

## **AMENDED ROOFERS UNION LOCAL NO. 70 APPRENTICESHIP TRUST AGREEMENT**

This Amendment to the Trust Agreement is made effective as of the 1<sup>st</sup> day of January 2008, in the State of Michigan, by the Roofers Union Local No. 70 Joint Board of Trustees.

**WHEREAS**, various employers and the Union have in effect agreements and amended agreements requiring periodic payments by employers to an Apprenticeship Trust for the purpose of providing Apprenticeship Training for members of the Union employed by such employers, and

**WHEREAS**, a Trust has been maintained,

**NOW THEREFORE**, this Amendment to the Agreement and Declaration of Trust is as follows:

### **PURPOSE AND DURATION**

The purpose of this Trust is to provide a vehicle for investing funds and making payments for training as described in this Agreement. The Trust shall continue indefinitely unless terminated in accordance with Section IX

### **SECTION I TERMS**

When used in this Agreement, the following terms have the meanings stated herein.

"Collective Bargaining Agreement" shall mean a written agreement between a contractor and the Union including any renewal or extension.

"Contractor" means any entity performing services in the Roofing Industry or related industries.

"Employer" means a contractor with a Collective Bargaining Agreement providing for contributions to this Trust.

"Trust" means this Roofers Union Local No. 70 Apprenticeship Trust

"Union" means Roofers Union Local No. 70.

### **SECTION II THE TRUSTEES**

1. Number

The Trust shall be administered and governed by a Board of Trustees, consisting of equal numbers of trustees designated as Employer Trustees and Union Trustees. There shall be four (4) Trustees.

2. Qualification of Trustees

Any person serving as Trustee must comply with the eligibility provisions contained in ERISA Section 411 as amended.

3. Named Fiduciaries

For purposes of ERISA, the Trustees shall be the named fiduciaries and plan administrator as those terms are used in ERISA.

4. Tenure of Service

Each Trustee shall serve until the effective date of such Trustees resignation or removal pursuant to the provisions of Section II, 5 & 6

5. Resignation of Trustee

Any Trustee may resign by written notice to the Funds Administrator. The resignation shall be effective as of the date stated in such notice. If a successor Trustee is appointed prior to the effective date of the resignation, then the resignation shall take effect immediately upon the appointment of the successor.

6. Removal of a Trustee

A majority of the signatory Contractors may terminate the designation of any employer Trustee by written notice to Administrator and the Union Trustees. The Union may terminate the designation of any Union Trustee by written notice to Administrator and the employer Trustees.

7. Appointment of Successor Trustee

In the event of the termination, resignation, death, incapacity, or unwillingness to serve of any Trustee, the Contractors by majority vote shall designate the successor to any employer Trustee and shall notify by written notice to Administrator and the Union Trustees. The Union shall designate the successor to any Union Trustee and shall notify by written notice to Administrator and the Employer Trustees.

8. Return of Trust Property

Any retiring, resigning or removed Trustee shall forthwith turn over to the remaining Trustees at the office of the Trust, any and all records, books, documents, monies and other property in his possession owned by the Trustees or incident to the fulfillment of this Agreement and the administration of the Trust.

9. Actions taken in good faith

No Trustee acting hereunder shall be liable for any action taken, or omitted by him, in good faith, nor for the acts or omissions of any insurance carrier or of any agent, employee or attorney selected by the Trustees with reasonable care nor for the acts or omissions of any other Trustees; nor shall any Trustee be individually or personally liable for any of the obligations of the Trustees acting as such or of the Trust. Neither any employer, the Contractors nor the Union shall be liable in any respect for any of the obligations of such Trustees even where such Trustees may be an officer of or associated in some way with the Contractors or the Union.

10. Trustee expenses and compensation

The Trustees shall be reimbursed out of the Trust for all reasonable and necessary expenses which they may incur in the performance of their duties. The Trustees may call upon the Union or their employees or the Contractors or their employees for assistance in the administration of the Trust and may reimburse the Union or their employees or the Contractors or their employees for any expenses incurred in connection therewith. The Trustees shall serve without compensation in the performance of their duties with the exception of any Union Trustees who are required to miss a day of work to attend meetings. Such Union Trustees shall be paid the equivalent of one day's pay for attending a meeting. The Trustees may exercise all rights or privileges granted to the policy holder by the provisions of each policy or allowed by the insurance carriers to the alternation, modification or amendment of such policy or policies and may take any action respecting such policy or policies or the insurance provided thereunder which may be necessary or advisable.

### SECTION III SUCCESSOR TRUSTEES

Any Successor Trustee designated as herein provided shall upon his signature to this Agreement and without further act become vested with all the estate, rights, powers, discretions and duties of his predecessor Trustee with like effect and as if originally designated as Trustee herein.

No Trustee Successor shall be liable or responsible for any acts or defaults of any co-Trustee or predecessor Trustee, or for any loss or expense resulting from or occasioned by anything done or

neglected to be done in the administration or the Trust prior to his becoming a Trustee nor shall such Successor be required to inquire into or take any notice of the prior administration of the Trust.

#### **SECTION IV OPERATION OF THE TRUST**

1. Quorum

One Union and One employer Trustee shall constitute a quorum for a meeting of the Trustees. The decisions of a quorum of the Trustees shall be determined by majority vote of the Trustees present at the meeting. No vacancy or vacancies in the Board of Trustees shall impair the power of the remaining Trustees, acting in the manner provided by this Agreement and Declaration of Trust, to administer the affairs of the Trust notwithstanding the existence of such vacancy or vacancies. If an existing vacancy results from the lack of an Employer Trustee, one Union Trustee shall be disqualified from the voting until the vacancy has been filled. If the vacancy results from the lack of a Union Trustee one Employer Trustee shall be disqualified from the voting until the vacancy has been filled. It is the intention of the parties that at any time any vote or other action is taken by the Board of Trustees that the number of Union Trustees and Employer Trustees qualified to act, vote and constitute a quorum shall always be equal.

2. Officers

The Trustees shall elect from among themselves a chairman and a secretary. One of the officers will be a Union trustee and the other shall be an employer Trustee. The chairman and secretary shall hold office for one year. A new election shall be held each year at the June meeting. The Chairman or Secretary may resign by giving notice to the Funds Administrator. Upon the resignation of an officer (or other event causing a vacancy) the office shall be filled at the next trustee meeting.

3. Meetings

Regular meetings of the Trustees shall be held during each year at dates fixed by the Trustees. The Chairman, or any two Trustees, may call a meeting of the Trustees at any time by giving at least five (5) business days written notice of the time and place thereof to each Trustee. Such notice may be delivered in person, by mail, by electronic communication or other forms approved by the Trustees. A meeting so called shall be adjourned for a reasonable period upon request of any Trustee showing a justifiable cause to the Trustees. The call for a meeting of the Trustees shall state the purpose thereof. Meeting of the Trustees may also be held at any time without notice if all the Trustees consent thereto. In the event that the Trustees shall concur in writing upon any proposition, no meeting thereon need be held by the Trustees. The vote of the Trustees may be cast by them in person at a meeting or may be evidenced by written instruments signed by them or other acceptable communication, including electronic communication from them.

4. Action without a meeting

Any action that may be taken at a meeting may also be taken by written consent by a majority of Trustees, including writing by recognized electronic communication or other forms approved by the Trustees.

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#### **SECTION V TRUSTEES DUTIES AND POWERS**

1. The Trustees shall have the right to enforce the performance of all obligations herein and to institute proceedings of any nature whatsoever to enforce the terms of this Trust.
2. The Trustees hereinabove named and their successors declare that they will receive and hold the contributions herein provided for and other money or property which may be entrusted to them as Trustees hereunder with the powers and duties and for the uses, purposes and Trusts herein named and for none other.

3. Title to all of the monies paid into the Trust and all of the property of the Trust shall be vested in and remain exclusively with the Trustees, and neither the Contractors, the Union, nor any employer or Participant or beneficiary shall have any right, title or interest in any of the monies or property of the Trust. It is the intention of the parties hereto that the Trust shall constitute an irrevocable trust for the sole and exclusive benefit of Participants entitled to benefits under this Trust and no benefits or monies or property of this Trust shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or change, and attempts to do so shall be void.
  - a. The payments from the Trust shall not constitute wages due to the participants.
  - b. No Participant shall have the right to receive any part of the contributions in lieu of benefits, nor to assign his benefits.
  - c. In no event shall employers, directly or indirectly, receive any refund of contributions made by them to the Trust, either during the term of this Agreement or upon its termination.
  - d. Any and all funds received by the Trustees in the form of contributions, income, dividends on policies of insurance, or otherwise, shall be received by them as part of the Trust to be administered and disposed of for the following purposes:
    1. To pay or provide for the payment of all reasonable and necessary expenses in connection with collecting the employer contributions and administering the affairs of the Trust, including but without limitations, all expenses which may be incurred in connection with the establishment of the Trust, the providing of fidelity bonds, the payment for occupancy of premises and the purchase or lease of such materials, supplies and equipment as the Trustees in their discretion find necessary and appropriate in the performance of their duties. The Trustees shall establish clerical administration procedure to effect the sound efficient and economical clerical administration of the Trust. They may, at their discretion, employ suitable personnel and actively assume clerical administration of the Trust or they may appoint an administrator who will perform the administrative function of the Trust.
    2. To pay or provide for the payment of all premiums on the policy or policies of insurance, procured in carrying out the purposes of the Trust, when such premiums shall become due. The policies shall be of whatever nature (i.e. liability, casualty, property damage, errors and omissions) deemed necessary by the trustees.
    3. To establish and accumulate as part of the Trust such reasonable reserves as the Trustees shall determine advisable to carry out the purposes of the Trust.
    4. The Trustees shall have power to invest and reinvest any funds which, in their sole and absolute discretion, they consider not required for current expenditures in whatever investment instruments they deem appropriate.
    5. The Trustees shall deposit all monies received by them in such bank or banks as they may select for that purpose. All withdrawals of monies from such bank or banks shall be made only by check, signed by a Trustee or other person authorized by all the Trustees to sign or countersign.
  - e. The Trustees shall, by resolution duly adopted, provide for fidelity bonds and/or other Trustee Investments with such companies and in such amounts as they may determine, for Trustees or other persons who shall be authorized to receive or withdraw funds from the Trust Estate. The cost of such bonds shall be paid from the Trust.
  - f. The Trustees shall have the exclusive authority to interpret the provisions of the Plan. The

Trustees have the authority to provide any payments directly from the Trust or to engage any third party to provide the payments.

- g. In addition to the powers specifically enumerated herein, the trustees shall also have any powers necessary under Federal and Michigan law to perform the duties of trustee and carry out the purposes of this Trust.

## **SECTION VI PAYMENT AND COLLECTION OF TRUST CONTRIBUTIONS**

The payment and collection of Trust Contributions shall be subject to the provisions of the Collective Bargaining Agreement and the provisions of this Section.

- a. Trust contributions shall be due and payable at the Trust office or at such other locations as may be specified by the Trustees, and shall be made monthly by the 10th of the month following the month for which the contributions are due.
- b. The Trustees shall have the authority to pursue and collect delinquent contributions and other claims described in this Section, the Collective Bargaining Agreement or any special agreement. Contributions shall be considered to be delinquent if they are not submitted by the due date, are not submitted for all Participants on whose behalf they are required, or are improperly computed as required by the applicable collective bargaining agreement or special agreement.
- c. The Trustees shall have the authority to inspect, examine and audit the payroll records, information, data, reports, or documents of any Contractor as they may deem necessary in the administration of the Trust. The Trustees or their authorized representatives may examine the pertinent financial records of each individual contractor with respect to the members covered by this Trust whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust. In the event that any inspection, examination or audit determines that a Contractor is delinquent in the payment of contributions, the Contractor shall be liable for the cost of such inspection, examination or audit, unless the Trustees waive imposition of costs for a showing of good cause.
- d. If the Trustees refer the delinquency to legal counsel for collection, the delinquent Contractor shall be liable for reasonable attorney fees and all reasonable costs incurred in the collection process, including court fees and any other related costs.
- e. The provisions of the Collective Bargaining Agreement regarding late penalties, liquidated damages of 10 percent, and interest at the rate of 12 percent per annum (with a minimum interest of \$50) on late payments shall apply to any delinquent payment to the Trust. The Trustees shall not be obligated to pursue the collection of delinquencies through the grievance-arbitration procedures (if any) provided in the collective bargaining agreement.
- f. The venue of any lawsuit initiated to recover delinquent contributions and any related costs shall be the court of competent jurisdiction (State or Federal) in Livingston County, Michigan or such other location as determined by the Trustee.

## **SECTION VII AUDITS AND REPORTS**

An annual audit of the Trust shall be made at the end of each fiscal year by independent certified public accountants selected by the Trustees. A statement of the results of said annual audit shall be made available for inspection by interested persons at the office of the Trust and at such other place as may be designated by the Trustees. More frequent audits may be made at the discretion of the Trustees. The

Trustees, within their discretion, shall, upon the request of the Contractors or Union or at reasonable intervals, furnish reports representing the status of the Trust, the application of the contributions received and such other pertinent information regarding the operation of the Trust and the benefits plan as may seem desirable or advisable.

When the welfare benefits have been determined and established and upon any substantial change in such benefits, the Trustees shall submit annual financial statements regarding such benefits, in any form, either directly or by distribution of reports, to the Contractors and the Union.

The employers, the Contractors and Union shall furnish to the Trustees upon request any and all information or records in their possession considered necessary by the Trustees in connection with the establishment and maintenance of the welfare plan and the efficient administration of the Trust.

## **SECTION VIII AMENDMENTS**

This Agreement and Declaration of Trust may be amended to any extent at any time, or from time to time, upon recommendation of the Contractors, or the Union with the unanimous concurrence of the Trustees serving at that time, providing, however, that no amendment may be submitted or acted upon which shall divert the Trust, or any part thereof, to a purpose other than that set forth, or permit a return of payments to employers from the Trust, or which shall eliminate the requirements of an annual audit, the results of which shall be available for inspection by interested parties, or which shall provide that the Trust shall be held in trust other than by an equal number of employer representatives and employee representatives.

It is the intention of the parties hereto that the contributions of the employers to the Trust are deductible as business expenses for tax purposes and that such contributions are not subject to Federal Social Security or Withholding Tax. All of the parties hereto agree to make such amendments to this Agreement as shall be necessary to secure approval of and carry out this intention.

## **SECTION IX EFFECTIVE DATES AND TERMINATION OF THE TRUST**

1. This Amendment shall become effective upon execution by all Trustees.
2. This Agreement and the Trust created hereby shall be terminated:
  - a. In the event the obligations of employers contributing to the Trust, to make contributions shall all terminate, the Trustees shall apply the Trust to the purposes specified so far as possible, any balance of the Trust which cannot be so applied shall be applied to such other uses as, in the opinion of the Trustees, will best accomplish the purposes for which the Trust was established. Upon the disbursement of the entire Trust, the Trust shall terminate.
  - b. This Trust may be terminated at any time by the unanimous consent of all the Trustees serving at that time and with the written approval of the Contractors and the Union.
3. In the event this Agreement and the Trust hereby created shall terminate for any reasons, the Trustees shall apply the Trust assets to pay any and all obligations of the Trust. Upon termination, the Trustees shall notify the Contractors, the Union, and any other person, partnership, corporation or association with whom they are dealing and shall continue as Trustees for the purpose of dissolution. Thereupon further surplus remaining in the Trust shall be used at the discretion of the Trustees to provide insurance benefits for the Participants covered at the time of the Termination of this agreement to the extent that such funds will provide. In no event shall the surplus, if any, remaining be distributed to the employers or the Participants.
4. In lieu of the distribution and liquidation upon termination as set forth, the Trustees, upon the written request of the Contractors and the Union, shall, after all obligations of the Trust have been satisfied,

turn over any surplus monies and property in the Trust to any future trust or [REDACTED] that may be created by and between the Contractors and the Union by collective bargaining agreements.

## **SECTION X ELIGIBILITY**

In order to be eligible for any apprenticeship benefits, a person must be a member of Local No. 70 and must be in good standing in accordance with the Constitution and By-Laws of the International Union or an initiate employed by an Employer.

## **SECTION XI BENEFITS**

The benefits of this Trust shall be available to any member of Local No. 70 that meets the eligibility of Section X. Benefits shall be any training made available and approved by the Trustees. The provisions of the Apprenticeship Training Program submitted to the United States Department of Labor are incorporated by reference.

## **SECTION XII MISCELLANEOUS**

This Trust is accepted by the Trustees in the State of Michigan and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of the United States and the laws of such State.

No person, partnership, corporation, or association dealing with the Trustees shall be obligated to see to the application of any funds or property of the Trust, nor to see that the terms of the Trust have been complied with, nor be obliged to inquire into the necessity or expediency of any act of the Trustees.

The Trust shall indemnify and defend to the fullest extent permitted by law any Trustee or Administrator acting for the Trustees in connection with the Plan, including any Employee or former Employee who formerly served or acted in such capacity, against all liabilities, damages, costs and expenses (including attorneys' fees and amounts paid in settlement of any claims approved by the Company) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

In the event any suit, action or proceeding is brought against the Trustees, one or more of the Trustees, or the Trust, in connection with any matter arising out of the administration of the Trust or in connection with any action or omission of the Trustees, or any one or more of the Trustees, or in the event any suit, action or proceeding is commenced by the Trustees relating to the administration of the Trust, the Trustees shall have the power and authority to employ counsel to represent them or any one or more of them, in matters pertaining to the Trust, in any such suit, action or proceeding, and counsel fees, or any other costs, shall be paid from the Trust, so long as the Trustees have acted in good faith, it being the intent to indemnify the Trustees against all honest mistakes in judgment and all other acts or omissions that are not deliberate and willful violations of their duties as Trustees.

Each signatory to this Agreement shall deposit with the Trustees a written designation of address to which all notices required or permitted hereby be mailed.

This Agreement may be executed in a number of counterparts, each of which shall have the force of an original and not more than one counterpart need be signed by any party hereto.

The parties believe that this contract is not in any part contrary to the provisions of any present State or Federal laws or regulations. In the event that it should later be found that any clause, sentence or paragraph is illegal because of the provisions of any present Federal or State law or regulation affecting this contract that portion of the contract shall give way to the provisions of such State or Federal law or

regulation, and if it is necessary to revise such clause, sentence or paragraph the parties will meet and negotiate necessary and appropriate changes, but all provisions of the contract which are not illegal shall continue in full force and effect without change.

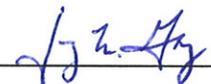
No matter respecting the foregoing or any difference arising thereunder or any matter involved in this Agreement and Declaration of Trust or the related Summary Plan Description shall be subject to the grievance procedure established in any collective bargaining agreement between the Contractors or any contributing employer and the Union

**IN WITNESS WHEREOF**, the Trustees have executed this instrument to evidence their acceptance of the Trust hereby created and their agreement to be bound thereby, and all other parties have executed this Agreement as of the day and year first above written, except where a different date is indicated.

**CONTRACTOR TRUSTEES**

By: 

Norm Burmeister  
Print Name

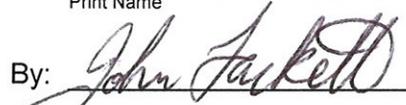
By: 

Jeremy H. Gray  
Print Name

**LOCAL UNION NO. 70 TRUSTEES**

By: 

Kenneth L Adkins  
Print Name

By: 

John Tackett  
Print Name