

**KENTUCKY LABORERS DISTRICT COUNCIL
HEALTH AND WELFARE TRUST FUND**

AGREEMENT AND DECLARATION OF TRUST

AS REVISED JULY 14, 2005

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PREAMBLE

WHEREAS, Article IX of the Agreement and Declaration of Trust of the Kentucky Laborers District Council Health and Welfare Trust Fund previously revised and adopted as of December 1, 1975, provides that this Trust Agreement may henceforth be amended to any extent from time to time by majority vote of the Trustees; and

WHEREAS, the Trustees of the Fund have previously made amendments to the Trust Agreement and are making additional amendment by the restatement of the Trust Agreement at this time to comply with the Employees Retirement Income Security Act of 1974, as amended; and

WHEREAS, this amended and restated Agreement and Declaration of Trust made and entered into by and between the KENTUCKY LABORERS DISTRICT COUNCIL and the CONSTRUCTION EMPLOYERS ASSOCIATION OF CENTRAL KENTUCKY, the WESTERN KENTUCKY CONSTRUCTION EMPLOYERS ASSOCIATION, the HIGHWAY CONTRACTORS, INC, and the TRI STATE CONTRACTORS ASSOCIATION, and their signatory members hereinafter called the "Employers"; and

WHEREAS, the Union and the Employers have collective bargaining agreements and supplement to said agreements requiring the Employers to make periodic payments to the Trust for the purpose of providing health and welfare benefits requiring a trust document for the receipt of said payments,

NOW, THEREFORE, in consideration of the promises and of the mutual benefits inuring to the parties hereto, the parties hereby restate said Trust to be known as the "KENTUCKY LABORERS DISTRICT COUNCIL HEALTH AND WELFARE TRUST FUND", and the parties hereby covenant and agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 - Union

The term "Union as used herein shall mean the Kentucky Laborers District Council and its affiliated unions having jurisdiction in the State of Kentucky, who have in effect with the Association, and/or with other Employers, Health and Welfare Agreements or Collective Bargaining Agreements providing for the establishment of a Health and Welfare Plan and Health and Welfare Fund and for the payment of contributions to such Fund.

Section 1.2 - Employer

- (1) The term "Employer" as used herein, shall mean an Employer of labor
 - (a) Who is in the construction industry, or otherwise, and who is a member of an Association, and who employs Employees as defined herein and is bound by an agreement with the Union providing for the payment by such Employer of contributions to the Trust Fund; or
 - (b) Who is in the construction industry, or otherwise, and who is not a member of an Association, but who employs Employees as defined herein and is bound by an agreement with the Union providing for the payment by such Employer of contributions to the Trust Fund; or
 - (c) Who employs Employees as defined herein and who shall assume all of the duties and obligations to pay regular contributions to the "Trust Fund" as an Employer. An Employer under this subsection shall, upon executing an Assent of Participation and by paying the contribution rate set by the Trustees to said Trust Fund on behalf of such Employees, become a party to the Trust and be bound by all of the provisions, terms and conditions of this Agreement and Declaration of Trust.
 - (d) The term "Employer" shall further mean the Union, the Kentucky Laborers District Council Joint Apprenticeship and Training Trust Fund, the Kentucky Laborers District Council Health and Welfare Trust Fund, and the Kentucky Laborers-Employers Cooperation & Education Trust for the sole and exclusive purpose of making required contributions into the Welfare Trust Fund on behalf of their full-time employees.
- (2) Any Employer, as defined in subsections (1)(b), (1)(c) and (1)(d) of this Section, shall be bound and abide by all of the provisions of this Declaration of Trust and of any agreement made or to be made by and between an Association and the Union in respect to the Trust and all rules, regulations, decisions and determinations which may, from time to time, be made by the Trustees and, as to any such Employer, the Employer Trustees are and shall be his agent for the purposes of this Trust.

Section 1.3 - Employee

The term "Employee" shall mean a person represented in collective bargaining by the Union and working for contributing Employer.

The term "Employee" shall also mean the employees of the Union, any employers' association whose member contractors are signatory to collective bargaining agreements with the Union, the Kentucky Laborers District Council Joint Apprenticeship and Training Trust Fund, the Kentucky Laborers District Council Health and Welfare Trust Fund, and the Kentucky Laborers-Employers Cooperation & Education Trust.

The term "Employee" shall further include the regular nonbargaining unit employees of participating employers, provided that said employees are not represented by another labor organization whose collective bargaining agreement with the employer requires the employer to furnish medical coverage and other health benefits through other sources, and provided further that contributions are made to the Welfare Fund on behalf of such employees at the uniform monthly contribution rate as determined from time to time by the Trustees.

Section 1.4 - Trustee

The term "Trustee" means the Trustees designated by this Trust Agreement and their successors who may or shall be

designated and appointed in accordance with the terms and provisions herein.

Section 1.5 - Named Fiduciary

The term "Named Fiduciary" means the Trustees designated by this Trust Agreement and their successors as defined in Section 1.4 of this Article.

Section 1.6 - Union Trustee

The term "Union Trustee" as used herein shall mean any Trustee designated solely by the Union in the manner provided herein.

Section 1.7 - Employer Trustee

The term "Employer Trustee" as used herein shall mean any Trustee designated in accordance with the provisions of Article V, Section 5.1.

Section 1.8 - Agreement and Declaration of Trust

The term "Agreement and Declaration of Trust" as used herein shall mean this instrument, including all amendments hereto and modifications hereof and the Trust created hereunder.

Section 1.9 - Health and Welfare Fund

The term "Health and Welfare Fund" shall mean the trust estate of the "Kentucky Laborers District Council Health and Welfare Fund" and shall consist of all employer contributions to the Trust Fund received under the aforementioned agreement or otherwise, and any additional contributions thereto that may hereafter be agreed upon by the parties under any collective bargaining agreement or other agreements or any modification, supplement, amendment, revision or extension thereof, together with all income, increments, earnings, dividends, interest and profits therefrom and all other funds as herein defined, received by the Trustees for the uses, purposes and trusts set forth in this Agreement and Declaration of Trust.

Section 1.10 - Health and Welfare Plan

The term "Health and Welfare Plan" means a plan, program, method and procedure for providing benefits to or for employees, or their beneficiaries in accordance with such rules and regulations relating to eligibility requirements, amount of benefits, character of benefits, general administration and operation of the Health and Welfare Fund and related matters as the Trustees may from time to time put into effect, adopt, enact or promulgate. The funds shall not be used for any other purpose.

Section 1.11 - Employer Contributions

The term "Employer Contributions" means any and all payments made by any and all Employers to the Health and Welfare Fund in accordance with or as required by any collective bargaining agreement or other agreement or arrangement between the Employer and the Union or any of its affiliated local unions, for the uses and purposes set forth in this Trust Agreement.

ARTICLE II
CREATION, PURPOSE AND APPLICATION OF TRUST FUND

Section 2.1 - Creation of Trust

The Union and the Association on behalf of its Member Employers do hereby accept and agree to be bound by the provisions of this Agreement and Declaration of Trust. All other Employers who accept and agree to be bound by this Agreement and Declaration of Trust shall be deemed parties hereto.

Section 2.2 - Purpose and Application of Health and Welfare Fund

- (1) The Health and Welfare Fund is created, established and maintained and the Trustees agree to receive the Health and Welfare Fund, hold and administer it, for the purpose of providing benefits for the Employees and their beneficiaries in accordance with the provisions of the Health and Welfare Plan
- (2) To effect the aforesaid, the Trustees shall have the power to use and apply the Trust Fund for the following:
 - (a) To pay benefits pursuant to the Health and Welfare Plan.
 - (b) To make deposits and payments pursuant to any contract referred to in Section 2.3 of this Article providing benefits contemplated herein.
 - (c) To make any deposits to a bank or trust company which through agreement with the Trustees has been empowered to make benefit payments to eligible Employees.
 - (d) To keep property purchased by the Trustees registered in the name of the Trustees or in the name of a nominee or nominees, as may be determined within the discretion of the Trustees.
 - (e) To decide all questions or controversies arising in any manner or between any parties or persons in connection with the Health and Welfare Fund or the operation thereof, whether as to any claim for any benefits made by any Employee, or any other person or whether as to the construction of the language or meaning of the rules and regulations adopted by the Trustees or established by this instrument, or as to any writing, decision, instrument, or accounts in connection with the operation of the Health and Welfare Fund or otherwise. The decision of the Trustees shall be binding upon all persons dealing with the Health and Welfare Fund, or claiming any benefits thereunder.
 - (f) To establish an office for the transaction of its business, to be made known to the parties interested in the Health and Welfare Fund. At such office there shall be maintained books and records pertaining to the Health and Welfare Fund and its administration.

Section 2.3 - Health and Welfare Plan

The Trustees are hereby empowered and authorized to administer or delegate responsibility for the administration of this health and welfare plan, to be known as the Kentucky Laborers District Council Health and Welfare Plan, which shall set forth the benefits to be provided from the Trust Fund, the conditions of eligibility for such benefits and such other items as the Trustees shall deem it necessary to include.

Section 2.4 - Limitation of Rights to Health and Welfare Fund

The following limitations shall apply to the rights or interests in, or use of, the Health and Welfare Fund:

- (1) Neither the Union or the Association, the Employees, Employers, Trustees, nor any other person, association or corporation shall have any right, title or interest in or to the Health and Welfare Fund except as specifically provided by the Health and Welfare Plan and the applicable rules and regulations thereunder. It is the intention of the parties hereto that this Section shall not disqualify contributions due from any Employer from being a priority claim in the event of bankruptcy of any such Employer.
- (2) Anything contained in this Agreement and Declaration of Trust to the contrary notwithstanding, no part of the corpus or income of the Health and Welfare Fund shall be used for or diverted to purposes other than for the exclusive benefit of Employees or their beneficiaries or for the purposes set out in Section 2.2 of this article.
- (3) No money, property, equity or interest of any nature whatsoever in the Health and Welfare Fund, or other Fund contracts, or any benefits or monies payable therefrom shall be subject to sale, transfer, assignment, encumbrance or other anticipation, nor to seizure or sale under any legal, equitable or other process.
- (4) All funds received by the Trustees hereunder as a part of the Health and Welfare Fund shall be deposited by them in such bank or banks, trust company or trust companies as the Trustees may designate for that purpose. All withdrawals of such funds shall be made by the Trustees pursuant to the authorization provided in this Trust Agreement.

ARTICLE III **CONTRIBUTIONS**

Section 3.1

Each Employer shall make prompt contributions to the Trust Fund in such amount and under the terms provided for in the applicable Collective Bargaining Agreements which are in effect from time to time between the Employers or their bargaining representatives and the Union, or in such amount and under such terms as may be agreed upon orally or in writing between the Employer and the Union, provided that such contributions shall be subject to acceptance by the Trustees and shall be deposited by the Employer to the credit of the Trustees in a bank designated by the Trustees. The Employer agrees that there shall be an absolute obligation to the Trust Fund, and such obligation shall not be subject to set-off, or counterclaim which the Employer may have for any liability of the Union.

ARTICLE IV **ESTABLISHMENT AND ACCEPTANCE OF THE HEALTH AND WELFARE PLAN**

Section 4.1 - Establishment of Health and Welfare Plan

The Union and the Association agree the Trustees shall establish and adopt a plan providing health and welfare benefits, death benefits and such other benefits as are lawful. The Health and Welfare Plan shall conform to the applicable sections of the Internal Revenue Code for purposes of tax deduction and exemption and shall comply with all existing federal law to carry out the purposes set forth in this Agreement.

Section 4.2 - Acceptance and Operation by Trustees

The Trustees hereby accept and agree to continue active administration of the Health and Welfare Plan.

ARTICLE V **TRUSTEES**

Section 5.1 - Designation of Trustees

The Fund shall be administered by a Board of Trustees consisting of eight (8) in number. Four (4) Trustees shall be appointed by the Association and shall be designated as Employer Trustees. The Association shall have the right to appoint one (1) Alternate Employer Trustee. Employer Trustees may appoint one or more Trustees from an Employer who is not a member of a participating employer association, but at any given time there shall be no more than four (4) Employer Trustees and one (1) Alternate Employer Trustee. Four (4) Trustees shall be appointed by the Union and shall be designated as Union Trustees. The Union shall have the right to appoint one (1) Alternate Union Trustee. The persons named as Alternate Trustees shall serve as Trustees on a temporary basis whenever regular Trustees are unable to attend meetings or to fulfill any of the functions required of Trustees.

Section 5.2 - Officers

The Trustees shall elect two (2) officers: a chairman and a secretary-treasurer to serve for the period of one (1) year or until their successor shall be elected. These offices shall be divided equally between the Union Trustees and Employer Trustees.

Section 5.3 - Acceptance of the Trust by Trustees

A Trustee upon signing this Agreement and Declaration of Trust, or upon written acceptance filed with the other Trustees in the case of any successor Trustee, shall be deemed to accept the Trust created and established by this Agreement and Declaration of Trust and consents to act as a Trustee and agrees to administer the Trust Fund as provided herein. The named fiduciaries are the Trustees who accept the duties of Trustees pursuant to this Agreement and Declaration of Trust.

Section 5.4 - Trustee's Term of Office

- (1) Each Trustee shall continue to serve as such until his death, incapacity, resignation or removal as provided herein.
- (2) A Trustee may resign and be fully discharged from all future duty or responsibility hereunder by giving notice in writing to the remaining Trustees and to the party designating him, which notice shall state the date such resignation shall take effect and such resignation shall take effect on the said date unless a successor Trustee shall have been appointed at an earlier date, in which event such resignation shall take effect as of the date of filing, by the successor, of the written acceptance provided for under Section 5.3 of this Article.

Section 5.5 - Successor Trustee

- (1) In the event any Union Trustee shall die, become incapable of acting, resign or be removed, a successor Union Trustee shall be immediately designated by the Union.
- (2) In the event any Employer Trustee shall die, become incapable, resign or be removed, a successor Employer Trustee shall be designated immediately by the Association.
- (3) Any successor Trustee shall, immediately upon his acceptance of the Trusteeship in writing filed with the Trustees, become vested with all the property rights, powers and duties of a Trustee hereunder with the like effect as if he had been originally named as a Trustee.

Section 5.6 - Removal of Trustees

The Union Trustees may be removed at any time by the Union. The Employer Trustees appointed by the Association may be removed at any time by the Association. Employer Trustees who are not members of a participating employer association and have been appointed by the incumbent Employer Trustees may be removed at any time by the incumbent Employer Trustees.

When a Trustee is removed as above, written notice shall be given to the remaining Trustees of such removal. All such removed Trustees, be they Union or Employer, shall be fully discharged from all further duties or responsibilities herein.

Section 5.7 - Compensation of Trustees

The Trustees shall serve without compensation from the Trust Fund except for reimbursement of reasonable expenses incurred under specific authority granted by the Trustees.

Section 5.8 - Meetings

Regular meetings of the Board of Trustees shall be held quarterly on a date fixed by the Trustees. The Chairman or the Secretary-Treasurer or any two (2) Trustees may call a meeting of the Trustees at any time by giving at least seven (7) days written notice of the time and place thereof to each Trustee. Such notices may be delivered in person or by mail. Meetings of the Trustees may also be held at any time without notice if all the Trustees consent thereto. In the event the Trustees shall unanimously concur in writing upon any proposition, no meeting thereon is to be held by the Trustees. The vote of the Trustees may be cast by them in person or may be evidenced by written instrument signed by them. A quorum shall consist at any of the above meetings of the Trustees, either regular or special, of at least two (2) Employer Trustees and two (2) Union Trustees.

Section 5.9 - Action of Trustees

- (1) The Trustees may adopt by-laws, rules or regulations to govern themselves, which are not inconsistent with any provision of this Agreement and Declaration of Trust.
- (2) Except as otherwise specifically provided in this Trust Agreement, any action taken by the Trustees shall be by

majority vote of the Trustees attending a regular or special meeting of the Trustees for which due notice has been given in writing. A quorum shall consist of at least two (2) Employer Trustees and two (2) Union Trustees. Any and all actions so taken shall have the same force and effect as if taken by all of the Trustees.

- (3) Each Trustee shall have one vote on all matters; provided however, that if there are an unequal number of Union Trustees or Employer Trustees present at any meeting, then in that event the group of Trustees which is lesser in number shall be entitled to cast an equal number of votes as the group having the larger number present.
- (4) A deadlock shall be deemed to exist whenever a proposal, nomination, motion or resolution made by any Trustee is not adopted or rejected by a majority vote. In the event of such deadlock arising, the Employer Trustees and Union Trustees shall meet for the purpose of agreeing upon a neutral person to break such deadlock by deciding the dispute in question. In the event of the inability of the Employer Trustees and the Union Trustees to agree upon the selection of such neutral person, the following procedure shall be followed. A panel of five impartial arbitrators shall be requested from the Federal Mediation and Conciliation Service. From the five man panel furnished by the aforesaid Service the Union Trustees shall strike two names and the Employer Trustees shall strike two names. The remaining name on the five man panel shall serve as the neutral person. Such neutral person shall immediately proceed to hear and decide the dispute. The decision and award of such impartial person shall be final and binding upon the parties and the reasonable compensation for such neutral person shall be paid by the Fund. The costs and expenses incidental to any proceedings needed to break a deadlock shall be borne by the Union and the Association as incurred by each.
Any neutral person selected or designated to break a deadlock shall be required to enter his decision within the time fixed by the Trustees. The scope of any such proceeding before such neutral person shall be limited to the provisions of this Agreement and Declaration of Trust and the Health and Welfare Plan. The neutral person shall have no jurisdiction to decide any issue arising under, or involving the interpretation of any health and welfare agreements or bargaining agreements between the Union and other Employers, and, such neutral person shall have no power or authority to change, add to, subtract from, or modify any provisions of the Health and Welfare Plan, this Agreement and Declaration of Trust or the collective bargaining agreements then in effect between the Union and Association and/or individual employers.
- (5) The Trustees shall authorize at least one (1) Employer Trustee and one (1) Union Trustee to execute any instrument, in writing, on behalf of the Trustees, and all persons, partnerships and corporations may rely thereupon that such instrument has been duly authorized.

ARTICLE VI **LIABILITY**

Section 6.1 - General Protection

Neither the Association, any individual employer, the Union, its representatives or officers, nor any individual employee shall be liable or responsible for any debts, liabilities or obligations of the Trust Fund or the Trustees.

Section 6.2 - Conflict of Interest

Neither the Association, any Association representative, any employer or employer representative, nor the Union, its representatives or officers, shall be liable in any respect for any of the obligations of the Trustees because such Trustees are in any way associated with any such Employer, Association or Union, it being understood that each of the Trustees acts as a representative in a statutory sense only and not as agent of any person, firm, corporation or organization.

Section 6.3 - General Responsibility

Neither the Association, the Union, any concerned employer, nor any of the Trustees shall be responsible or liable for:

- (1) The validity of this Trust Agreement or Health and Welfare Plan
- (2) The form, validity, sufficiency or effect of any contract or policy for benefits which may be entered into.

- (3) Any delay occasioned by any restrictions or provisions in this Trust Agreement, the Health and Welfare Plan, the rules and regulations of the Board of Trustees issued hereunder, any contract or policy procured in the course of the administration of the Fund, or by any other proper procedure in such administration; provided, however, that this clause shall not excuse any violation of the collective bargaining agreement.
- (4) The payment of any other sum other than those received by them as such Trustees or as creating any obligation upon them other than to discharge duties of the Trustees as provided in this Agreement and Declaration of Trust. The Trustees, their Administrators and Agents shall be under no obligation to make certain that all eligible Employees are included in the Employer's reports and contributions.

Section 6.4 - Liability for the Health and Welfare Fund

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

Section 6.5 - Errors in Good Faith Without Gross Negligence

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

Section 6.6 - General Non-Liability

The Trustees, Administrators and Agents, Trust or Trust Funds shall assume no responsibility for the oversight, carelessness, inadvertent error, or any other act or thing done or omitted or for any misstatement or misrepresentation made by any agent or employee of any insurance company, bank, trust company, investment manager or service contractor; further, the obligation or liability of the Trustees, their Administrators and Agents, Trust or Trust Funds hereunder shall be specifically limited to the receipt of any sum or sums which may come into their hands pursuant to the terms of this Trust.

The Trustees shall not be liable for the proper application of any part of the Health and Welfare Fund or for any other liabilities arising in connection with the administration or operation of the Trust Fund, except as herein provided.

Section 6.7 - Reliance on Written Instruments

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

Section 6.8 - Non-Alienation

Neither the employer parties hereto or who execute this Agreement, the Union, an individual employee nor any beneficiary shall have any right, title or interest in the Fund other than as specifically provided for in the Plan itself or as specifically provided in this Agreement. Neither the Fund nor any contributions to the Fund shall be in any manner liable or subject to the debts, contracts or liabilities of any individual employer or employee or beneficiary. No part of the Fund or any benefits payable in accordance therewith shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, execution or charge by any person other than as provided for in the Plan itself or as provided for in this Agreement.

ARTICLE VII
ADMINISTRATION OF THE TRUST FUND

Section 7.1 - General

The administration of the Trust Fund shall be vested wholly in the Trustees and for such administration the Trustees shall, consistent with the purposes of this Trust Fund, have the power and authority to;

- (1) Require immediate contributions to the Trust Fund by Employers in accordance with the collective bargaining agreements between the Employer or his collective bargaining agent and the Union. The Trustees shall have the power to demand, collect, and receive Employer contributions for the purpose specified herein, and to impose additional payments that would reasonably compensate the Trust Fund in the form of liquidated damages. These additional payments are to be determined by the Trustees when Employers are delinquent in their reports and payments. In order to carry out and effectuate the purpose hereof, the Trustees shall have the power to specify the time, manner, and place of payment of Employer contributions to the Trust Fund and shall promulgate these requirements.
- (2) Make such uniform rules and regulations as are consistent with and necessary for effectuating the provisions of this Agreement and Declaration of Trust, including but not limited to the following:
 - (a) To develop procedures for the establishment of credited service of Employees, including the means of affording Employees the opportunity to object thereto, and to establish such facts conclusively.
 - (b) To prescribe rules and procedures governing the application for benefits. These rules and procedures shall be published in the Kentucky Laborers District Council Health and Welfare Plan. The Plan shall be distributed in the form of a uniform booklet. This booklet and other printed material issued by the Trustees will bear a union label.
 - (c) To make determinations which shall be final and binding upon all parties as to the rights of an Employee to benefits, including any rights any individual may have to request an appeal with respect to any such determination to afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review.
 - (d) To obtain and evaluate all statistical and actuarial data which may be reasonably required with respect to the administrator of the Health and Welfare Plan, it being agreed that all information, records, lists of Employers and Employees and all other data which may come into the hands of the Trustees are to be considered confidential and private records of the Trust Fund and no information from such records, lists or data shall be divulged by the Trustees unless unanimously authorized by the Trustees.
 - (e) To make reciprocal agreements with the Trustees of other health and welfare plans established by unions and employers, to provide for the reciprocal transfer of credited service between such health and welfare plans and this Health and Welfare Plan in the case of Employees transferring their employment to such employers.
 - (f) To make such other rules and regulations as may be necessary for the administration of the Health and Welfare Plan which are not inconsistent with the purposes of this Agreement and Declaration of Trust.
- (3) Invest or reinvest such funds as are not necessary for current expenditures as they may from time to time determine. When so investing or reinvesting, they shall exercise the judgment and care which men of prudence, care, skill and diligence under the circumstances then prevailing that prudent men acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Section 7.2 - Other Powers of the Trustees

The Trustees shall have the power and right to perform the functions listed below, along with such other non-listed general and incidental functions which are not inconsistent with the terms and intent of this Trust Agreement and Health and Welfare Plan.

- (1) Accept and receive all contributions and hold, invest, reinvest, manage and administer the same as part of the Health and Welfare Fund for the uses, purposes and trusts herein provided.

- (2) Accumulate all income, earnings and profits of the Health and Welfare Fund and receive and administer the same as a part hereof.
- (3) Establish and accumulate as part of the Health and Welfare Fund such reserve or reserves as the Trustees shall in their opinion deem necessary or advisable for the sound and efficient administration of the Plan.
- (4) To purchase, acquire, receive, retain, administer, surrender or assign any insurance contract, pay the premiums thereof, and exercise the rights, privileges and options on benefits contained in such contracts in the event said Trustees shall determine that contracts of insurance shall be acquired as part of the Health and Welfare Fund or Plan.
- (5) Receive any securities or other property included within the term "funds" that are tendered to them and that they may deem to be acceptable.
- (6) To pay from the proceeds of said Fund any and all tax liabilities due and owing by said Trust, provided, however, that the Trustees may contest the validity of any such tax claim which they believe to be inequitable or not justified.
- (7) Enter into agreements and contracts for the deposit of funds with banks, trust companies, or other banking or brokerage institutions which customarily accept and hold moneys on deposit and to authorize such depositories to act as custodian of the fund whether in cash, securities or other property, and to authorize such depository or depositories as agent or as corporate trustee to invest, reinvest, convert, acquire, sell, exchange and manage the fund in whole or in part insofar as lawful.
- (8) Authorize withdrawal of moneys from accounts of the Health and Welfare Fund but only by orders or checks signed by the person or persons authorized by the Board of Trustees to sign or countersign the same.
- (9) Hold from time to time any or all of the Health and Welfare Fund in cash uninvested and nonproductive of interest or other income.
- (10) Compromise, arbitrate, settle, adjust or release any suit or legal proceeding, claim, debt, damage or undertaking due or owing from or to the Trust Fund on such terms and conditions as the Trustees may deem advisable.
- (11) Make, execute and deliver as Trustees any and all instruments in writing necessary or proper for the effective exercise of any of the Trustees' powers as stated herein or otherwise necessary to accomplish the purposes of the Health and Welfare Fund and this Trust Agreement.
- (12) Prepare, promulgate and issue rules and regulations pertaining to application for benefits of the Fund, eligibility requirements to participate in the same and types and kinds of benefits to be secured from proceeds of the Fund.
- (13) To employ such executive, consultant, actuarial, administrative, clerical, secretarial and legal personnel and other employees and assistants as may be necessary in connection with the administration of the Fund and the Health and Welfare Plan and to pay or cause to be paid out of the Fund the compensation and any expenses of such personnel and assistants and the cost of office space, furnishings, supplies and other essentials required in such administration.
- (14) To construe all provisions of this Agreement and the terms used herein and any constructions adopted by the Board of Trustees in good faith shall be binding upon all interested
- (15) The Trustees shall be vested with all necessary discretionary authority to determine the eligibility for benefits of Participants and their dependents and to construe all terms of the Plan of Benefits.

Section 7.3 - Expenses

Expenses incurred in the collection of the Employer contributions and in the administration and operation of the Plan and Fund shall be paid from said Health and Welfare Fund. All Trustees shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties.

Section 7.4 - Collection by Trustees

The Trustees shall have the power to demand, collect, and receive Employer contributions and to hold such moneys on behalf of the Kentucky Laborers District Council Health and Welfare Trust Fund. In the event an Employer fails to pay contributions when due and legal proceedings are necessary in order to effect collection thereof, the Employer shall be required to pay not only such contribution arrears plus legal interest, but also all court costs and reasonable attorneys' fees.

Section 7.5 - Investment Manager

The Trustees may appoint an Investment Manager or Investment Managers who may be individuals or corporations and delegate to said Investment Managers the authority to manage, acquire or dispose of assets of this Trust and the Plan created pursuant thereto.

The duties of the Investment Manager shall include, but not be limited to, the following activities and functions:

- (1) The Investment Manager shall have the duty to manage, acquire or dispose of assets of this Trust and the Plan created pursuant thereto to the extent and in the manner authorized by the Employees Retirement Income Security Act of 1974.
- (2) The Investment Manager shall report on a regular periodic basis to the Trustees as to its activities, investments, holdings, acquisitions and disposal of assets.

The Investment Manager shall receive compensation from the Trust Fund for the performance of its duties in connection with the management of the assets of the Trust Fund and the Plan created pursuant thereto in such an amount as is agreed upon by and between the Board of Trustees and the Investment Manager.

Section 7.6 - Administrator

The Trustees may appoint an Administrator who may be an individual or a corporation and may delegate any of their administrative powers or duties hereunder to him or it, or to any of their agents or employees or to any of such Administrator's agents or employees.

The duties of the Administrator shall include, but not be limited to, the following activities and functions:

- (1) Determine or estimate the amounts of contributions receivable from each of the Employers;
- (2) To make demand for and receive such contributions in such sums as shall become due;
- (3) To allocate and disburse funds in accordance with the terms of this Trust and the Plan created pursuant thereto.

The Administrator shall receive compensation from the Health and Welfare Fund for the performance of his duties in connection with the administration and operation of the Trust and Fund in such an amount as is agreed upon by and between the Board of Trustees and the Administrator.

Section 7.7 - Books of Accounts

The Trustees shall keep true and accurate books of accounts and records of all their transactions which shall be open to the inspection of any Trustee at all times and which shall be audited at least annually and at such other times as the Trustees shall deem advisable by a certified public accountant selected by the Trustees. Copies of such audits shall be given to all Employer Trustees and Union Trustees. Such audits shall be available at all times for inspection by the Union, Employers or other interested persons at the principal office of the Trust Fund.

ARTICLE VIII MISCELLANEOUS PROVISIONS

Section 8.1 - Employers' Obligation to Furnish Information

Each Employer shall promptly furnish to the Trustees on demand any and all necessary records of his Employees concerning the names, Social Security numbers, amount of wages paid and hours worked and any other payroll records that the Trustees may require in connection with the administration of the Trust Fund and for no other purpose. The Trustees or their authorized representatives may examine the payroll books and records of each Employer whenever such examination is deemed necessary by the Trustees in connection with the proper administration of the Trust.

Section 8.2 - Dealings with Trustees

No person, partnership, corporation, or association dealing with the Trustees shall be obliged to see to the application of any funds or property of the Trust Fund or to see that the terms of this Agreement and Declaration of Trust or of the

Health and Welfare Plan have been complied with or be obliged to inquire into the necessity or expediency of any act of the Trustees.

Every instrument effected by the Trustees, whether executed by all of them or in the manner specified in Article V, Section 5.9(2) shall be conclusive in favor of any person, partnership, corporation or association relying thereon that:

- (1) At the time of delivery of said instrument, this Agreement and Declaration of Trust was in full force and effect, and
- (2) Said instrument was effected in accordance with the terms and conditions of the Agreement and Declaration of Trust, and
- (3) The Trustees were duly authorized and empowered to execute such instrument.

Section 8.3 - Notices

Notice given to a Trustee, Union, Employer, Association, or any other person shall, unless otherwise specified herein, be sufficient if in writing and delivered to or sent by postpaid first class mail to the last address as filed with the Trustees. Except as herein otherwise provided, the delivery of any statement or document required hereunder to be made to a Trustee, Union or Employer shall be sufficient if delivered in person or if sent by postpaid first class mail to his or its last address as filed with the Trustees.

Section 8.4 - Legal Action by Trustees

The Trustees may seek judicial protection by any action or proceeding they may deem necessary to settle their accounts, or to obtain a judicial determination or declaratory judgment as to any question concerning construction of the Trust Agreement or instruction as to any action thereunder. The Trustees shall be required to join, as parties defendant, in such action, or proceeding, only the Union and/or the Association unless the Federal or State law requires otherwise, or unless a full and complete adjudication cannot be had without the joinder of other parties. Any such determination shall be binding upon all parties to or claiming under this Agreement and Declaration of Trust.

Section 8.5 - Costs of Suit

The costs and expenses of any action, suit, or proceeding brought by or against the Trustees or any of them (including counsel fees) shall be paid from the Trust Fund, except in relation to matters as to which it shall be adjudged in such action, suit, or proceedings that such Trustee was acting in bad faith or was grossly negligent or performed his duties hereunder with willful misconduct.

Section 8.6 - Fidelity Bonds

All of the Trustees and each Employee employed by the Trustees who may be engaged in receiving or withdrawing of moneys of the Trust Fund shall be bonded for such sums as the Trustees from time to time shall determine, or as required by law, by a duly authorized surety company. The cost of premiums for such bonds shall be paid out of the Trust Fund.

Section 8.7 - Payments To or By Trust Fund

All payments due to or from the Trust Fund shall be by check, bank draft, postal money order or other recognized written method of transmitting money or its equivalent.

Section 8.8 - Savings Clause

If any provision of this Trust Agreement, Health and Welfare Plan, or any step in the administration of the Health and Welfare Fund, is held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of this Trust Agreement, the Health and Welfare Plan or the rules and regulations promulgated by the Trustees, unless such illegality or invalidity prevents the accomplishment of the objectives and purposes of the Plan. In the event of any such holding, the appropriate parties will adopt valid provisions to take the place of the provisions declared illegal or invalid.

ARTICLE IX AMENDMENTS

Section 9.1

This Agreement and Declaration of Trust may be amended in any respect from time to time by majority vote of the Trustees, except that no amendment shall divert the Health and Welfare Fund from any purpose other than the provisions of benefits authorized by applicable law, nor revert any part of the Health and Welfare Fund to employers, nor shall there be any amendments which could change the manner of designation or equality of number of Union Trustees and Employer Trustees, nor eliminate the requirement of an annual audit, nor the payment of necessary expenses.

A copy of such amendment, upon passage by the Trustees, shall be made public in a form and to an extent considered necessary by them.

ARTICLE X TERMINATION OF TRUST

Section 10.1 - Conditions of Termination

This Agreement and Declaration of Trust shall cease and terminate upon the happening of any one or more of the following events:

- (1) In the event the Trust Fund shall be inadequate to carry out the intent and purpose of this Agreement or to meet the payments due or to become due under this Agreement.
- (2) In the event there are no individuals living who can qualify as Employees hereunder.
- (3) In the event of termination by action of the Union and the Employers.

Section 10.2 - Procedures in Event of Termination

In the event that termination of Trust is decided upon, the Trustees shall

- (1) Continue to apply the Health and Welfare Fund to the obligations and purposes of this Trust and upon the dispersal of the entire Trust Fund, this Trust shall terminate.
- (2) Make provisions out of the Trust Fund for the payment of expenses incurred up to the date of termination of the Trust and the expenses incident to such termination.
- (3) Arrange for a final audit and report of their transactions and accounts, for the purpose of termination of their trusteeship.

ARTICLE XI SITUS AND CONSTRUCTION OF TRUST

Section 11.1

This Trust is accepted by the Union and the Association in the State of Kentucky and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of that State.

ACCEPTANCE OF TRUSTEESHIP

I/We, the undersigned, having been designated to serve as Union Trustee(s) and Employer Trustee(s) as the case may be, in accordance with the Agreement and Declaration of Trust providing for the Kentucky Laborers District Council Health and Welfare Fund, do hereby accept the Trust created and established by the aforesaid Agreement and Declaration of Trust, consent to act as Trustee(s) and agree to administer the Trust Fund.

UNION TRUSTEES:

James Blevins, Chairman
Phillip Knight, Union Trustee
Mitchell Oney, Union Trustee
Larry Tabor, Union Trustee

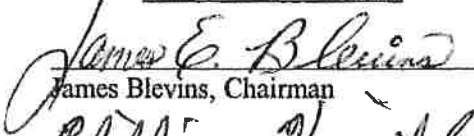

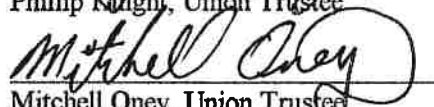
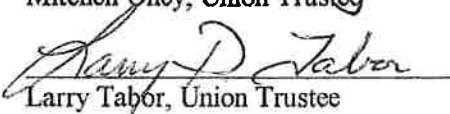
EMPLOYER TRUSTEES:

John Leinenbach, Secretary / Treasurer
Mike Gerescher, Employer Trustee
Charles Tennant, Employer Trustee

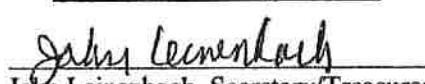

Dated at Lawrenceburg, Kentucky this 14th day of July, 2005.

WITNESS the signatures of the undersigned Trustees this 13th day of July, 2005:

UNION TRUSTEES:


James Blevins, Chairman

Phillip Knight, Union Trustee

Mitchell Oney, Union Trustee

Larry Tabor, Union Trustee

EMPLOYER TRUSTEES:


John Leinenbach, Secretary/Treasurer

Mike Gerescher, Employer Trustee

Charles Tennant, Employer Trustee

**FIRST AMENDMENT TO THE AGREEMENT AND
DECLARATION OF TRUST, AS REVISED JULY 14, 2005**

WHEREAS, the Trustees of the Kentucky Laborers District Council Health and Welfare Fund believe that the current Trust Agreement and Declaration of Trust as Revised July 14, 2005 is in need of an Amendment; and,

WHEREAS, the Trustees believe that certain language needs to be incorporated into the Trust to protect the assets of the Trust held by contributing employers who may be delinquent or have not yet forwarded funds owed to the Trust Fund which are in fact assets of the Fund; and,

WHEREAS, the Trustees believe in order to preserve the integrity of the Trust Fund that Article III: Contributions, Section 3.1, should be amended,

NOW, THEREFORE, in consideration of the promises and mutual benefits inuring to the parties hereto, the parties hereby make an amendment to the Agreement and Declaration of Trust as Revised July 14, 2005 as follows:

Article III: Contributions, Section 3.1 shall be restated in full with and the additional language inserted at the end which reads: *All contributions inuring to the Trust Fund are assets of the Trust Fund, whether they are in the possession of the Trust Fund, or still remaining in the treasury of the contributing employer.*

Section 3.1 in its amended form shall read as follows:

**ARTICLE III
CONTRIBUTIONS**

Section 3.1

Each Employer shall make prompt contributions to the Trust Fund in such amount and under the terms provided for in the applicable Collective Bargaining Agreements which are in effect from time to time between the Employers or their bargaining representatives and the Union, or in such amount and under such terms as may be agreed upon orally or in writing between the Employer and the Union, provided that such contributions shall be subject to acceptance by the Trustees and shall be deposited by the Employer to the credit of the Trustees in a bank designated by the Trustees. The Employer agrees that there shall be an absolute obligation to the Trust Fund, and such obligation shall not be subject to set-off, or counterclaim which the Employer may have for any liability of the Union. All contributions inuring to the Trust Fund are assets of the Trust Fund, whether they are in the possession of the Trust Fund, or still remaining in the treasury of the contributing employer.

ADOPTION OF AMENDMENT

I/We, the undersigned, having been designated to serve as Union Trustee(s) and Employer Trustee(s) as the case may be, in accordance with the Agreement and Declaration of Trust providing for the Kentucky Laborers District Council Health and Welfare Fund, do hereby adopt this amendment to the Trust Fund this 14TH day of April, 2016.

WITNESS the signatures of the undersigned Trustees this 14TH day of April, 2016.

UNION TRUSTEES:

James E. Blenis
Chairman

Michael W. King

M. A.

Pat J. Bladen

Larry Khuder

EMPLOYER TRUSTEES:

Dan Hatcher
Secretary/Treasurer

Greg Hatcher

Jeffrey Stone

Donald W. Thon

ACCEPTANCE OF TRUSTEESHIP

I/We, the undersigned, having been designated to serve as Union Trustee(s) and Employer Trustee(s) as the case may be, in accordance with the Agreement and Declaration of Trust providing for the Kentucky Laborers District Council Health and Welfare Fund, do hereby accept the Trust created and established by the aforesaid Agreement and Declaration of Trust, consent to act as Trustee(s) and agree to administer the Trust Fund.

UNION TRUSTEES:

- *James E. Blasing*
- *Michael O'Leary*
- *Ray D. Bladen*
- *Larry Johnson*

EMPLOYER TRUSTEES:

- *Jeffrey Stoltz*
- *Ray E. Griffin*
- *Darryl Bachman*
- *Donald W. Thamm*

Dated at Lawrenceburg, Kentucky this 14th day of April, 2016.

**SECOND AMENDMENT TO THE
AGREEMENT AND DECLARATION OF TRUST, AS REVISED JULY 14, 2005**

This Second Amendment to the Agreement and Declaration of Trust as revised July 14, 2005 of the Kentucky Laborers District Council Health and Welfare Fund is hereby entered into as follows:

WHEREAS, effective July 14, 2005, the Trustees of the Kentucky Laborers District Council Health and Welfare Fund revised the Agreement and Declaration of Trust;

WHEREAS, Section 9.1 of the Agreement and Declaration of Trust as revised July 14, 2005 authorizes the Trustees to amend its terms by majority vote;

NOW, THEREFORE, the Trustees hereby make this Second Amendment to the Agreement and Declaration of Trust as Revised July 14, 2005 as follows:

1. Article VII, Section 7.4 of the Agreement and Declaration of Trust as Revised July 14, 2005 is restated in its entirety to now state as follows:

Section 7.4 – Collection by Trustees


- (1) The Trustees shall have the power to demand, collect, and receive Employer contributions and to hold such moneys on behalf of the Health and Welfare Fund. An Employer that fails to make contributions to the Health and Welfare Fund pursuant to Article III, Section 3.1 (as amended) in the correct amount, and in a timely manner, will be assessed liquidated damages and interest as follows:
 - (a) Employers employing laborers in the building and construction industry:
Liquidated Damages in the amount of 10% of the unpaid contributions and interest at a rate of 10% per annum will be assessed if an Employer's contributions are not received by the Health and Welfare Fund's depository bank by first (1st) day of the second (2nd) month following the month in which the work was performed.
 - (b) All other Employers and Employers employing laborers in the building and construction industry that are contributing pursuant to a participation Agreement on behalf of non-bargained employees:
Liquidated Damages in the amount of 10% of the unpaid contributions and interest at a rate of 10% per annum will be assessed if an Employer's contributions are not received by the Health and Welfare Fund's depository bank by first (1st) day of the month for which the contributions are due (i.e., the eligibility month).
- (2) In the event that the Trustees use the services of legal counsel to assist in the collection of contributions, liquidated damages and/or interest, the Employer shall be liable for any and all reasonable attorney's fees and costs incurred by the Health and Welfare Fund in the collection process, including court costs, audit fees, litigation expenses, etc. The Health and Welfare Fund need not initiate formal legal proceedings for an Employer to be obligated to pay reasonable attorney's fees.


2. The remaining provisions of the Agreement and Declaration of Trust as Revised July 14, 2005 not amended by this Second Amendment shall remain unchanged and shall remain in full force and effect.
3. This Second Amendment shall be attached and incorporated to the Agreement and Declaration of Trust as Revised July 14, 2005.

IN WITNESS WHEREOF, the Trustees of the Kentucky Laborers District Council Health and Welfare Fund executed this Amendment this 18th day of January 2018.


UNION TRUSTEES









EMPLOYER TRUSTEES:







THIRD AMENDMENT TO THE
AGREEMENT AND DECLARATION OF TRUST, AS REVISED JULY 14, 2005

This Third Amendment to the Agreement and Declaration of Trust as revised July 14, 2005 of the Kentucky Laborers District Council Health and Welfare Fund is hereby entered into as follows:

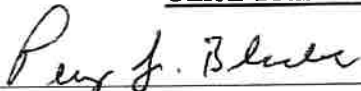
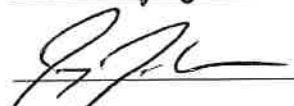


1. **Article III- Contributions – is amended to comply with Section 302 of the Labor Management Relations Act by removing oral agreements as an underlying basis for contributions in Section 3.1 as follows:**

Section 3.1

Each Employer shall make prompt contributions to the Trust Fund in such amount and under the terms provided for in the applicable collective bargaining agreement which are in effect from time to time between the Employers or their bargaining representatives and the Union, or in such amount and under such terms as may be agreed upon in writing between the Employer and the Union, provided that such contributions shall be subject to acceptance by the Trustees and shall be deposited by the Employer to the credit of the Trustees in a bank designated by the Trustees. The Employer agrees that there shall be an absolute obligation to the Trust Fund, and such obligation shall not be the subject to set-off, or counterclaim which the Employer may have for any liability of the Union. All contributions inuring to the Trust Fund are assets of the Trust Fund, whether they are in the possession of the Trust Fund, or still remaining in the treasury of the contributing employer.

IN WITNESS WHEREOF, the Trustees of the Kentucky Laborers District Council has executed this Amendment this 25th day of April 2019.

Union Trustees:

Employer Trustees:



