

AMENDMENT NO. 1
TO THE
AGREEMENT AND DECLARATION OF TRUST
FOR THE
SHEET METAL WORKERS LOCAL NO. 33 (CLEVELAND DISTRICT)
HEALTH AND WELFARE TRUST

THIS AGREEMENT OF AMENDMENT made this 7th day of October, 1996 by and between the members of the Board of Trustees (the "Trustees") of the Sheet Metal Workers Local No. 33 (Cleveland District) Health and Welfare Fund (the "Fund"):

WITNESSETH THAT:

WHEREAS, by an Agreement and Declaration of Trust dated as of May 1, 1976 an employee welfare benefit trust was established known as the "Sheet Metal Workers Local No. 65 Health and Welfare Trust"; and

WHEREAS, Article VII, Section 1 of said Agreement and Declaration of Trust provides that said Agreement and Declaration of Trust may be amended from time to time by the unanimous concurrence of the Trustees serving at that time; and

WHEREAS, the Trustees now desire to amend said Agreement and Declaration of Trust with respect to certain matters contained therein;

NOW, THEREFORE, it is hereby declared and agreed by the unanimous concurrence of the Trustees that, effective as of the date first above written, the Agreement and Declaration of Trust establishing the Fund be, and it hereby is, amended in the following respects:

A. Article I, Section 3 as amended to read in its entirety as follows:

"The term 'Union' as used herein shall mean Sheet Metal Workers Local No. 33, Cleveland District, and any successor thereto."

B. The first sentence of Article I, Section 6 is amended to read in its entirety as follows:

"The term 'Trustee' as used herein shall mean any natural person designated as a Trustee pursuant to Article III, Sections 1-3, of this Agreement and Declaration of Trust or his alternate or successor while acting as a Trustee."

C. Article I, Section 5 is amended to read in its entirety as follows:

"The terms 'Trust Fund,' 'Trust' or 'Fund' as used herein shall mean Sheet Metal Workers Local No. 33, Cleveland District, Health and Welfare Trust and the entire assets thereof, including all funds received by the Trustees in the form of Employer contributions, together with all contracts (including dividends, interest, refunds, and other sums payable to the Trust Fund on account of such contracts), all investments made and held by the Trustees, all income, increments, earnings and profits therefrom, and any and all other property or funds received and held by the Trustees under this Agreement and Declaration of Trust."

D. Article III, Section 1 is amended by adding the following sentence at the end thereof:

“The body appointing any Trustee may likewise appoint an alternate Trustee for each or any Trustee named, and each such alternate Trustee shall have full authority to act as a Trustee in the absence of the Trustee for whom he is the alternate.”

E. Article III, Section 2, is amended to read in its entirety as follows:

“The Union may terminate the designation of any Union Trustee or alternate by mailing or delivering to the said Trustee or alternate and to each of the remaining Trustees and alternates a true copy of the appropriate action taken by the Union terminating such designation.

Any Employer Trustee or alternate may be removed by the Association. In terminating the designation of any such Employer Trustee or alternate, the same shall be done by mailing or delivering to the person to be removed, as well as to all of the remaining Trustees and alternates, a copy of the termination of designation.

Any Trustee or alternate may resign by instrument in writing executed for that purpose and mailed or delivered to each of the remaining Trustees and alternates, the Association and the Union, not less than seven (7) days prior to the intended effective date thereof.”

F. The first sentence of Article III, Section 3 is amended to read in its entirety as follows:

“In the event of death, the resignation, removal or inability to act of any Trustee or alternate, the vacancy thereby created shall be filled by appointment from the membership of the group whose representation on the Board has been affected. Until the vacancy is filled, an alternate, if any, shall serve in the Trustee’s stead.”

G. The last sentence of Article III, Section 3 is amended to read in its entirety as follows:

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

H. Article III, Section 4 is amended by adding the following sentence at the end thereof.

“A vacancy being temporarily filled by an alternate Trustee shall not be considered as a vacancy for this purpose.”

I. Article III, Section 6 is amended to read in its entirety as follows:

“The Trustees shall meet at such times and places and with such frequency as the Trustees shall, in their discretion and fiduciary status, determine. Notice of meetings shall be given to all Trustees and alternates at least seventy-two (72) hours prior to the time for convening the meeting, in person or in writing; provided, however, that meetings of the Trustees may also be held at any time without the required prior notice if all Trustees consent thereto. All meetings of the Trustees shall be attended only by the Trustees, alternates and those other persons designated or invited by the Trustees to attend and shall not be open to the public. Written minutes shall be kept on all business

transactions and all matters on which voting occurred. Copies of the minutes shall be distributed to all Trustees and alternates and acted upon at the next meeting of the Trustees.”

J. The first paragraph of Article III, Section 8 is amended to read in its entirety as follows:

“To constitute a quorum for the transaction of business, the presence of at least two (2) Trustees or alternates is required, at least one (1) of whom shall be an Employer Trustee or alternate thereto, and one (1) of whom shall be a Union Trustee or alternate thereto. At all meetings of the Trustees, Employer Trustees present shall have, in the aggregate, a total of two (2) votes and the Union Trustees present shall have, in the aggregate, a total of two (2) votes.

K. Article III, Section 9 is amended to read in its entirety as follows:

“Each Trustee and alternate serving as such shall execute a written Acceptance of Trust in a form satisfactory to the Trustees and in conformity with the Act, and thereby he shall be deemed to have accepted the Trust created, established and maintained by this Agreement and Declaration of Trust; to have consented to act as a Trustee or alternate, as the case may be; and to have agreed to administer the Trust Fund as provided herein.”

L. The first sentence of Article III, Section 12 is amended to read in its entirety as follows:

“The Board of Trustees shall initiate action to cause the removal of any fellow Trustee or an alternate who may be serving as a Trustee or alternate in violation of the Act.”

EXCEPT as herein expressly amended or modified, all of the terms and provisions of the Agreement and Declaration of Trust, as existing immediately prior hereto, are hereby affirmed.

IN WITNESS WHEREOF, the Trustees have executed multiple copies of this agreement at Cleveland, Ohio on the date first written above.

BOARD OF TRUSTEES OF THE
SHEET METAL WORKERS LOCAL NO. 33 (CLEVELAND DISTRICT)
HEALTH AND WELFARE FUND

EMPLOYER TRUSTEES:

UNION TRUSTEES:

