operations
Center for Consumer Information & Insurance Oversight
Centers for Medicare & Medicaid Services
Department of Health & Human Services



**ACA Transitional Reinsurance Program
Annual Enrollment and Contributions Submission Form**



Type of Payment

- First Collection - Contribution for Program Payments and Program Administration Funds
- Second Collection - Contribution for General Fund of the US Treasury
- Combined Collection - First Collection + Second Collection (as described above)
- Invoice
- Resubmission - File Attachment

Benefit Year for Reporting Gross Annual Enrollment Count	2014
Total Applicable Benefit Year Contribution Rate	63.00
Gross Annual Enrollment Count	16,483.00
Verify Gross Annual Enrollment Count	16,483.00
Contribution Rate for Program Payments and Program Administration Funds	52.50
Contribution Amount Due for Program Payments and Program Administration Funds	865,357.50
Contribution Rate for General Fund of the US Treasury	10.50
Contribution Amount Due for General Fund of the US Treasury	173,071.50
Total Contributions Due for the Applicable Benefit Year	1,038,429.00
Pay.gov Tracking ID	_____
Invoice Number	_____
Verify Invoice Number	_____
Invoice Payment Amount	_____
Gross Annual Enrollment Count	_____
Verify Gross Annual Enrollment Count	_____

- The gross annual enrollment count entered in this form matches the aggregate enrollment count by entity in the supporting documentation.
- Acknowledgment:** My acknowledgment is on behalf of my organization and the contributing entity or entities for which the data and accompanying payment(s) are being submitted. My acknowledgment legally and financially binds my organization and each contributing entity to the applicable laws, regulations and program instructions of the Affordable Care Act (ACA). By my submission, I certify that the data are true, correct and complete. If my organization or any contributing entity becomes aware that data are untrue, incorrect or incomplete, CMS shall be promptly informed. If CMS identifies a discrepancy or has questions about the data being submitted, I agree to be the contact for responding to such questions. I acknowledge that the provisions of the Affordable Care Act specifically make payments made by or in connection with an Exchange subject to the False Claims Act if those payments include any Federal funds. This includes, but is not limited to, the transitional reinsurance program established under Section 1341 of the Affordable Care Act.

Authorizing Official for Reporting Entity's Acknowledgment

* First Name: _____ * Last Name: _____ * Title: _____
 * Email Address: _____ * Telephone: _____ Ext: _____

Back

12/3/2014

Pay.gov - Receipt



Receipt

Your payment is complete

Pay.gov Tracking ID: 25I7A71L

Agency Tracking ID: 74701819951

Form Name: ACA Transitional Reinsurance Program Annual Enrollment Contributions Submission

Application Name: Transitional Reinsurance Contributions

Payment Information

Payment Type: Bank account (ACH)

Payment Amount: \$865357.50

Transaction Date: 11/03/2014 01:50:03 PM EST

Payment Date: 01/09/2015

Account Information

Account Holder Name: Electrical Welfare Trust Fund

Routing Number: [REDACTED]

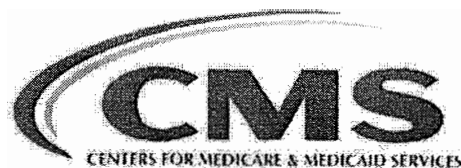
Account Number: [REDACTED]

Email Confirmation Receipt

Confirmation Receipts have been emailed to:

[REDACTED]

**ACA Transitional Reinsurance Program
Annual Enrollment and Contributions Submission Form**



Type of Payment

- First Collection - Contribution for Program Payments and Program Administration Funds
- Second Collection - Contribution for General Fund of the US Treasury
- Combined Collection - First Collection + Second Collection (as described above)
- Invoice
- Resubmission - File Attachment

Benefit Year for Reporting Gross Annual Enrollment Count	2014
Total Applicable Benefit Year Contribution Rate	63.00
Gross Annual Enrollment Count	16,483.00
Verify Gross Annual Enrollment Count	16,483.00
Contribution Rate for Program Payments and Program Administration Funds	52.50
Contribution Amount Due for Program Payments and Program Administration Funds	865,357.50
Contribution Rate for General Fund of the US Treasury	10.50
Contribution Amount Due for General Fund of the US Treasury	173,071.50
Total Contributions Due for the Applicable Benefit Year	1,038,429.00
Pay.gov Tracking ID	_____
Invoice Number	_____
Verify Invoice Number	_____
Invoice Payment Amount	_____
Gross Annual Enrollment Count	_____
Verify Gross Annual Enrollment Count	_____

- The gross annual enrollment count entered in this form matches the aggregate enrollment count by entity in the supporting documentation.
- Acknowledgment: My acknowledgment is on behalf of my organization and the contributing entity or entities for which the data and accompanying payment(s) are being submitted. My acknowledgment legally and financially binds my organization and each contributing entity to the applicable laws, regulations and program instructions of the Affordable Care Act (ACA). By my submission, I certify that the data are true, correct and complete. If my organization or any contributing entity becomes aware that data are untrue, incorrect or incomplete, CMS shall be promptly informed. If CMS identifies a discrepancy or has questions about the data being submitted, I agree to be the contact for responding to such questions. I acknowledge that the provisions of the Affordable Care Act specifically make payments made by or in connection with an Exchange subject to the False Claims Act if those payments include any Federal funds. This includes, but is not limited to, the transitional reinsurance program established under Section 1341 of the Affordable Care Act.

Authorizing Official for Reporting Entity's Acknowledgment

* First Name: _____ * Last Name: _____ * Title: _____
 * Email Address: _____ * Telephone: _____ Ext: _____

Back

12/3/2014

Pay.gov - Receipt



Receipt

Your payment is complete

Pay.gov Tracking ID: 25IACU2M

Agency Tracking ID: 74703076918

Form Name: ACA Transitional Reinsurance Program Annual Enrollment Contributions Submission

Application Name: Transitional Reinsurance Contributions

Payment Information

Payment Type: Bank account (ACH)

Payment Amount: \$173071.50

Transaction Date: 11/05/2014 01:18:57 PM EST

Payment Date: 11/09/2015

Account Information

Account Holder Name: Electrical Welfare Trust Fund

Routing Number: [REDACTED]

Account Number: [REDACTED]

Email Confirmation Receipt

Confirmation Receipts have been emailed to:

[REDACTED]

EXHIBIT E



Receipt

Your payment is complete

Pay.gov Tracking ID: 25IB14T7

Agency Tracking ID: 74703743674

Form Name: ACA Transitional Reinsurance Program Annual Enrollment Contributions Submission

Application Name: Transitional Reinsurance Contributions

Payment Information

Payment Type: Bank account (ACH)

Payment Amount: \$142569.00

Transaction Date: 11/06/2014 12:05:19 PM EST

Payment Date: 01/12/2015

Account Information

Account Holder Name: PNC Bank- Operating Engineer Local No. 77

Routing Number: [REDACTED]

Account Number: [REDACTED]

Email Confirmation Receipt

Confirmation Receipts have been emailed to:

[REDACTED]



Receipt

Your payment is complete

Pay.gov Tracking ID: 25OB668U

Agency Tracking ID: 74905735842

Form Name: 2015 ACA Transitional Reinsurance Program Annual Enrollment Contributions

Application Name: Transitional Reinsurance Contributions

Payment Information

Payment Type: Bank account (ACH)

Payment Amount: \$107,712.00

Transaction Date: 11/11/2015 04:31:15 PM EST

Payment Date: 01/08/2016

Account Information

Account Holder Name: Operating Engineers TRT Fund of Wash

Routing Number: [REDACTED]

Account Number: [REDACTED]

Email Confirmation Receipt

Confirmation Receipts have been emailed to:

[REDACTED]

ACA Transitional Reinsurance Program Annual Enrollment and Contributions Submission Form



* Type of Filing

- New
 Re-Filing
 Resubmission
 Invoice

* Type of Payment (All payment types must be filed and scheduled by November 15th of the Benefit Year)

<input type="checkbox"/>	First Collection - Contribution for Program Payments and Program Administration Funds (Regulatory Payment Due Date - January 15, 2016)
<input type="checkbox"/>	Second Collection - Contribution for General Fund of the US Treasury (Regulatory Payment Due Date - November 15, 2016)
<input checked="" type="checkbox"/>	Combined Collection - First Collection + Second Collection (as described above) (Regulatory Payment Due Date - January 15, 2016)

* Benefit Year for Reporting Gross Annual Enrollment Count 2015

Total Applicable Benefit Year Contribution Rate 44.00

* Annual Enrollment Count 2,448.00

* Verify Annual Enrollment Count 2,448.00

Contribution Rate for Program Payments and Program Administration Funds 33.00

Contribution Amount Due for Program Payments and Program Administration Funds 80,784.00

Contribution Rate for General Fund of the US Treasury 11.00

Contribution Amount Due for General Fund of the US Treasury 26,928.00

Total Contributions Due for the Applicable Benefit Year 107,712.00

Previous Pay.gov Tracking ID [REDACTED]

Invoice Number [REDACTED]

Verify Invoice Number [REDACTED]

Invoice Payment Amount [REDACTED]

Annual Enrollment Count [REDACTED]

Verify Annual Enrollment Count [REDACTED]

The Annual enrollment count entered in this Form is accurate and matches the aggregate enrollment count by entity in the Supporting Documentation, if applicable.

Acknowledgment: My acknowledgment is on behalf of my organization and the contributing entity or entities for which the data and accompanying payment(s) are being submitted. My acknowledgment legally and financially binds my organization and each contributing entity to the applicable laws, regulations and program instructions of the Affordable Care Act (ACA). By my submission, I certify that the data are true, correct and complete. If my organization or any contributing entity becomes aware that data are untrue, incorrect or incomplete, CMS shall be promptly informed. If CMS identifies a discrepancy or has questions about the data being submitted, I agree to be the contact for responding to such questions. I acknowledge that the provisions of the Affordable Care Act specifically make payments made by or in connection with an Exchange subject to the False Claims Act if those payments include any Federal funds. This includes, but is not limited to, the transitional reinsurance program established under Section 1341 of the Affordable Care Act.

Authorizing Official for Reporting Entity's Acknowledgment

* First Name: [REDACTED] * Last Name: [REDACTED] * Job Title: [REDACTED]

* Email Address: [REDACTED] * Telephone: [REDACTED] Ext: [REDACTED]



Receipt

Your payment is submitted

Pay.gov Tracking ID: 25USBIF4

Agency Tracking ID: 75124632820

Form Name: 2016 ACA Transitional Reinsurance Program Annual Enrollment Contributions

Application Name: ACA TRP BY2016

Payment Information

Payment Type: Bank account (ACH)

Payment Amount: \$72,873.00

Transaction Date: 11/07/2016 03:13:43 PM EST

Payment Date: 01/10/2017

Account Information

Account Holder Name: Operating Engineers TRT Fund of Wash

Routing Number: [REDACTED]

Account Number: [REDACTED]

Email Confirmation Receipt

Confirmation Receipts have been emailed to:

[REDACTED]

**ACA Transitional Reinsurance Program
Annual Enrollment and Contributions Submission Form**



[Need Help?](#)

* Type of Filing ?
 New Re-Filing Resubmission Invoice

* Do you want to make the Full Contribution for 2016 in one payment? ?
 Yes No

* If No, select one of the two payments for which you are filing this Form. ?
 (1) First Collection - \$21.60 per covered life.
 (Regulatory Payment Due Date - January 17, 2017)
 (2) Second Collection - \$5.40 per covered life.
 (Regulatory Payment Due Date - November 15, 2017)

* Benefit Year for Reporting Annual Enrollment Count	2016	
Total Applicable Benefit Year Contribution Rate	27.00	
* Annual Enrollment Count	2,699.00	?
* Verify Annual Enrollment Count	2,699.00	?
Contribution Rate for Program Payments and Program Administration Funds	21.60	?
Contribution Amount Due for Program Payments and Program Administration Funds	58,298.40	?
Contribution Rate for General Fund of the US Treasury	5.40	?
Contribution Amount Due for General Fund of the US Treasury	14,574.60	?
Total Contributions Due for the Applicable Benefit Year	72,873.00	?
* Previous Pay.gov Tracking ID		?
* Invoice Number		?
* Verify Invoice Number		?
* Invoice Payment Amount		
* Annual Enrollment Count		?
* Verify Annual Enrollment Count		?

The Annual enrollment count entered in this Form is accurate and matches the aggregate enrollment count by entity in the Supporting Documentation, if applicable. ?

Acknowledgment: My acknowledgment is on behalf of my organization and the contributing entity or entities for which the data and accompanying payment(s) are being submitted. My acknowledgment legally and financially binds my organization and each contributing entity to the applicable laws, regulations and program instructions of the Affordable Care Act (ACA). By my submission, I certify that the data are true, correct and complete. If my organization or any contributing entity becomes aware that data are untrue, incorrect or incomplete, CMS shall be promptly informed. If CMS identifies a discrepancy or has questions about the data being submitted, I agree to be the contact for responding to such questions. I acknowledge that the provisions of the Affordable Care Act specifically make payments made by or in connection with an Exchange subject to the False Claims Act if those payments include any Federal funds. This includes, but is not limited to, the transitional reinsurance program established under Section 1341 of the Affordable Care Act.

Authorizing Official for Reporting Entity's Acknowledgment

* First Name: _____ * Last Name: _____ * Job Title: _____
 * Email Address: _____ * Telephone: _____ Ext: _____

EXHIBIT F



From: pay.gov.clev@clev.frb.org
Sent: Tuesday, November 11, 2014 5:22 PM
To: [Redacted]
Subject: Pay.gov Payment Confirmation: Transitional Reinsurance Contributions

Your payment has been submitted to Pay.gov and the details are below. If you chose the option to receive payment reminders in your user profile and this is a deferred or recurring payment, you will receive a reminder email several days before the payment is processed. You may change your payment reminder preferences and email address in your user profile at any time.

If you wish to cancel this transaction, log in to your account at <https://www.pay.gov/> and choose the Pending tab of the Payment Activity page. If you have any questions regarding this payment, please contact Transitional Reinsurance Contributions at 1-855-CMS-1515 or by email at reinsurancecontributions@cms.hhs.gov.

Application Name: Transitional Reinsurance Contributions
Pay.gov Tracking ID: 25ID697R
Agency Tracking ID: 74706024990

Account Holder Name: Stone & Marble Masons of Metropolitan Washington DC Health and Welfare Fund
Transaction Type: ACH Debit
Transaction Amount: \$20,664.00
Payment Date: 01/14/2015
Account Type: Business Checking
Routing Number: [Redacted]
Account Number: [Redacted]

Transaction Date: 11/11/2014 05:21:51 PM EST
Total Payments Scheduled: 1
Frequency: OneTime

THIS IS AN AUTOMATED MESSAGE. PLEASE DO NOT REPLY.



From: notification@pay.gov
Sent: Tuesday, November 10, 2015 10:34 AM
To: [Redacted]
Subject: Pay.gov Payment Confirmation: Transitional Reinsurance Contributions

Your payment has been submitted to Pay.gov and the details are below. If you chose the option to receive payment reminders in your user profile and this is a deferred or recurring payment, you will receive a reminder email several days before the payment is processed. You may change your payment reminder preferences and email address in your user profile at any time.

If you wish to cancel this transaction, log in to your account at <https://www.pay.gov/> and choose the Pending tab of the Payment Activity page. If you have any questions regarding this payment, please contact Transitional Reinsurance Contributions at 1-855-CMS-1515 or reinsurancecontributions@cms.hhs.gov.

Application Name: Transitional Reinsurance Contributions
Pay.gov Tracking ID: 25OB3RCP
Agency Tracking ID: 74905162382

Account Holder Name: Stone & Marble Masons of Metropolitan Washington DC Health & Welfare Fund
Transaction Type: ACH Debit
Transaction Amount: \$14,476.00
Payment Date: 01/14/2016
Account Type: Business Checking
Routing Number: [Redacted]
Account Number: [Redacted]

Transaction Date: 11/10/2015 10:33:49 AM EST
Total Payments Scheduled: 1
Frequency: OneTime

THIS IS AN AUTOMATED MESSAGE. PLEASE DO NOT REPLY.

[REDACTED]

From: notification@pay.gov
Sent: Wednesday, November 9, 2016 12:42 PM
To: [REDACTED]
Subject: Pay.gov Payment Confirmation: ACA TRP BY2016

Your payment has been submitted to Pay.gov and the details are below. To confirm that the payment processed as expected, you may refer to your bank statement on the scheduled payment date. If you have any questions or wish to cancel this payment, you will need to contact the agency you paid at your earliest convenience.

If you chose the option to receive payment reminders in your user profile and this is a deferred or recurring payment, you will receive a reminder email several days before the payment is processed. You may change your payment reminder preferences and email address in your user profile at any time.

If you wish to cancel this transaction, log in to your account at <https://www.pay.gov/> and choose the Pending tab of the Payment Activity page.

Application Name: ACA TRP BY2016
Pay.gov Tracking ID: 25UTLU7L
Agency Tracking ID: 75125986668

Account Holder Name: Stone & Marble Masons of Metro Washington DC Health & Welfare Fund
Transaction Type: ACH Debit
Transaction Amount: \$11,637.00
Payment Date: 01/13/2017
Account Type: Business Checking
Routing Number: [REDACTED]
Account Number: [REDACTED]

Transaction Date: 11/09/2016 12:42:02 PM EST
Total Payments Scheduled: 1
Frequency: OneTime

THIS IS AN AUTOMATED MESSAGE. PLEASE DO NOT REPLY.

[REDACTED]

From: Division of Reinsurance Operations <reinsurancecontributions@cms.hhs.gov>
Sent: Friday, December 23, 2016 3:58 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: REMINDER - ACA Transitional Reinsurance Program – Removal of ACH Debit Block for Combined Collection

Thank you for filing your ACA Transitional Reinsurance Program Annual Enrollment and Contribution Submission Form for the 2016 benefit year through Pay.gov.

- Your Combined Collection payment in the amount of \$11,637.00 is scheduled to be withdrawn from your bank account on 1/13/2017. Your transaction will be processed on the scheduled day or the day after. The Pay.gov tracking ID associated with your Combined Collection payment is 25UTLU7L.

Prior to the scheduled payment date for your Combined Collection, please take the following steps to ensure your ACH payment transaction completes successfully:

1. Verify that the account you provided will have sufficient funds to cover the amount of your Pay.gov transaction on your scheduled payment date. If you need to update your banking information prior to the scheduled payment date, please contact us at reinsurancecontributions@cms.hhs.gov.
2. Contact your financial institution to verify that the account you provided does not have an ACH Debit Block. Automatic debits to a business account may be blocked by the bank through a security feature called an ACH Debit Block, ACH Positive Pay, or ACH Fraud Prevention Filters. To remove an ACH Debit Block, contact your financial institution to add the Transitional Reinsurance Program to your list of allowed ACH Company IDs.

The Transitional Reinsurance Program's Company ID (also known as Agency Location Code (ALC+2)) is 7505008016.

The Company Name is USDEPTHHSCMS.

The Originating Depository Financial Institution (ODFI) is FRB-C. FRB-C is the payment processor for ACH payments made through Pay.gov and will appear as the ACH ODFI. FRB-C processes Pay.gov ACH transactions under ABA routing numbers [REDACTED] and [REDACTED].

3. We note that CMS will not be providing a W-9 for this payment. The following information should be used to document for your financial records that a payment was made to CMS - CMS TIN: 52-0883104

CMS Official Address:

Department of Health and Human Services Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

If you are unable to contact your financial institution before your scheduled payment date and the payment is rejected or retired, you must complete a refiling. For additional information, please contact us at reinsurancecontributions@cms.hhs.gov.

Thank you,

Division of Reinsurance Operations
Center for Consumer Information & Insurance Oversight
Centers for Medicare & Medicaid Services
Department of Health & Human Services