Agreement and Declaration of Trust

LABORERS’ INTERNATIONAL UNION

LABORERS’ NATIONAL HEALTH & WELFARE FUND

CO-CHAIRMAN OF TRUSTEES
Armand E. Sabitoni—Paul Fayad

Revised: May 1, 2001
Agreement and Declaration of Trust

THIS AGREEMENT AND DECLARATION OF TRUST is made effective August 1, 1988 by, between and among the Laborers International Union of North America, AFL-CIO ("LIUNA"), the employers of laborers who now and hereafter execute this instrument ("Employers"), and the individuals who herein and hereafter agree to serve as Trustees of the trust fund established by this instrument.

WITNESSETH:

WHEREAS, LIUNA is a labor organization which represents laborers employed in many industries, including the service contract industry, throughout the United States; and

WHEREAS, the establishment and maintenance of an employee benefit plan to provide high quality health and welfare benefits for laborers on a cost effective basis is in the best interests of LIUNA and its members and of the Employers; and

WHEREAS, the maintenance of individual employer-sponsored plans can be costly and inefficient, and may not meet the needs of a mobile workforce; and

WHEREAS, the creation of a national multiemployer trust fund would make possible economies of scale and otherwise foster the provision of quality health and welfare benefits for laborers on a cost effective basis, as well as protect laborers against the loss of coverage as they move from job to job; and

WHEREAS, LIUNA and the Employers wish to establish such a trust fund to be jointly administered by labor and management trustees in accordance with the Labor Management Relations Act and the Employee Retirement Income Security Act; and

WHEREAS, LIUNA and its affiliates have executed or expect to execute collective bargaining agreements with Employers providing for contributions to the trust fund established by this instrument; and

WHEREAS, LIUNA and the Employers wish to set forth the terms and conditions under which the trust fund shall be established and operated;

NOW, THEREFORE, in consideration of the foregoing representations and the mutual promises herein, it is hereby understood, agreed and declared as follows:

ARTICLE I
DEFINITIONS

Section 1.01 GENERALLY: Unless the context or subject matter otherwise requires, the definitions set forth in this Article shall govern the interpretation of this instrument. The singular of a term shall be deemed to include the plural, and the masculine form shall be deemed to include the feminine.

Section 1.02 LIUNA: The term “LIUNA” shall mean the Laborers International Union of North America, AFL-CIO.

Section 1.03 UNION: The term “Union” shall mean LIUNA or a Local Union or District Council affiliated with LIUNA.

Section 1.04 FUND: The term “Fund” shall mean the Laborers National Health and Welfare Fund established by this instrument.

Section 1.05 TRUST AGREEMENT: The term “Trust Agreement” shall mean this Agreement and Declaration of Trust, including any and all amendments hereto.

Section 1.06 TRUSTEE: The term “Trustee” shall mean one of the individuals herein designated or hereafter designated in accordance with this Trust Agreement to hold the Fund’s assets in trust and to administer the Fund as fiduciaries.

Section 1.07 BOARD OF TRUSTEES: The terms “Board of Trustees” and “Board” shall mean the body comprised of all the Trustees.

Section 1.08 EMPLOYER: The term “Employer” shall mean an employer of laborers and an association of employers of laborers, which is or becomes signatory to this Trust Agreement or otherwise adopts it, which becomes signatory to a Participation Agreement, and which is accepted for participation in the Fund by or for the Board of Trustees. The term “Employer” shall also mean a Union in its capacity as an employer to the extent that it agrees to contribute to the Fund on behalf of its Employees.

Section 1.09 EMPLOYEES: The term “Employee” shall mean an employee of an Employer with respect to whom the Employer agrees to make contributions to the Fund.

Section 1.10 PLAN: The term “Plan” shall mean the program or programs of health and welfare benefits to be provided from the Fund as adopted by the Board of Trustees pursuant to this Trust Agreement, together with any amendments thereto or interpretations thereof adopted by the Board of Trustees.

Section 1.11 CONTRIBUTIONS: The term “Contributions” shall mean the moneys contributed or required to be contributed to the Fund by Employers together with such interest, liquidated damages, fees and costs of collection as may be assessed by the Board of Trustees in accordance with this Trust Agreement.

Section 1.12 BENEFITS: The term “Benefits” shall mean the health and welfare benefits provided through the Fund pursuant a Plan.

Section 1.13 PARTICIPANT: The term “Participant” shall mean an Employee who meets the eligibility criteria for participation in the Fund and coverage under a Plan as established by the Board of Trustees pursuant to its powers under this Trust Agreement.

Section 1.14 BENEFICIARY: The term “Beneficiary” shall mean a natural person designated by a Participant as his or her beneficiary, or otherwise designated as a beneficiary of a Participant, in accordance with the Plan(s) adopted by the Board of Trustees and as determined by the Board of Trustees.

Section 1.15 PARTICIPATION AGREEMENT: The term “Participation Agreement” shall mean a written agreement approved by the Board of Trustees providing for participation by an Employer in the Fund pursuant to Article VI of this Trust Agreement.

Section 1.16 ADMINISTRATOR: The term “Administrator” shall mean the person or entity employed by the Board of Trustees in accordance with Article IV, Section 4.03 of this Trust Agreement.

ARTICLE II
DECLARATION OF TRUST AND PURPOSES

Section 2.01 DECLARATION OF TRUST: LIUNA and the Employers do hereby declare and establish a trust fund to be known as the LABORERS NATIONAL HEALTH AND WELFARE FUND and to be used for the purposes permitted by this Trust Agreement and applicable law.

Section 2.02 GENERAL PURPOSES: The Fund shall be used for the exclusive purposes of providing health and welfare benefits as determined by the Board of Trustees to Participants and their Beneficiaries and of defraying the reasonable expenses of operating and administering the Fund in accordance with this Trust Agreement. The Fund shall endeavor to provide the highest
level of Benefits at the lowest cost possible consistent with the need to accumulate and maintain reasonable reserves, to defray the expenses of administering and operating the Fund, to preserve and advance the Fund as an entity, and to comply with applicable law.

Section 2.03 LIMITATIONS: The Fund shall be a non-profit trust. No net earnings of the Fund shall inure to the benefit of any Employer, the Union or any other individual or entity, except to the extent permitted under applicable provisions of the Internal Revenue Code and all other applicable laws.

Section 2.04 LEGAL STATUS: The Fund is intended as a joint labor-management trust fund within the meaning of section 302(c)(5) of the Labor Management Relations Act so as to permit Employer contributions. It is further intended that the Fund be an employee welfare benefit plan covered by the Employee Retirement Income Security Act, and that the Fund qualify as a tax-exempt trust under section 501(c) of the Internal Revenue Code.

ARTICLE III
TRUSTEES

Section 3.01 ROLE OF TRUSTEES: The administration, management and operation of the Fund shall be exclusively the right and responsibility of the Board of Trustees. The Board of Trustees shall be the “named fiduciary” of the Fund and its Plan(s).

Section 3.02 COMPOSITION OF THE BOARD: The Board of Trustees shall be composed of not fewer than four (4) Trustees, and shall have equal numbers of Union Trustees and Employer Trustees. The Board of Trustees may increase the number of Trustees from time to time in its discretion by designating additional Union Trustees and Employer Trustees; provided however that the number of Union Trustees and Employer Trustees remain equal in number and that the number of Trustees serving at one time do not exceed fourteen (14). If the number of Trustees is increased, the Board may thereafter decrease the number of Trustees consistent with the requirement of equal representation. No more than two (2) Employer Trustees associated with any one Employer shall serve concurrently so as to encourage broader involvement by employers.

Section 3.03 ACCEPTANCE OF TRUSTEESHIP: Each Trustee shall acknowledge his or her acceptance of trusteeship and consent to serve as a Trustee in accordance with this Trust Agreement by affixing his or her signature to the end of this Trust Agreement. Each successor or additional Trustee appointed in accordance with this Trust Agreement shall be vested with all property, rights, powers and duties of a Trustee hereunder immediately upon signing a copy of this Trust Agreement or a written acceptance incorporating and affixed to the Trust Agreement, without the necessity of any formal conveyance or other instrument of title. Such a successor or additional Trustee shall have no responsibility or liability for acts or omissions of the Trustees before he or she assumed office as a Trustee.

Section 3.04 TERM OF TRUSTEES: Each Trustee, including successor and additional Trustees, shall serve until his or her effective resignation, disqualification, removal, disability or death.

Section 3.05 RESIGNATION: Any Trustee may resign by a written instrument executed for that purpose and delivered to the remaining Trustees and, if a Union Trustee, to LIUNA’s General President.

Section 3.06 REMOVAL: Any Trustee may be removed at any time, with our without cause, by majority vote of the Trustees.

Section 3.07 SUCCESSOR TRUSTEES: In the event of the resignation, disqualification, removal, disability or death of a Trustee, a successor Trustee shall be designated by the remaining Union Trustees or by the remaining Employer Trustees depending on which Trustee group has the vacancy.

Section 3.08 VACANCIES: No vacancy or vacancies on the Board of Trustees shall impair the power of the remaining Trustees to administer, manage and operate the Fund pending the filling of such vacancy or vacancies. The relative voting strength of the Union Trustees and the Employer Trustees shall remain equal despite the vacancy or vacancies, and the vote(s) associated with the vacant Trustee position(s) shall be allocated (fractionally, if necessary) among the remaining Trustees in the Trustee group with the vacancy or vacancies.

Section 3.09 QUALIFICATIONS: An individual may serve as a Trustee while also serving as an officer or employee of LIUNA or of an Employer.

Section 3.10 COMPENSATION AND EXPENSES: The Union Trustees and the Employer Trustees shall receive no compensation for their services as Trustees. All Trustees may be reimbursed from Fund assets for reasonable and actual expenses incurred in connection with their services to the Fund.

ARTICLE IV
POWERS, RIGHTS AND DUTIES OF TRUSTEES

Section 4.01 GENERAL POWERS: The Board of Trustees is hereby vested with all authority and powers which it deems necessary or appropriate to carry out the purposes of the Fund, including but not limited to full authority and power:

a) To lease, purchase or obtain such lands, premises, materials, supplies, equipment, insurance, goods and services as the Board deems necessary or appropriate, and to pay reasonable compensation, costs or expenses therefor from the Fund;

b) To hire, employ, retain or contract with persons or organizations to provide such administrative, clerical, technical, professional, legal, accounting, investment, actuarial and other assistance as the Board deems necessary or appropriate, and to pay reasonable compensation, costs or expenses therefore from the Fund;

c) To delegate to any employees, agents, professionals, or service providers such powers and duties as the Board considers necessary or appropriate;

d) To enter into on behalf of the Fund such contracts or agreements as the Board considers necessary or appropriate;

e) To design, adopt, administer, amend, and terminate one or more Plans of Benefits;

f) To receive Contributions and other payments to the Fund from Employers and any other source whatsoever not prohibited by applicable law;

g) To establish and accumulate as part of the Fund such reserve or reserves as the Board considers necessary or appropriate to protect the Fund and to otherwise carry out the purposes of the Fund and meet the requirements of applicable law;

h) To invest and reinvest the Fund in any type of prudent investments not expressly prohibited by applicable law, to take any and all action with respect to holding, buying, selling, and exchanging such investments in the name of the Board or in the name of its nominee as it considers appropriate, and to authorize any bank, trust company, insurance company or investment manager to commingle any monies deposited with it in any pooled employee benefit plan account or other pooled investment account administered or managed by it;
Section 4.02 ALLOCATION AND DELEGATION OF FIDUCIARY RESPONSIBILITIES: The Board of Trustees may allocate such fiduciary responsibilities and administrative duties to one or more Trustees, to one or more committees of Trustees, or to other persons as it may deem appropriate or necessary consistent with applicable law. The allocation or delegation of duties shall be set forth in writing. The remaining Trustees shall not be liable for the acts or omissions of those Trustees to whom fiduciary responsibilities are allocated or delegated in accordance with this provision.

Section 4.03 ADMINISTRATOR: The Board of Trustees is empowered to appoint, hire, or contract with an Administrator who or which may be an individual or a business organization, to perform such administrative and managerial duties and responsibilities with respect to the Fund and its Plan(s) as the Board may consider necessary or appropriate to delegate from time to time. The Board is also empowered to delegate to the Administrator such powers and authority as it considers necessary or appropriate to discharge the Administrator's duties and responsibilities. The Administrator shall report to the Board of Trustees about his, her, or its activities and the status of the Fund's affairs periodically and as the Board may order. The Administrator shall serve at the will of the Board and may be removed by it with or without cause at any time subject only to any reasonable contract or arrangement between the Fund and the Administrator.

Section 4.04 ADMINISTRATIVE OFFICES: The Board shall establish one or more administrative offices for the Fund and shall staff such office(s) in such manner as it deems necessary or appropriate, either with Fund employees or by contracting with another organization.

Section 4.05 ALLOCATION AND DELEGATION OF INVESTMENT FUNCTIONS:

a) The Board of Trustees is empowered to appoint and retain one or more qualified investment managers who may be business organizations or individuals, and to delegate to such investment manager(s) full authority to manage, acquire and dispose of such assets of the Fund as the Board shall specify, subject to the requirements of applicable law. The investment manager(s) shall report to the Board on a regular basis and as ordered by the Board as to activities, investments, holdings, acquisitions and disposal of assets.

b) No Trustee shall be liable for the acts or omissions of such investment manager(s) or be under any obligation to invest or otherwise manage any of the Fund which is subject to the management of such investment manager(s).

c) In connection with any allocation or delegation of investment functions or responsibility, the Board may, from time to time, adopt appropriate investment policies or guidelines.

Section 4.06 DEPOSIT AND WITHDRAWAL OF FUNDS:

a) All monies received by or on behalf of the Fund shall be deposited in the Fund account(s) such bank(s) as the Board of Trustees may designate for that purpose, and all withdrawals of monies from such account(s) shall be made only by checks, drafts, or other recognized written method of transmitting money signed by such Trustees as are authorized in writing by the Board to sign. Except as hereinafter provided, no check, draft or other writing drawing on the Fund's account(s) shall be valid unless signed by two (2) Trustees.

b) The Board of Trustees may, in its discretion, designate and authorize the Administrator, an employee, or an agent of the Fund to sign checks or otherwise draw upon such separate and specific bank account(s) as the Board may estab-
lish or designate for this purpose. The Board may, in its
discretion, limit the amount and number of such checks or
draws as it considers appropriate.

Section 4.07 EXECUTION OF DOCUMENTS: Except as
provided otherwise herein, the Board of Trustees may authorize
one of the or both Co-Chairmen of the Board or any one or more
of the other Trustees to execute any notice, document, certification
or other instrument in writing, and all persons, partnerships,
corporations, associations, and other entities may rely thereupon
that such notice or instrument that has been duly authorized and
is binding on the Fund and the Board.

Section 4.08 BOOKS OF ACCOUNT: The Board of Trustees
shall cause to be kept true and accurate books of account and
records of all Fund transactions, which shall be audited at least
annually by an independent certified public accountant selected
by the Board.

Section 4.09 RIGHT TO INFORMATION: The Board of
Trustees is empowered and entitled to demand and promptly
obtain from any Employer and any other person or organization
dealing with the Fund such documents or information as the
Board deems necessary or appropriate for the administration of
the Fund, but the board shall make no other or further use of such
documents or information. Such documents and information
shall include names of employees and Participants, Social
Security Numbers, employment status information, and employ-
ment and payroll records.

Section 4.10 PROVISION OF INFORMATION: The Board is
authorized to provide Participants, Employers and others with
such information as may be required by applicable law and with
such other information as the Board may consider necessary or
appropriate for purposes of the Fund but with due regard for the
privacy of medical information.

Section 4.11 SURETY OR FIDELITY BONDS: To the extent
required by applicable law or as otherwise deemed necessary or
appropriate by the Board of Trustees, the Trustees, as well as
employees and agents of the Fund engaged in handling assets of
the Fund, shall be bonded by a duly authorized surety company,
and the cost of such bonding shall be payable from the Fund.

Section 4.12 AUTHORITY TO ENTER INTO AGRE-
EMENTS WITH OTHER BOARDS: The Board is empowered
and authorized, on behalf of the Fund, to enter into agreements
with other employee benefit plans with respect to coordination of
benefits, reciprocal benefits, transfers of assets and liabilities,
sharing of facilities and services, alternative benefits delivery
systems, mergers, and such other matters as the Board deems
appropriate to the extent not prohibited by applicable law.

Section 4.13 ERRORS & OMISSIONS INSURANCE: The
Board may in its discretion obtain and maintain contracts or poli-
cies of insurance, to the extent not prohibited by applicable law,
to insure the Trustees, the fund as such, as well as employees and
agents of the Trustees and of the Fund, while engaged in busi-
ness and related activities for and on behalf of the Fund (1) with
respect to liability to the Fund and others as a result of acts,
errors or omissions of such Trustees, employees, or agents,
respectively, provided such insurance contract or policy shall
permit recourse by the insurer against the Trustees and other cov-
ered persons if required by law, and (2) with respect to injuries
received or property damages suffered by them. The cost of the
premium for such policies or contracts of insurance shall be paid
out of the Fund. Any Trustee or other covered fiduciary may pur-
chase, at his, her or its own expense, a rider to such contract or
policy or a separate contract or policy to insure against any
recourse by the insurer.

Section 4.14 PERSONAL LIABILITY: In recognition that the
Fund is a legal entity separate from the Unions and the
Employers, and in further recognition of the need to attract and
retain competent Trustees, to the full extent permitted by applicable
law:

a) Neither the Unions nor any Employer, nor any of their offi-
cers or representatives, shall be responsible or liable in any
respect for any acts, omissions or obligations of the Fund
or of the Trustees, individually or collectively.

b) Neither the Unions nor any Employer nor any Trustee shall
be responsible or liable for:
   (1) the validity of this Trust Agreement or of any
Fund Plan or program;
   (2) the form, validity, sufficiency or effect of any
contract or policy which may be entered into;
or
   (3) the payment of any sums beyond those
received by the Board of Trustees.

c) Neither the Board of Trustees nor the Fund shall be bound
by any representations about the Fund or any Plan or pro-
gram of the Fund, other than those representations con-
tained in this Trust Agreement, the official Plan
descriptions or written communications from the Board.

d) Neither the Unions nor any Employer nor any Trustee per-
sonally shall be liable for Benefits payable under the Plan.
All Benefits shall be paid from the corpus of the Fund. The
corpus of the Fund shall include the Contributions, earn-
ings, profits, increments, assets and other things of value
which may from time to time be held by the Fund.

e) No Trustee shall be liable or responsible for his or her own
acts or omissions, or for any acts or omissions of any other
fiduciary or person, except for his or her own acts or oms-
ions determined by a court to be willful misconduct, or as
otherwise required by applicable law. The Fund shall indem-
nify (through insurance or otherwise) each Trustee against
any and all claims, losses, damages, expenses and liabili-
ities arising from any act or omission in the course of
performing his or her Fund-related duties, and shall
assume the cost of defending same, except to the extent
that the Trustee is found personally liable under the pre-
ceding sentence.

f) Neither the Trustees nor the Fund shall assume any respon-
sibility for the oversight, carelessness, inadvertent error, or
any other act or omission, or for any misstatement or mis-
representation made, by any agent or employee of any
insurance company, bank, trust company, investment
manager, service provider, Employer, or the Unions. Further the
obligations or liability of the Trustees and the Fund here-
under shall be specifically limited to the receipt of the
sums which may come into their hands pursuant to the
terms of this Trust Agreement.

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

h) The Trustees shall be fully protected in acting upon any
instrument, certificate or paper believed by them to be gen-
une and to be signed or presented by the proper person(s)
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.

i) The Trustees may from time to time consult with the
Fund’s legal counsel, accountant, consultants, actuaries or
other professionals, and shall be fully protected in acting in reliance on such advice. Such advice shall be protected by all applicable legal privileges.

j) The Trustees shall be fully protected in reliance on information, data, statistics or analyses furnished by persons performing such functions for the Fund.

k) The Trustees, employees and agents of the Fund shall have no liability for acting in compliance with a provision of the Trust Agreement or of any Fund Plan or program which is subsequently found to be unlawful.

ARTICLE V
TRUSTEES’ PROCEDURES

Section 5.01 OFFICERS: The Board shall select from among the Trustees two (2) Co-Chairmen; one of whom shall be a Union Trustee and the other of whom shall be an Employer Trustee. The Board may appoint such other officers as it deems appropriate.

Section 5.02 MEETINGS: Meetings of the Board of Trustees shall be held at such times and at such places, and by such means, as the Co-Chairmen or a majority of the Trustees may agree upon. Such meetings shall be called upon ten (10) days’ notice to all Trustees, except that a meeting may be held at any time without notice if all the Trustees consent. The Board shall meet not less often than twice each year. Meetings may be conducted in person or through telephonic or other electronic means which permit discussion among the Trustees; provided, however, that preference shall be given to face-to-face meetings.

Section 5.03 QUORUM: No actions shall be taken at a meeting of the Board of Trustees unless a quorum, equal to two (2) Union Trustee and two (2) Employer Trustee, is present and able to vote.

Section 5.04 MINUTES OF MEETINGS: The Board of Trustees shall keep written minutes of all meetings, but such minutes need not be verbatim. Copies of the minutes shall be sent to all Trustees and to such others as the Board directs.

Section 5.05 ACTION BY BOARD: Except as otherwise provided herein, all action by the Trustees shall be taken at Board meetings and by simple majority vote of the Trustees in attendance and voting. Each Trustee shall have one (1) vote except in the event of a vacancy as provided in Article III, Section 3.09 of this Trust Agreement.

Section 5.06 ACTION BY BOARD WITHOUT MEETING: Action may be taken by the Board of Trustees in writing without a meeting, provided that all the Trustees concur in the taking of such action without a meeting.

Section 5.07 DEADLOCK: In the event that any matter considered by the Board of Trustees cannot be decided because of a tie-vote or because of the lack of a quorum at two (2) consecutive meetings, the matter may be submitted for final and binding arbitration before an impartial arbitrator. If either the Union Trustees or the Employer Trustees desire to submit a matter to arbitration, the Trustees desiring arbitration shall serve written notice of intent to arbitrate on all other Trustees. The Union Trustees and the Employer Trustees shall then endeavor to select an impartial arbitrator by agreement. If within thirty (30) days following the date of service of the notice of intent to arbitrate a mutually acceptable arbitrator has not been designated, the Union Trustees or the Employer Trustees, or the Board, may apply to the United States District Court for the district where the Fund’s principal office is located for the designation of an arbitrator. The fees and expenses of the arbitrator shall be paid from the Fund. However, the fees and expenses incurred by the

Trustees in connection with the designation of the arbitrator and with the arbitration shall not be payable from the Fund.

ARTICLE VI
PARTICIPATION AND CONTRIBUTIONS

Section 6.01 PARTICIPATION: Participation in the Fund shall be open to all Employers, subject to the absolute discretionary power of the Board of Trustees to accept, reject, condition or reject employers from participation. The Board is empowered to condition participation by an Employer on, among other things, the execution of such Participation Agreement(s) and forms as the Board may promulgate and the submission of such information as the Board deems necessary and appropriate. The Board is further empowered to accept one group, but reject another group, of an Employer’s Employees for participation in the Fund to the extent not prohibited by applicable law.

Section 6.02 TERM OF PARTICIPATION: An Employer shall participate in and contribute to the Fund for such period as required by its Participation Agreement or by applicable law. Notwithstanding the preceding sentence, the Board of Trustees, in its sole discretion, may reject an Employer from participation in the Fund if the employer fails to pay contributions or other payments owed the Fund when due or if the Board deems such expulsion necessary or appropriate to protect the Fund for any other reason. Termination of participation shall not excuse any employer from indebtedness to the Fund for all contributions and other payments due for the period before the effective date of termination. The Board is empowered to deem the purported termination of an Employer ineffective until such time as all indebtedness to the Fund by the Employer is satisfied.

Section 6.03 CONTRIBUTIONS: Employers participating in the Fund shall pay into the Fund contributions in such amounts, in such manner, and at such times as the Board of Trustees shall determine and require from time to time, and as required by the Employer’s Participation Agreement or by applicable law. In the event that an Employer is required by applicable law to contribute to the Fund despite the expiration of the Employer’s collective bargaining agreement, that obligation to contribute shall be deemed to also arise under this Trust Agreement.

Section 6.04 DEFAULT IN PAYMENT: Nonpayment by an Employer of any Contributions when due shall not relieve any other Employer of its obligations to make payments. Any Employer which fails to pay the Contributions or other payments owed the Fund when due may be expelled, at the Board of Trustees discretion, from participation in the Fund. In the event of default by an Employer, the Board is empowered to withhold Benefit eligibility or Benefits for the affected Participants and Beneficiaries, until such times as the Contributions are paid in full. In addition to any other remedies to which the Fund or the Board is entitled, any Employer which fails to pay contributions or other payments owed shall be liable to the Fund for interest at the rate of one-and-one-half percent (11/2%) per month compounded from the due date through the date of payment, as well as for all expenses of collection incurred by the Fund, including attorneys’ fees and court costs. The Board is empowered to institute proceedings at law or equity, and to take any other action, to collect Contributions and all other payments due. If legal proceedings are initiated against an Employer in default, the Employer shall also be liable to the Fund for liquidated damages in an amount equal to twenty percent (20%) of the Contributions past due. The Board is empowered, in its sole discretion, to compromise any claim for Contributions, interest, liquidated damages or costs of collection.

Section 6.05 CONTRIBUTION REPORT: All Employers shall submit to the Fund such written reports or documents as the
Board of Trustees may deem necessary or appropriate to collect and substantiate contributions.

Section 6.06 AUDITS: All Employers, at the request of the Board of Trustees, shall submit to an audit by a certified public accountant or accountancy firm of the appropriate records of the Employer to verify that the correct amount of contributions or of other payments due has been or will be paid. Such audits may include records relating to employees other than Participants to the extent deemed necessary or appropriate to verify Contributions. If a deficiency is determined by the audit, the Board of Trustees may assess the cost of the audit against the delinquent Employer. No use shall be made of information gathered during an audit other than uses relating to the administration of the Fund.

Section 6.07 REFUNDS OF CONTRIBUTIONS: No Contributions or other assets of the Fund shall be refunded to any Employer; except that where an Employer proves that mistaken payments and overpayments of Contributions were made, the Board of Trustees may, in its sole and absolute discretion, refund such payments to the extent permitted by applicable law.

ARTICLE VII
PLANS OF BENEFITS

Section 7.01 ESTABLISHMENT OF PLANS: The Board of Trustees shall develop and adopt one or more written Plans for the payment of such health and welfare Benefits to Participants and Beneficiaries as it considers, in its sole and absolute discretion, feasible and appropriate. Such Benefits may include health, medical, surgical, hospitalization, sickness, accident, disability, life insurance, dental, vision and similar benefits, but shall not include pensions on retirement or death. The Plan(s) shall include conditions of eligibility for participation and for Benefits, descriptions of the types and amounts of Benefits payable, procedures for claiming and paying Benefits, and procedures for appealing denials of Benefits. The Board shall also adopt such programs, procedures, rules, regulations, forms and conditions as it considers necessary or appropriate for the operation of the Plan(s). Such Plan(s) may provide for coordination of benefits with other plans, for subrogation to the rights of Participants and Beneficiaries against third parties, and for other conditions on Benefits which the Board deems, in its sole and absolute discretion, necessary or appropriate to protect the Fund.

Section 7.02 AMENDMENT OF PLANS: The Board of Trustees is empowered to amend or terminate any Plan at any time when, in its sole and absolute discretion, it considers such action necessary or appropriate. The Board is also empowered to amend or terminate at any time, in its sole and absolute discretion, any programs, procedures, rules, regulations, forms and conditions adopted by it.

Section 7.03 FUNDING OF PLANS: The Board of Trustees is empowered to purchase policies or contracts of insurance from duly authorized insurance companies to provide all or a portion of the Benefits under the Plan. The Board is also empowered to provide for the payment of all or a portion of the Benefits under the Plan directly from the Fund.

Section 7.04 DESIGN AND INTERPRETATION OF PLANS: The design of Plans, their Benefits, and related programs, procedures, rules, regulations, forms and conditions by the Board of Trustees shall not be subject to judicial review. The Board is empowered to interpret and apply the terms and conditions of the Plan(s) and all related programs, procedures, rules, regulations and conditions, and its interpretations and applications shall be final and binding on Participants, Beneficiaries, Employers, the Union and all others concerned unless made in bad faith. The Board may act upon information presented to it with respect to a claim for Benefits, and shall be under no obligation to undertake its own investigation. The Board shall be the sole judge of whether conditions of Plan coverage or Benefit eligibility have been satisfied. The Board is empowered to delegate its responsibilities and powers under these provisions to the Administrator.

Section 7.05 LIMITATIONS OF BENEFITS: Under no circumstances shall the Fund or the Board of Trustees be liable or responsible for paying other than the Benefits set forth in the Plan(s). In no event shall the Fund, the Board, the Union, or any Employer be liable for Benefits beyond those which can be provided by the assets of the Fund, including insurance contracts, after the other obligations of the Fund have been satisfied.

Section 7.06 SPENDTHRIFT THRUST: No Participant or Beneficiary shall have any ownership of or claim to any assets of the Fund. The sole interest of Participants and Beneficiaries in the Fund shall be an entitlement to receive Benefits for which they meet the eligibility standards and conditions and which can otherwise be paid by the Fund. No assets of the Fund and no Benefits shall be subject to garnishment, attachment, execution, alienation, assignment, assessment or other legal process; provided, however, that the Board of Trustees may provide in a Plan for the assignment of Benefits to the provider of medical care or other services covered by a Plan; and provided further, that the Fund may withhold the payment of Benefits to satisfy the indebtedness of Participants or Beneficiaries to the Fund.

ARTICLE VIII
AMENDMENT & TERMINATION

Section 8.01 AMENDMENT BY BOARD: This Trust Agreement may be amended, in whole or in part, at any time by the Board of Trustees by a duly executed written instrument; provided that no amendment shall violate applicable law or alter the fundamental purposes of the Fund as described herein; and provided further that no amendment shall permit the net earnings of the Fund to inure to the benefit of any Employer, the Union, or any other individual or organization, except to the extent permitted by applicable provisions of the Internal Revenue Code. Any such amendment shall be deemed as part of this Trust Agreement and shall be binding on the Board, the Employers, the Union, Participants and Beneficiaries, and all other parties dealing with the Fund. The Board is empowered to fix such effective date for an amendment as it deems necessary or appropriate.

Section 8.02 TERMINATION OF FUND: This Trust Agreement and the Fund may be terminated at any time by the Board of Trustees or by LIUNA; provided that such action shall be confirmed by a duly executed written instrument; and provided further that no termination by the Board shall be effective until written notice is delivered to LIUNA’s General President; and provided further that no termination by LIUNA shall be effective until written notice is delivered to each Trustee.

Section 8.03 PROCEDURE ON TERMINATION: In the event of termination of the Fund, the Board of Trustees shall first apply the Fund’s assets exclusively to pay or provide for the payment of any and all proper obligations of the Fund, and then shall distribute or apply any remaining assets of the Fund in a manner which the Board of Trustees, in its sole and absolute discretion, deems consistent with the purposes of the Fund and which is not prohibited by applicable law. The Board is empowered to take any and all action necessary or appropriate to effectuate the termination and final distribution of assets to conclude the Fund’s affairs. The Trustees shall continue to serve as such until the Fund’s affairs are concluded.

Section 8.04 MERGER: The Board of Trustees or LIUNA may agree to merge the Fund with or into another trust or other
tax-exempt entity with the same fundamental purposes as the Fund, provided that such action is not prohibited by applicable law and written notice of such a merger agreement is given to the Board, LIUNA and the Employers.

Section 8.05 NO INUREMENT: Under no circumstances, including termination or merger, shall the Fund inure to the benefit of any Employer, the Union or any other individual or organization, except to the extent permitted by applicable provisions of the Internal Revenue Code and all other applicable laws.

ARTICLE IX
MISCELLANEOUS

Section 9.01 SITUS: The situs of the Fund and principal administrative office shall be the City of Washington, District of Columbia or its vicinity.

Section 9.02 GOVERNING LAW: All questions pertaining to the validity, construction and administration of the Fund not governed by federal law shall be governed by the law of the District of Columbia.

Section 9.03 SEVERABILITY & SAVINGS: The provisions of this Trust Agreement shall be interpreted in a manner consistent with applicable law. If any provision of this Trust Agreement should be declared invalid or unenforceable or inoperative by any competent governmental authority, the Board of Trustees shall suspend the operation of such provision and shall substitute in its stead a provision which will meet the objections to validity and which is consistent with the purposes of the Fund. Such a determination that certain provisions of this Trust Agreement are invalid or inoperative or unenforceable by operation of law shall not affect the continued validity and operating of the remaining provisions of this Trust Agreement.

Section 9.04 LIMITATION OF RIGHTS: No individual or entity, save the Board of Trustees, shall have any interest, right or ownership in the Fund or its assets. The obligations of the Fund shall be payable only from the assets of the Fund.

Section 9.05 EXECUTION OR ADOPTION: This Trust Agreement may be signed or executed by an Employer or Trustee on separate sheets attached to the Trust Agreement. This Trust Agreement may also be adopted by express reference in a collective bargaining agreement. Participation Agreement or other written agreement acceptable to the Board.

IN WITNESS THEREOF, and to acknowledge their agreement to and acceptance of the terms and obligations of this Trust Agreement, the undersigned do cause this instrument to be duly executed.

FOR LIUNA:

APPENDIX TO AGREEMENT AND DECLARATION
TRUST OF THE LABORERS NATIONAL
HEALTH & WELFARE FUND

ADOPTION AND ACCEPTANCE OF
THE AGREEMENT

In consideration of the benefits of participation, the undersigned Employer hereby adopts and agrees to be bound by the foregoing Agreement and Declaration of Trust establishing the Laborers National Health & Welfare Fund.

By: ________________________________  By: ________________________________

Printed Name: ________________________________  Printed Name: ________________________________

Title: ________________________________  Title: ________________________________

Business: ________________________________  Union: ________________________________

Address: ________________________________  Date: ________________________________

_______________________________________  ________________________________