

**RESTATED AGREEMENT
AND DECLARATION OF TRUST
OF THE
NECA-IBEW WELFARE TRUST FUND**

WHEREAS, there has heretofore been entered into an Agreement and Declaration of Trust, effective November 21, 1955, by and between the DECATUR DIVISION, the SPRINGFIELD DIVISION, the PEORIA DIVISION, the CHAMPAIGN DIVISION and the DANVILLE DIVISION of the ILLINOIS CHAPTER of the NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION; and Independent Employers who are or may become a party hereto, hereinafter referred to as the "Employers", and DECATUR LOCAL 146, SPRINGFIELD LOCAL 193, PEORIA LOCAL 34, CHAMPAIGN LOCAL 601 and DANVILLE LOCAL 538, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, hereinafter referred to as the "Union", which Agreement creates a welfare trust fund as therein provided; and

WHEREAS, said Agreement and Declaration of Trust has heretofore been restated and amended; and

WHEREAS, under Article XIII, Section 13.9 of said Agreement and Declaration of Trust, the Trustees have the power and authority to amend such Agreement and Declaration of Trust from time to time as therein provided; and

WHEREAS, it is determined to be desirable to amend said Agreement and Declaration of Trust and to further restate the same so as to incorporate therein all of the amendments adopted heretofore or as part of this restatement; and

NOW, THEREFORE, the Trustees, designated and in office, as such, hereby amend this Restated Agreement and Declaration of Trust effective _____ and, as amended, restate it as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Act. The term "Act" as used herein shall mean the Employee Retirement Income Security Act of 1974, any amendments as may from time to time be made and any regulations promulgated pursuant to the provisions of the said Act.

Section 1.2 Association. The term "Association" shall mean any Association of Electrical Contractors and/or Chapter of the National Electrical Contractors Association, Inc., who becomes party to or bound by this Agreement.

Section 1.3 Beneficiary. The term "Beneficiary" as used herein shall mean a person designated by a Participant or by the terms of the plan of benefits established pursuant to this Trust Agreement (such as a dependent or member of the family of a Participant) who is or may become entitled to a benefit thereunder.

Section 1.4 Collective Bargaining Agreement The term "Collective Bargaining Agreement" shall mean an agreement relating to the terms and conditions of employment of Electricians and any amendments, renewals or modifications thereof between the Local Unions affiliated with the International Brotherhood of Electrical Workers and the Association or individual Employers of Electricians within the jurisdiction of the International Brotherhood of Electrical Workers.

Section 1.5 Electrician. The term "Electrician" shall mean any employee engaged in doing

work of the character falling within the jurisdiction of the Local Unions affiliated with the International Brotherhood of Electrical Workers.

Section 1.6 Employee. The term "Employee" as used herein shall mean any employee working for an Employer as defined herein, and with respect to whose employment an Employer is required to make contributions to the Fund. Employees, if any, of this Fund who are not employed by an Employer as defined in Section 1.6, but as shall be proposed and accepted for such benefits by the Trustees. As to such personnel as are Employees of the Fund, the Trustees shall be deemed to be an Employer within the meaning of the Trust Agreement and shall provide benefits for said Employees out of said Fund, on the same basis as for other Employees.

Section 1.7 Employer. The term "Employer" as used herein shall mean:

(a) An Employer who has duly executed or is bound by a Collective Bargaining Agreement with the Union, either by individually executing a Collective Bargaining Agreement, or by executing an assent to such an Agreement which is also executed by the Local Union representing its employees and also executed by the Division of the Association to which it is a member (or, if the Employer is not a member of the Association, the execution of such an assent by any other multi-employer group representing it which negotiates with the Union), so as to provide for the making of payments to the Fund with respect to Employees represented by the Union.

(b) The Union, which, for the purposes of making the required contributions into the Fund, shall be considered as the Employer of the Employees of the Union for whom the Union contributes to the Fund, as well as the Association comprised of Employers, which, for the purposes of making the

required contributions into the Fund, shall be considered as the Employer of the Employees of the Association for whom the Association contributes into the Fund.

(c) The Benefit Corporation which oversees the Trust Fund shall be considered as an Employer for the purposes of making contributions solely for those of its full-time employees who are employed by the Benefit Corporation.

(d) An Employer who, while not generally recognizing the Union as the representative of its Employees, is bound to make contributions on behalf of its Employees.

(e) Employers as described in this Section shall, by the making of payments to the Fund pursuant to such collective bargaining or other written agreements, be deemed to have accepted and be bound by this Trust Agreement.

In addition, those employees of any local, state, regional, national or international labor organization of which the Union is an affiliate on whose behalf contributions had been made to the Trust Fund while they were employed as Electricians, provided that a participation agreement has been entered into between such labor organization has been entered into between such labor organization and the Trustees as provided in Article IV, Section 1(e) hereof (this provision shall include, but not be limited to, employees approved by the Trustees of such entities as Union affiliated Apprenticeship Committees, Credit Unions, etc.).

(f) Generally, pursuant to the strictures of the Employee Retirement Income Security Act, unless otherwise permitted by law, individual owners, sole proprietors and partners shall

not be considered Employees.

Section 1.8 Local Union or Union. The term "Local Union" or "Union", as used herein, shall mean any local union affiliated with the International Brotherhood of Electrical Workers who have or will become bound to this Agreement or any successor affiliated with the International Brotherhood of Electrical Workers.

Section 1.9 Participant. The term "Participant" as used herein shall mean any Employee or former Employee of an Employer who is or may become eligible to receive a benefit of any type from this Fund or whose Beneficiaries may be eligible to receive any such benefit.

Section 1.10 Trustees. The term "Trustees" as used herein shall mean the Trustees designated in this Trust Agreement, together with their successors designated and appointed in accordance with the terms of this Trust Agreement. The Trustees, collectively, shall be the "Administrator" of this Fund as that term is used in the Act.

Section 1.11 Trust Fund. "Trust", "Trust Fund" and "Fund" as used herein shall mean the NECA-IBEW WELFARE TRUST FUND.

Section 1.12 Trust Agreement. The terms "Agreement and Declaration of Trust" or "Trust Agreement" as used herein shall mean this instrument, including all amendments and modifications as may from time to time be made.

Section 1.13 Wage Area. The term "Wage Area" shall be synonymous with the authorized jurisdiction of a Local Union of the International Brotherhood of Electrical Workers encompassed by this Trust.

ARTICLE II

CREATION AND PURPOSES OF FUND

Section 2.1 The Trust Fund is created, established and maintained, and the Trustees agree to receive, hold and administer the Trust Fund, for the purpose of providing health and welfare benefits as now are, or hereafter may be, authorized or permitted by law for Participants and their Beneficiaries and in accordance with the provisions herein set forth.

ARTICLE III

BOARD OF TRUSTEES

Section 3.1 Number, Appointment, Term. The Fund shall be administered by a Board of Trustees, the number of which shall be determined by the Board, the members of which shall be designated as "Union Trustees" and "Employer Trustees." The Union Trustees shall be appointed and may be removed by the Local Union in the Wage Area. The Employer Trustees shall be appointed and may be removed by the Association or other multi-employer group representing the Participating Employers in the Wage Area. The number of Trustees may be increased or decreased from time to time by the Trustees in a manner and in a way as determined by them; provided however, that the total membership of the Board of Trustees will always be equalized so as to reflect an even number of Trustees, divided equally between Union and Employer Trustees (said equalizing method described below). In no event shall any Trustee who is appointed as an Employer or Union Trustee from one Wage Area be permitted to be appointed or act on behalf of any other Wage Area, except in circumstances where action is not taken by the respective appointing body to appoint the appropriate number of Trustees, thereby resulting in a Trustee or Trustees representing more than one Wage Area, but such exception shall only be permitted after such is specifically ratified by the remaining Trustees.

The respective Trustees shall serve without compensation, unless permitted by law, and at the will of the Local Union in the Wage Area or the Association or other multi-employer group

representing the Participating Employers in the Wage Area, respectively, appointing them, but they shall be reimbursed for all reasonable and necessary expenses properly and actually incurred by them in connection with the performance of their official duties as such. The Local Union in the Wage Area or the Association or other multi-employer group representing the Participating Employers in the Wage Area shall select successor Trustees whenever vacancies occur among their respective appointees. A vacancy shall occur whenever a Trustee resigns or when a Trustee is removed by the party which appointed him, or by reason of death or incapacity.

Section 3.2 Acceptance of Trusteeship. The Trustees shall meet and sign this Restated Agreement and Declaration of Trust immediately and any successor Trustee(s) or additional Trustee(s) shall sign a written acceptance thereof, and they shall by so doing thereby agree to accept the Trusteeship and to act in their fiduciary capacities strictly in accordance with the provisions thereof.

Section 3.3 Resignation and Removal. A Trustee may resign and become and remain fully discharged from all further prospect duty or responsibility hereunder upon giving thirty (30) days' notice in writing to the remaining Trustees and to the party by whom he was appointed, or such shorter notice as the remaining Trustees may accept as sufficient, in which notice there shall be stated a date on which such resignation shall take effect (such resignation shall not relieve such Trustee from fiduciary responsibilities that exists because of the Trustee's position as to this Trust); and such resignation shall take effect on the date specified in the notice unless a successor Trustee shall have been appointed at an earlier date, in which event such resignation shall take effect immediately upon the appointment of such successor Trustee. An Employer Trustee may be removed from office at any time by action of the Association or other multi-employer group representing the Participating Employers in the Wage Area Employers, written

notice of such action to be delivered to the Chairman and Secretary-Treasurer of the Trustees serving at that time. A Union Trustee may be removed from office at any time by action of the Local Union in the Wage Area, written notice of such action to be delivered to the Chairman and Secretary-Treasurer of the Trustees serving at that time.

Section 3.4 Successor Trustees, Appointment. If any Employer Trustee shall die, become incapable of acting hereunder, resign, or be removed, a Successor Employer Trustee shall be immediately appointed by the Employers, such appointment to be in writing and to be delivered to the Chairman and Secretary-Treasurer of the Trustees serving at that time. If any Union Trustee shall die, become incapable of acting hereunder, resign, or be removed, a Successor Union Trustee shall immediately be appointed by the Local Union in the Wage Area, such appointment to be in writing and be delivered to the Chairman and Secretary-Treasurer of the Trustees serving at that time. It is the intention hereof that the Fund shall at all times be administered by an equal number of Employer Trustees and Union Trustees; in the absence of such, equal, weighted voting shall apply as provided herein. The written appointment shall state the term, if any, during which the Trustee is to serve, consistent with Section 3.1.

Section 3.5 Successor Trustee, Assumption of Office. Any Successor Trustee shall immediately upon his appointment as a Successor Trustee and his acceptance of the Trusteeship in writing, as provided in Section 3.4, become vested with all the property rights, powers and duties of a Trustee hereunder with like effect as if originally named a Trustee without the necessity of any formal conveyance or other instrument of title.

Section 3.6 Acceptance of the Trust by Trustees. A Trustee, in order to comport with the requirements of Sections 3.2 and 3.6 of this Article III, shall execute a written acceptance in a form satisfactory to the Trustees and consistent with the Act and thereby shall be deemed to have

accepted the Trust created and established by this Trust Agreement and to have consented to act as Trustee and to have agreed to administer the Trust Fund as provided herein. Such written acceptance shall be filed with the Fund's Administrative Manager who shall notify the remaining Trustees of the receipt of such acceptance.

Section 3.7 Limitation of Liability of Trustees. No Trustee shall be liable or responsible for his own acts or for any acts or defaults of any other fiduciary or party in interest or any other person except in accordance with applicable federal law.

Section 3.8 Office of the Fund. The principal office of the Trust Fund shall, so long as such location is feasible, be located and maintained in Decatur, Illinois, or if such is impractical, within any town or city within the jurisdiction of the International Brotherhood of Electrical Workers which is a party to this Agreement, or where the third party administrator of the Fund is domiciled. The location of the principal office shall be made known to the parties interested in the Trust Fund. At such office, and at such other places as may be required by law, there shall be maintained the books and records pertaining to the Trust Fund and its administration.

Section 3.9 Officers. At the first meeting of each applicable alternating calendar year, the Trustees shall elect from among themselves a Chairman and a Secretary-Treasurer to serve for a term of two (2) years commencing the day of the year of election, or until his or their successors have been elected. When the Chairman is elected from the Employer Trustees, then the Secretary-Treasurer shall be elected from the Union Trustees. The chairmanship shall alternate, insofar as practicable or desirable, between the Employer Trustee and the Union Trustee. The Secretary-Treasurer, or such other person as the Trustees may designate, shall keep minutes and records of all meetings, proceedings and acts of the Trustees and shall, with reasonable promptness, send copies of such minutes and records to all Trustees. The Chairman shall preside

at all meetings of the Trustees.

Section 3.10 Power to Act in Case of Vacancy. No vacancy or vacancies on the Board of Trustees shall impair the power of the remaining Trustees, acting in the manner provided by this Trust Agreement, to administer the affairs of the Trust Fund notwithstanding the existence of such vacancy or vacancies.

Section 3.11 Meetings; Notices. The Chairman or Secretary-Treasurer may call meetings or the Trustees by resolution may provide for regular meetings not to exceed one meeting per month. Meetings shall take place only in the continental United States.

Section 3.12 Attendance at Meetings; Minutes. All official meetings of the Trustees shall be attended only by the Trustees and shall not be open to the public, except that there may attend such other persons as may be designated by the Trustees or when invited to do so, and as may be otherwise required by law. Written minutes, a copy of which shall be furnished with reasonable promptness to each Trustee, shall be kept of all business transacted and of all matters upon which voting shall have occurred and the vote of each Trustee shall be recorded. Such minutes shall be approved by the signature of an Employer Trustee and of a Union Trustee.

Section 3.13 Quorum; Voting; Action without Meeting.

(a) Fifty-one percent (51%) of the Union Trustees appointed to serve on this Fund, together with Fifty-one percent (51%) of the Employer Trustees appointed to serve on this Fund, when present in person at a meeting of the Board of Trustees shall constitute a quorum for the transaction of business.

(b) Any action taken by the Trustees, except as herein otherwise provided, shall be by affirmative vote of a majority of the votes cast at a meeting. The Trustees must cast their votes in person, except as provided in subsection (c) of this Section.

(c) Action by the Trustees on any proposition may also be taken without a meeting if at least two-thirds of employer Trustees and two-thirds of Union Trustees agree affirmatively in writing on any such proposition proposed.

(d) Any action taken by the Trustees pursuant to this Agreement and Trust shall be by a majority vote of the Trustees present at any meeting at which a quorum is present. If at any meeting of the Trustees the representation of the Employer and Union groups is unequal, each Trustee in the smaller group shall be allowed an additional fractional vote so that the smaller group of trustees shall have the same voting power as that of the larger group.

Section 3.14 Manner of Action in the Event of Deadlock.

(a) A deadlock shall be deemed to exist whenever a proposal, nomination, motion or resolution made or proposed by any one of the Trustees is not adopted or rejected by a majority vote and the maker of the proposal, nomination, motion or resolution notifies the remaining Trustees in writing that a deadlock exists.

(b) In the event of such deadlock arising, the Trustees shall meet for the purpose of agreeing upon an impartial umpire to break such deadlock by deciding the dispute in question. In the event of the inability of the Trustees to agree upon the selection of such impartial umpire within a reasonable time, then, on the petition of either group of Trustees, the senior judge on duty of the District Court of the United States for the District of Illinois where the Trust Fund has its principal office shall appoint such impartial umpire. Such impartial umpire shall immediately proceed to hear the dispute between the Trustees and decide such dispute, and the decision and award of such umpire shall be final and binding upon the parties. The reasonable compensation of such umpire and the costs

and expenses (including, without limitation, attorneys' and reporter fees) incidental to any proceedings instituted to break a deadlock shall be paid by the Trust Fund.

(c) Any impartial umpire selected or designated to break a deadlock shall be required to enter his decision within a reasonable time fixed by the Trustees. The scope of any such proceeding before such impartial umpire shall be limited to the provisions of this Trust Agreement and to the provisions of the rules, regulations and by-laws adopted by the Trustees and to the plan of benefits established by them. The impartial umpire shall have no jurisdiction or authority to change or modify the provisions of this Trust Agreement or to decide any issue arising under or involving the interpretation of any collective bargaining agreements between the Union and the Employers, and such impartial umpire shall have no power or authority to change or modify any provisions of any such collective bargaining agreements.

Section 3.15 Removal of Trustee (Violation of Act). The Board of Trustees shall initiate action to cause the removal of any fellow member Trustee who may be serving as a Trustee in violation of the Act. The vacancy or vacancies caused by such a removal shall be filled in accordance with Section 3.4 of this Article.

ARTICLE IV

CONTRIBUTIONS AND COLLECTIONS

Section 4.1 Employer Contributions.

(a) Each Employer shall make prompt contributions or payments to the Trust Fund in such amount and under the terms as are provided for in the applicable collective bargaining agreement in effect from time to time between the Employer or his bargaining representative and the Union. An Employer may also be required to make contributions in

such amount and under such terms as such Employer may be obligated, in writing, to make, provided that such contributions shall be subject to acceptance by the Trustees. The Employer agrees that such contributions shall constitute 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 or of an Employee.

(b) Contributions to the Fund shall be paid to the Trustees or to such depository as the Trustees shall designate, only by check, bank draft, money order or other recognized written method of transmitting money or its equivalent, made payable to the order of the Trustees of the NECA-IBEW Welfare Trust Fund. The payment of contributions shall be made periodically at such times as the Trustees shall specify by rules and regulations or as may be provided in the applicable collective bargaining agreement.

(c) Each Employer shall be responsible only for the contributions payable by him on account of Employees covered by him, except as may be otherwise provided by law.

(d) In the event an Employee employed by an Employer, as defined herein, shall perform work outside of the geographical jurisdiction of the Union, the Employer may continue to make payments to the Trust Fund and the Trustees may accept such payments.

(e) Employers shall make contributions on behalf of each of its employees employed by the Employer in a management, supervisory, or other non-bargaining capacity who are also engaged in bargaining unit work. Such contributions are shall be made on the basis of 160 hours per month, regardless of the number of hours actually worked. Each such Employer shall execute a Participation Agreement with the Trustees of the NECA-IBEW Welfare Trust Fund.

Section 4.2 Employee Contributions. Participants (i) who cease to perform work for an

Employer for which work Employer contributions were required to be paid to this Fund as provided in Section 4.1 of this Article, and (ii) who, at the time they last performed such work, had been eligible and qualified to receive benefits under the plan of benefits established by the Trustees under this Fund, and (iii) who are members of such a class of such Participants as to whom the Trustees, consistent with applicable law, have in their sole discretion determined to provide continued eligibility for benefits of such type and amount and for such period of time and on such terms as the Trustees in their discretion may wish to make available to such class, shall make periodic contributions or payments to the Trust Fund in such amounts and at such times and subject to such conditions, requirements, limitations and rules as the Trustees in their sole discretion may establish and impose with respect to such class of such Participants. Nothing herein shall be construed to abridge the rights of those eligible to receive benefits pursuant to exercise of rights under Consolidated Omnibus Budget Reduction Act and, when in conflict, the most favorable determination to the participant or beneficiary shall apply.

Section 4.3 Receipt of Payment and Other Property of Trust. The Trustees or such other person or entity designated or appointed by the Trustees are hereby designated as the persons to receive the payments heretofore or hereafter made to the Trust Fund by the Employers and Employees. The Trustees are hereby vested with all right, title and interest in and to such moneys and all interest which may be accrued thereon, and are authorized to receive and be paid the same.

Section 4.4 Late Payments. The Trustees may require the payment by Employers of liquidated damages in the aggregate sum of:

- (a) \$50.00 per month on each monthly report and /or contributions that are not received by the 15th of the month up to a maximum of \$500.00; and
- (2) twice the prime interest rate on the amount of each month's delinquent

contributions, compounded monthly.

The Employer is liable for audit costs and reasonable attorney fees for the collection of delinquent contributions, liquidated damages, interest and other collection costs as described in Section 4.5 of this Article.

Section 4.5 Collection and Enforcement of Payments. The Trustees, or such committee of the Trustees as the Board of Trustees shall appoint, or the Administrative Manager if one has been appointed and when directed by such committee or by the Board of Trustees, shall have the power to demand, collect and receive Employer payments and all other money and property to which the Trustees may be entitled, and shall hold the same until applied to the purposes provided in this Trust Agreement. They shall take such steps, including the institution and prosecution of, or the intervention in, such legal or administrative proceedings as the Trustees in their sole discretion determine to be in the best interest of the Trust Fund for the purpose of collecting such payments, money and property, without prejudice, however, to the rights of the Union to take whatever steps it deems necessary and wishes to undertake for such purpose.

The Trustees may employ attorneys, accountants and other professionals to conduct audits of the pertinent employment and payroll records of each employer, and the employer shall be liable to pay the professional fees and costs of suit and audit and all other costs incurred by the Trustees in pursuing delinquent contributions. Such other costs may include, but are not limited to, filing fees and service of process. Non-payment by any employer of any contribution or other monies owed to the Fund shall not relieve any other employer from his or its obligation to make required payments to the Trust Fund.

Section 4.6 Production of Records. Each Employer shall promptly furnish to the Trustees, on demand, the names of his Employees, their Social Security numbers, the hours worked by each Employee and such other information as the Trustees may reasonably require in connection with the administration of the Trust Fund and for no other purpose. The Trustees and the insurance carrier, when so authorized by the Trustees, may, by their respective representatives, examine the pertinent employment and payroll records of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust Fund and of the contracts or policies of insurance. The Union shall, upon the request of the Trustees, promptly furnish information with respect to an Employee's employment status. If such examination discloses that the employer has not been making its full payment as agreed, the costs of such examination shall be paid by such employer (subject to the discretion of the Delinquency Committee to waive all or part of said costs in light of the application of objection criteria mitigating such failure to pay contributions). (See also Section 4.4).

Section 4.7 Contribution Forms. Statements accompanying monthly contributions shall be made on a form or forms previously approved by the Trustees, and shall contain such information as the Trustees, in their sole collective discretion, may deem reasonable and necessary to compute the amount of the contribution due from each Participating Employer and the eligibility of employees for benefits.

Section 4.8 Conduct of Trust Business. The Trustees shall have general supervision of the operation of this Trust Fund and shall conduct the business and activities of the Trust Fund in accordance with the Trust Agreement and applicable law. The Trustees shall hold, manage and protect the Trust Fund and collect the income therefrom and contributions thereto.

ARTICLE V

USE OF FUND

Section 5.1 The Trustees shall have the power and authority to use and apply the Trust Fund for the following purposes:

(a) To pay or provide for the payment of all reasonable and necessary expenses (i) of collecting the Employer contributions and payments and other moneys and property to which they may be entitled and (ii) of administering the affairs of this Trust, including the employment of such administrative, legal, expert and clerical assistance, the purchase or lease of such premises, materials, supplies and equipment and the performance of such other acts, as the Trustees, in their sole discretion, find necessary or appropriate in the performance of their duties. In order to effectuate the clear purposes of the Trust, with respect to the employment of any professional, including others outlined above, but in addition thereto, consultants, actuaries, investment managers, and investment advisors, the Trustees shall, as a matter of Fund policy, have such services bid not less than one (1) time every six (6) years.

(b) To provide health and welfare and related benefits to eligible Participants and Beneficiaries in accordance with a plan of benefits provided through policies of insurance or other health programs and facilities in accordance with Section 5.2 of this Article or established and administered as provided in subsection (e) of this Section. Such health and welfare and related benefits shall be limited to those which can be financed from the Trust Fund after payment of authorized and accrued expenses.

(c) To establish and accumulate such reserve funds as the Trustees, in their sole discretion, deem necessary and desirable for the proper execution of the Trust herein

created.

(d) To pay all other proper and necessary expenses incurred by any Trustee not specified above, including the cost of defense in litigation arising out of the Trusteeship of this Trust Fund, to the extent permitted by law.

(e) To pay or provide for the payment of premiums on the contracts or policies of insurance mentioned in Section 5.2 hereof, which contracts or policies of insurance may be contracted for in the name of and issued to the Trustees, or to the Trust Fund, as they may determine.

Section 5.2 Procurement of Insurance. The Trustees are expressly authorized to negotiate for, obtain and maintain policies of group life, group accident, group health and group disability insurance (including group hospital, medical and surgical insurance), or such other insurance coverage as may be determined by the Trustees, for the payment to eligible Participants and Beneficiaries, by an insurance company or companies licensed to transact business in the State of Illinois of such benefits as now or hereafter may be authorized or permitted by law and as the Trustees may, from time to time, determine. Such policies of insurance shall be in such forms and in such amounts and may contain such provisions and be subject to such limitations and conditions as the Trustees, in their sole discretion, may from time to time determine and shall cover such Participants and Beneficiaries as the Trustees, pursuant to the provisions hereof, shall from time to time determine eligibility for benefits as herein provided. The Trustees may exercise all rights and privileges granted to the policyholder by the provisions of each contract or policy of insurance, and may agree with the insurance carrier to any alteration, modification or amendment of such contract or policy, and may take any action respecting each such contract or policy, and the insurance provided thereunder, which they, in their sole discretion, may deem necessary or advisable and such insurance carrier shall not be required to inquire into the authority of the Trustees with regard to any dealings in connection with such contract or policy. The Trustees are expressly authorized, by unanimous vote, to establish and maintain a plan or plans to provide any and all of the health and welfare benefits, as the Trustees in their sole discretion may determine, directly out of the Trust Fund in accordance and upon compliance with Section 5.1(e) of this Article, in lieu of, or in combination with, coverage provided by an insurance carrier or carriers.

Section 5.3 Investments

(a) The Trustees shall have the power and authority, in their sole discretion, to

invest and reinvest such funds as are not necessary for current expenditures or liquid reserves, as they may from time to time determine, in such investments as are legal investments under applicable State and Federal law relating to the investments of the employee welfare trust funds, not limited, however, by any limitation restricting investments in common stocks to a percentage of the Fund or to a percentage of the total market value of the Fund. The Trustees may sell, exchange or otherwise dispose of such investments at any time and, from time to time, as provided in Section 5.9(f). The Trustees shall also have power and authority (in addition to, and not in limitation of, common law and statutory authority) to invest in any stocks, bonds or other property, real or personal, including improved or unimproved real estate and equity interests in real estate, where such an investment appears to the Trustees, in their discretion and consistent with their fiduciary obligations, to be in the best interest of the Trust Fund and its Participants and Beneficiaries, judged by then prevailing business conditions and standards. The Trustees shall have the authority, in respect to any stocks, bonds or other property, real or personal, held by them as Trustees, to exercise all such rights, power and privileges as might be lawfully exercised by any person owning similar stocks, bonds or other property in his own right.

(b) Delegation and Allocation of Investment Functions.

(1) The Trustees are authorized, in their discretion, by resolution, to allocate to the Investment Committee such duties and responsibilities to invest and reinvest such Fund assets as they shall specify in such allocation in accordance with Sections 5.5 and 5.3(a).

(2) The Trustees shall have the power and authority to appoint one or

more investment managers (as defined in Section 3(38) of the Act) who shall be responsible for the management, acquisition, disposition, investing and reinvesting of such of the assets of the Trust Fund as the Trustees shall specify. Any such appointment may be terminated by the Trustees upon thirty (30) days' written notice. The fees of such investment manager, and its expenses to the extent permitted by law, shall be paid out of the Trust Fund.

(3) In connection with any allocation or delegation of investment functions under paragraphs (1) and (2) of this subsection (b), the Trustees shall, from time to time, adopt appropriate investment policies or guidelines.

Section 5.4 Deposits and Disbursements. All Trust Funds not invested shall be deposited by the Trustees in such depository or depositories as the Trustees shall from time to time select, and any such deposit or deposits, or disbursements therefrom, shall be made in the name of the Trust in the manner designated by the Trustees and upon the signature(s) of persons designated and authorized by the Trustees or by the Investment Manager(s) appointed in accordance with Section 5.3(b)(2) of this Article.

Section 5.5 Allocation and Delegation of Fiduciary Responsibilities. The Trustees may, by resolution or by-law or by provisions of this Trust Agreement, allocate fiduciary responsibilities and various administrative duties to committees or subcommittees of the Board of Trustees, and they may delegate such responsibilities and duties to other individuals as they may deem appropriate or necessary in their sole discretion and consistent with the Act.

Section 5.6 Administrative Manager. The Trustees may employ or contract for the services of an individual, firm or corporation, to be known as "Administrative Manager", who shall, under the direction of any appropriate committee of the Trustees, administer the office or

offices of the Trust Fund and of the Trustees, coordinate and administer the accounting, bookkeeping and clerical services, provide for the coordination of actuarial services furnished by the consulting actuary, prepare (in cooperation where appropriate with the consulting actuary and independent auditor) all reports and other documents to be prepared, filed or disseminated by or on behalf of the Trust in accordance with law, assist in the collection of contributions required to be paid to the Trust Fund by Employers and perform such other duties and furnish such other services as may be assigned, delegated or directed or as may be contracted by or on behalf of the Trustees. The Administrative Manager shall be the custodian on behalf of the Trustees of all documents and other records of the Trustees and of the Trust Fund.

Section 5.7 By-Laws, Rules and Regulations.

(a) The Trustees are hereby empowered and authorized to adopt by-laws and to promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust Fund, provided the same are not inconsistent with the terms of this Trust Agreement. All by-laws, rules and regulations adopted by action of the Trustees shall be binding upon all parties hereto, all parties dealing with the Trust Fund and all persons claiming any benefits hereunder.

(b) No by-law, regulation, rule, action or determination made or adopted by the Trustees, nor any decision or determination made by any impartial umpire appointed pursuant to Section 3.14 of this Agreement, shall in any manner conflict or be inconsistent (1) with any provision of the applicable current collective bargaining agreement in effect, or which may be made, between the Union and the Employers, (2) with this Trust Agreement and (3) with any applicable Federal, State or local law.

Section 5.8 Additional Authority. The Trustees are hereby empowered, in addition to

such other powers as are set forth herein or conferred by law,

(a) to enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration of the Trust Fund, and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the Participants involved;

(b) to keep property and securities registered in names of the Trustees or of the Fund or in the name of any other individual or entity duly designated by the Trustees;

(c) to establish and accumulate as part of the Trust Fund such reasonable reserve funds as the Trustees, in their sole discretion, deem necessary or desirable to carry out the purposes of such Trust Fund;

(d) to pay out of the Trust Fund all real and personal property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund, or any money, property, or securities forming a part thereof;

(e) to do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder; and

(f) to sell, exchange, lease, convey, mortgage or dispose of any property, whether real or personal, at any time forming a part of the Trust Fund upon such terms as they may deem proper, and to execute and deliver any and all instruments of conveyance, lease, mortgage and transfer in connection therewith.

Section 5.9 Bonds. The Trustees shall obtain from an authorized surety company such bonds as may be required by law, covering such persons and in such amounts (but not less than

required by law) as the Trustees, in their discretion, may determine. The cost of premiums for such bonds shall be paid out of the Trust Fund.

Section 5.10 Insurance. The Trustees may in their discretion obtain and maintain policies of insurance, to the extent permitted by law, to insure themselves, the Trust Fund as such, as well as employees or agents of the Trustees and of the Trust Fund, while engaged in business and related activities for and on behalf of the Trust Fund (1) with respect to liability to others as a result of acts, errors or omissions of such Trustee or Trustees, employees or agents, respectively, provided such insurance policy shall provide recourse by the insurer against Trustees as may be required by law and (2) with respect to injuries received or property damage suffered by them. The cost of the premiums for such policies of insurance shall be paid out of the Trust Fund.

Section 5.11 Information to Participants and Beneficiaries. The Trustees shall provide Participants and Beneficiaries such information as may be required by law.

Section 5.12 Accountants and Actuaries. The Trustees shall engage one or more independent qualified public accountants and one or more enrolled actuaries to perform all services as may be required by applicable law and such other services and the Trustees may deem necessary.

Section 5.13 Trustees to Act without Compensation. The Trustees shall act in such capacity without compensation, unless permitted by law, but they shall be entitled to reimbursement for the expenses properly and actually incurred in the performance of their duties with the Trust Fund, including, without limitation, attendance at meetings and other functions of the Board of Trustees or its committees or while on business of the Board of Trustees, attendance at institutes, seminars, conferences or workshops for or on behalf of the Trust Fund. Trustees in their discretion may adopt expense reimbursement guidelines not inconsistent with this Section.

Section 5.14 Reports. All reports required by law to be signed by one or more Trustees shall be signed in compliance with all applicable laws.

Section 5.15 Records of Trustee Transactions. The Trustees shall keep true and accurate books of account and a record of all of their transactions and meetings (including actions taken at such meetings and by informal action of the Trustees), which records and books shall be audited at least annually by a certified public accountant. A copy of each audit report shall be furnished both to the Employers and the Union and shall be available for inspection by interested persons at the principal office of the Trustees and the respective offices of the Employers and the Union.

Section 5.16 Construction and Determination by Trustees. Subject to the stated purposes of the Fund and the provisions of this Agreement, the Trustees shall have full and exclusive authority to determine all questions of coverage and eligibility, methods of providing or arranging for benefits and all other related matters. They shall have full power to construe the provisions of this Agreement, the terms used herein and the by-laws and regulations issued thereunder. Any such determination and any such construction adopted by the Trustees in good faith shall be binding upon all of the parties hereto and the Beneficiaries hereof. No matter respecting the foregoing or any difference arising thereunder or any matter involved in or arising under this Trust Agreement shall be subject to the grievance or arbitration procedure established in any collective bargaining agreement between the Employers and the Union, provided, however, that this clause shall not affect the rights and liabilities of any of the parties under any of such collective bargaining agreements.

It is the intent of the drafters of this Trust document that the Trustees possess the discretion to determine eligibility for benefits and to construe the terms of the Trust and/or plan governing benefits. It is also the intent of the drafters of this Trust, by adopting the discretionary

power specified above, that the decisions of the Trustees as to the granting or denial of benefits and the construing of terms of the Trust and benefit plan, are reviewed pursuant to an "arbitrary and capricious" standard by a reviewing court, as enunciated by the United States Supreme Court in Firestone Tire and Rubber Company et al. v. Richard Bruch, 57 LW 4194 (Feb. 21, 1989).

Section 5.17 Liability. The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person.

Section 5.18 Reliance on Written Instruments. Any Trustee to the extent permitted by applicable law, may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument.

Section 5.19 Reliance by Others. No party dealing with the Trustees shall be obligated to:

- (a) to see the application to the stated Trust purposes, of any funds or property of the Trust Fund; or
- (b) to see that the terms of this Trust Agreement have been complied with; or
- (c) to inquire into the necessity or expediency of any act of the Trustees.

Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon:

- (a) that at the time of the execution of said instrument, the Trust was in full force and effect;
- (b) that the instrument was executed in accordance with the terms and conditions

of this Trust Agreement; and

(c) that the Trustees were duly authorized and empowered to execute the instrument.

Section 5.20 Discharge of Liability. The receipt by the Trustees for any money or property or checks (after such checks are honored at the bank and paid to the Trust Fund) shall discharge the person or persons paying or transferring the same.

Section 5.21 Multiple Benefit Schedules. The Trustees shall be authorized to accept contributions at more than one rate and they may provide different schedules of benefits appropriate for each such rate of contribution. However, it is the intention of the parties hereto that contributing Employers hereto shall, to the extent feasible, negotiate identical hourly contribution rates. Further, the Trustees shall be authorized to establish more than one schedule of benefits for the same hourly contribution rate. The Trustees, further, may accept contributions at the rates negotiated by the Union with any Employer, or with any additional Association for a particular bargaining unit, and the Employees represented by the Union or additional Union(s) and such bargaining unit may be provided with a schedule of benefits appropriate for the rate of contribution so negotiated and paid into the Fund on their behalf.

Section 5.22 Retiree Benefits. Retiree benefits have been made available by the Trustees as a privilege, not a right. No person acquires a vested right to such benefits either before or after his or her retirement. The Trustees may expand, reduce or cancel coverage for retirees; change eligibility requirements or the amount of contributions; and otherwise exercise their prudent discretion at any time without legal right or recourse by a retiree or any other person.

ARTICLE VI

CONTROVERSIES AND DISPUTES

Section 6.1 Reliance on Records. In any controversy, claim, demand, suit at law or other proceeding between any Participant, Beneficiary or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Union or with the Employers, any facts certified to the Trustees by the Union or the Employers, any facts which are of public record and any other evidence pertinent to the issue involved.

Section 6.2 Submission to Trustees. All questions or controversies of whatsoever character, arising in any manner or between any parties or persons in connection with the Trust Fund or the operation thereof, whether as to any claim for any benefits preferred by any Participant, Beneficiary or any other person, or whether as to the construction of the language or meaning of the by-laws, rules and regulations adopted by the Trustees or this instrument, or as to any writing, decision, instrument or accounts in connection with the operation of the Trust Fund or otherwise, shall be submitted to the Trustees or, in the case of questions related to claims for benefits, to an Appeals or Review Committee, if one has been appointed, and the decision of the Trustees or Appeals or Review Committee shall be binding upon all persons dealing with the Trust Fund or claiming benefits thereunder.

Section 6.3 Settling Disputes. The Trustees may in their sole discretion compromise or settle any claim or controversy in such manner as they think best, and any majority decision made by the Trustees in settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all parties interested in this Trust.

ARTICLE VII

BENEFICIAL RIGHTS

Section 7.1 No Rights, Title or Interest of Employers and Union. No Employer or Union, or Employees, or Participants and their Beneficiaries shall have any right, title or interest in or to the Trust Fund or any part thereof.

Section 7.2 Limitations upon Beneficial Rights of Employees. No Employee, Participant or any Beneficiary of a Participant shall have any right, title or interest in or to the Trust Fund or any part thereof, provided however, that any Participant who shall be covered by an insurance plan, or his Beneficiaries under such plan, shall be entitled to the benefits in the forms and amounts and subject to the terms and conditions of such insurance plan and of this Trust; provided, further, however, that the benefits shall be free from the interference and control of any creditor, and no benefits shall be subject to any assignment or other anticipation, nor subject to seizure or sale under any legal, equitable or any other process, and in the event that any claim or benefit shall, because of any debt incurred by or resulting from any other claim or liability against any Participant or Beneficiary, or by reason of any seizure or sale or attempted sale under any legal, equitable or other process, or in any suit or proceeding, become payable, or be liable to become payable, to any person other than the Participant or Beneficiary for whom the same is intended, as provided herein, pursuant hereto, the Trustees shall have power to withhold payment of such benefit to such Participant or Beneficiary until such assignment, transfer, encumbrance, anticipation or other disposition, writ or legal process is cancelled or withdrawn in such manner as shall be satisfactory to the Trustees. Until so cancelled or withdrawn, the Trustees shall have the right to use and apply the benefits, as the Trustees may deem best, directly for the support and maintenance of such Participant or Beneficiary. Notwithstanding any provisions contained in this section to the contrary, any Participant or Beneficiary may assign, hospital, surgical and medical benefits to any hospital or physician rendering services to the Participant or Beneficiary.

Section 7.3 Optional Benefits Prohibited. No Employee or Participant shall have the right, privilege or option to receive, instead of the benefits provided hereunder:

(a) any part of the contributions payable by Employers under this Trust Agreement;

(b) a cash consideration either upon termination of the plan of benefits provided hereunder or upon such Employee's or Participant's withdrawal from coverage under this Fund, either voluntarily or through severance of employment with any particular Employer; or

(c) the cash surrender value of any policy of insurance in lieu of the benefits provided in said policy.

ARTICLE VIII

TERMINATION OF TRUST

Section 8.1 Conditions of Termination. This Trust Agreement shall cease and terminate upon the happening of any one of the following events.

(a) In the event the Trust Fund shall, in the opinion of the Trustees, be inadequate to carry out the intent and purpose of this Trust Agreement, or be inadequate to meet the payments due or to become due under this Trust Agreement and under the plan of benefits to Participants and Beneficiaries already drawing benefits;

(b) In the event there are no individuals living who can qualify as Employees hereunder;

(c) In the event of termination by action of the Union and the Employers;

(d) In the event of termination as may be otherwise provide by law.

Section 8.2 Procedures in Event of Termination. In the event of termination, the Trustees

shall:

- (a) make provision out of the Trust Fund for the payment of expenses incurred up to the date of termination of the Trust and the expenses incidental to such termination;
- (b) arrange for a final audit and report of their transactions and accounts, for the purpose of termination of their Trusteeship;
- (c) apply the Trust Fund to pay any and all obligations of the Trust and distribute and apply any remaining surplus in such manner as will, in their opinion, best effectuate the purposes of the Trust and the requirements of law;
- (d) give any notices and prepare and file any reports which may be required by law.

ARTICLE IX

APPEALS COMMITTEE

Section 9.1 Appointment. The Chairman of the Board of Trustees shall have the discretion to appoint from among the membership of the Board of Trustees, the members of the Appeals Committee. Due consideration shall be give to the importance of Committee tenure in so far as appointment or reappointment to the Appeals Committee.

Section 9.2 Number of Members. The Appeals Committee shall consist of ten (10) members, five (5) chosen from among the Employer Trustees and five (5) chosen from among the Union Trustees.

Section 9.3 Selection of Chairman and Secretary. The Appeals Committee shall select from among their membership a Chairman and Secretary, each of whom shall be selected from different groups, i.e., the Employer Trustee Group and the Union Trustee Group, it being the

intent of the Trustees that at no time shall both offices be held by members of the same group. The Chairman or his designee shall preside at all meeting of the Appeals Committee. The Secretary shall keep accurate minutes of the proceedings and cause to be prepared such documents and correspondence as may be required from time to time. All Trustees shall assure compliance with all applicable (Health Insurance Portability and Accountability Act) (HPPAA) regulations and requirements, including those related to privacy and procedures.

Section 9.4 Binding Decisions. The Appeals Committee shall review all appeals of benefit denials and make such a determination as in their sole discretion they deem proper. Their decision shall be binding upon the Board of Trustees of NECA-IBEW Welfare Trust Fund.

Section 9.5 Meetings. The Appeals Committee shall meet upon the call of the Chairman of NECA-IBEW Welfare Trust Fund at such times and places as he shall determine, unless the Committee otherwise agree. No meeting of the Committee shall take place except upon ten (10) days notice, unless the Committee members otherwise agree.

Section 9.6 Majority Vote, Quorum. Decisions of the Appeals Committee shall be by a majority of the votes cast at any meeting at which a quorum is present. A quorum of the Appeals Committee shall consist of four (4) trustees in attendance at a meeting two (2) of whom are Employer Trustees and two (2) of whom are Union Trustees. If at any meeting of the Appeals Committee the representation of the Employer and Union Trustees is unequal, each Trustee of the smaller group of trustees shall be allowed an additional fractional vote so that the smaller group of trustees shall have the same voting power as that of the larger group.

Section 9.7 Effect of No Majority Vote to Reverse. In the event that there is no majority on a vote to reverse an appealed decision of benefit denial, that decision shall be affirmed and be the decision of the Appeals Committee.

Section 9.8 Appointing a Successor Member. In the event that any member of the Appeals Committee shall resign or be unable to serve by reason of death or incapacity, the Chairman of the NECA-IBEW Welfare Trust Fund shall appoint his successor. The Chairman shall not have the power to remove any member of the Appeals Committee, nor appoint a successor, except as set forth in Section 1 and 8 of this Article.

Section 9.9 Expense Reimbursement. The members of the Appeals Committee shall be reimbursed for expenses properly and actually incurred in the performance of their duties as members of the Appeals Committee.

ARTICLE X

STEERING COMMITTEE

Section 10.1 Appointment. The Chairman of the Board of Trustees shall appoint from among the membership of the Board of Trustees, the members of the Steering Committee.

Section 10.2 Number of Members. The Steering Committee shall consist of twelve (12) members, six (6) chosen from among the Employer Trustees and six (6) chosen from among the Union Trustees.

Section 10.3 Selection of Chairman and Secretary. The Steering Committee shall select from among their membership a Chairman and Secretary, each of whom shall be selected from different groups, i.e., the Employer Trustee Group and the Union Trustee Group, it being the intent of the Trustees that at no time shall both offices be held by members of the same group. The Chairman or his designee shall preside at all meeting of the Steering Committee. The Secretary shall keep accurate minutes of the proceedings and cause to be prepared such

documents and correspondence as may be required from time to time.

Section 10.4 Meetings. The Steering Committee shall meet upon the call of the Chairman of NECA-IBEW Welfare Trust Fund at such times and places as he shall determine, unless the Committee otherwise agree. No meeting of the Committee shall take place except upon ten (10) days notice, unless the Committee members otherwise agree.

Section 10.5 Majority Vote, Quorum. Decisions of the Steering Committee shall be by a majority of the votes cast at any meeting at which a quorum is present. A quorum of the Steering Committee shall consist of six (6) trustees in attendance at a meeting three (3) of whom are Employer Trustees and three (3) of whom are Union Trustees. If at any meeting of the Steering Committee the representation of the Employer and Union Trustees is unequal, each Trustee of the smaller group of trustees shall be allowed an additional fractional vote so that the smaller group of trustees shall have the same voting power as that of the larger group.

Section 10.6 Appointing a Successor Member. In the event that any member of the Steering Committee shall resign or be unable to serve by reason of death or incapacity, the Chairman of the NECA-IBEW Welfare Trust Fund shall appoint his successor. The Chairman shall not have the power to remove any member of the Steering Committee, nor appoint a successor, except as set forth in Section 1 and 6 of this Article.

Section 10.7 Expense Reimbursement. The members of the Steering Committee shall be reimbursed for expenses properly and actually incurred in the performance of their duties as members of the Steering Committee.

ARTICLE XI

DELINQUENCY COMMITTEE

Section 11.1 Appointment. The Chairman of the Board of Trustees shall appoint from among the membership of the Board of Trustees, the members of the Delinquency Committee.

Section 11.2 Number of Members. The Delinquency Committee shall consist of four (4) members, two (2) chosen from among the Employer Trustees and two (2) chosen from among the Union Trustees.

Section 11.3 Selection of Chairman and Secretary. The Delinquency Committee shall select from among their membership a Chairman and Secretary, each of whom shall be selected from different groups, i.e., the Employer Trustee Group and the Union Trustee Group, it being the intent of the Trustees that at no time shall both offices be held by members of the same group. The Chairman or his designee shall preside at all meeting of the Delinquency Committee. The Secretary shall keep accurate minutes of the proceedings and cause to be prepared such documents and correspondence as may be required from time to time.

Section 11.4 Scope of Authority and Binding Decisions. The Delinquency Committee shall have the authority to review each case in which costs, liquidated damages or fees are assessed pursuant to the provisions of this Article and are empowered in their discretion to waive all or part of such costs, liquidated damages or fees for good cause shown. Their decision shall be binding on the Board of Trustees of the NECA-IBEW Welfare Trust Fund. Notwithstanding the above stated empowerment, the Board of Trustees shall continue to either approve or disapprove the minutes of the meetings of the Delinquency Committee, but shall have no power to alter the decision of the Delinquency Committee as to the exercise of discretion pertaining to the waiver of all or part of the costs cited above, liquidated damages or fees for good cause shown.

Section 11.5 Meetings. The Delinquency Committee shall meet upon the call of the Chairman of NECA-IBEW Welfare Trust Fund at such times and places as he shall determine,

unless the Committee otherwise agree. No meeting of the Committee shall take place except upon ten (10) days notice, unless the Committee members otherwise agree.

Section 11.6 Majority Vote, Quorum. Decisions of the Delinquency Committee shall be by a majority of the votes cast at any meeting at which a quorum is present. A quorum of the Delinquency Committee shall consist of three (3) trustees in attendance at a meeting one (1) of whom are Employer Trustees and one (1) of whom are Union Trustees. If at any meeting of the Delinquency Committee the representation of the Employer and Union Trustees is unequal, each Trustee of the smaller group of trustees shall be allowed an additional fractional vote so that the smaller group of trustees shall have the same voting power as that of the larger group.

Section 11.7 Waiver of Costs, Liquidated Damages or Fees. Unless a motion to waive all or a part of the costs, liquidated damages or fees assessed pursuant to this Article receives a majority of the votes cast then such costs, liquidated damages or fees shall not be waived..

Section 11.8 Appointing a Successor Member. In the event that any member of the Delinquency Committee shall resign or be unable to serve by reason of death or incapacity, the Chairman of the NECA-IBEW Welfare Trust Fund shall appoint his successor. The Chairman shall not have the power to remove any member of the Delinquency Committee, nor appoint a successor, except as set forth in Section 1 and 8 of this Article.

Section 11.9 Expense Reimbursement. The members of the Delinquency Committee shall be reimbursed for expenses properly and actually incurred in the performance of their duties as members of the Delinquency Committee.

ARTICLE XII

INDEMNIFICATION AND PROTECTION OF TRUSTEES

Section 12.1 Limited Personal Liability. Except in accordance with applicable federal law, no Trustee shall be personally liable for the payment, performance of discharge of any obligation, debt, contract, or liability of the Trust Fund. All contracts, debts, obligations and liabilities contracted or incurred by the Trustees in the proper discharge of their duties shall be paid and discharged out of the Trust Fund; provided, however, that nothing contained 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 12.2 Good Faith Performance; No Vicarious Liability. To the extent permitted by law, the Trustees shall not be liable for any error of judgement 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, bad faith 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 12.3 Reliance on Writings. The Trustees shall be fully protected in acting upon any instrument in writing believed by them to be genuine and 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 12.4 Judicial Determination. 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 or construction of the Trust Agreement or instruction as to any action thereunder.

Section 12.5 Retention of Legal Counsel. To the extent permitted by law, the costs and expenses of engaging or retaining legal counsel, or of any action, suit or proceeding brought by or against the Trustees or any of them, shall be paid from the Trust Fund, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Trustee was acting in bad faith or was grossly negligent in the performance of his duties hereunder.

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Law Applicable. This Trust is created and accepted in the State of Illinois and all questions pertaining to the validity or construction of this Trust Agreement and of the acts and transactions of the parties hereto shall be determined in accordance with the laws of the State of Illinois, except as to matters governed by Federal law.

Section 13.2 Savings Clause. Should any provision of this Agreement and Declaration of Trust be held to be unlawful, or unlawful as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of said provisions to any other person or instance, unless such illegality shall make impossible the functioning of this Fund.

Section 13.3 Reciprocity Agreements. The Trustees may, in their sole discretion, enter into such reciprocity agreement or agreements with other welfare funds as they determine to be in the best interest of the Trust Fund, provided that any such reciprocity agreement or agreements shall not be inconsistent with the terms of this Trust Agreement or the collective bargaining agreements under which this Trust Agreement is maintained.

Section 13.4 Merger. The Trustees shall have the power to merge with any other fund established for similar purposes as this Trust Fund under the terms and conditions mutually

agreeable to the respective Board of Trustees, subject to the approval of the Union and the Employers.

Section 13.5 Refund of Contributions. In no event shall any Employer, directly or indirectly, receive any refund on contributions made by them to the Trust except in case of a bona fide erroneous payment or overpayment of contributions, (to the extent permitted by law). No erroneous payment or overpayment of contributions shall be refunded beyond one year from the date of discovery of such erroneous payment or overpayment of contributions, unless specifically approved by the Trustees and premised upon circumstances warranting such.

Section 13.6 Accounting and Judicial Settlements.

(a) Accounting. The Union or an Employer may, at any time demand of the Trustees an accounting with respect to any and all accounts, provided that the party demanding such accounting agrees to pay the necessary expenses thereof.

(b) Judicial Settlements and Action by Trustees. The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts and to seek judicial protection by any action or proceeding they determine necessary and, further, to obtain a judicial determination or declaratory judgment as to any question of construction of this Trust Agreement or for instructions as to any action thereunder and, further, as to any question relating to the discharge of their duties and obligations under, or in connection with the administration of, this Trust and as to the distribution of assets belonging to the Trust. Any such determination, decision or judgment shall be binding upon all parties to, or claiming under, this Trust Agreement.

Section 13.7 Withholding Payment. In the event any question or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may

withhold such payment until there shall have been made an adjudication of such question or dispute which, in the Trustees' sole judgment, is satisfactory to them, or until the Trustees shall have been fully protected against loss by means of such indemnification agreement or bond as they, in their sole judgment, determine to be adequate.

Section 13.8 Gender. Whenever any words are used in this Trust Agreement in the masculine gender, they shall also be construed to include the feminine or neuter gender in all situations where they would so apply; and whenever any words are used in the singular, they shall also be construed to include the plural in all situations where they would so apply; and wherever any words are used in the plural, they shall also be construed to include the singular.

Section 13.9 Amendment of Trust Agreement. The provisions of this Trust Agreement may be amended at any time by an instrument in writing executed by the Trustees, provided that no amendment shall divert or provide for the use of the Trust Fund then in the hands of the Trustees from the purpose of this Trust Fund to provide group insurance in the event of death, illness or accident to the Employees, Participants or to their Beneficiaries as hereinabove set forth, or for the payment of such benefits as may be authorized under Sections 5.1 or 5.2 of Article V hereof. It is further provided that no amendment (i) shall provide for the use or application of the Trust Fund for any purpose other than those set forth in Sections 2.1 and 5.1 hereof; or (ii) permit the return to, or payment of the Trust Fund, or any part thereof, to any Employer except a contribution or other payment made by mistake of fact to the extent permitted by law; or (iii) so amend this Trust Agreement that there shall not be an equal number of Employer Trustees and of Union Trustees to administer the Trust. Any amendment to the specific language of this Trust Document shall be identified as such prior to taking a vote thereon, so that any amendment will be voted upon by the Trustees as an amendment (that is, such proposition shall not be proposed and

approved without reference to the effect of the amendatory purpose as to the language contained herein).

Section 13.10 Article and Section Titles. The Article and Section titles are included solely for convenience and shall, in no event, be construed to affect or modify any part of the provisions of this Trust Agreement or be construed as part thereof.

Section 13.11 Withdrawal of Union. Any local union affiliated with the International Brotherhood of Electrical Workers may withdraw from this Trust Agreement and the Trust therein created, provided that the Local Union serves written notice of such withdrawal upon each of the Trustees of said Trust, as well as upon the Employers' Association, at least forty-five (45) days prior to the effective date of withdrawal. In the event that withdrawal of participants takes place pursuant to this Article, benefits shall be paid to or on behalf of former Employees and their dependents in accordance with the Welfare Plan for all claims incurred on or before the thirty - first day following the date on which the obligation to make the required contributions terminated but the individual employee, participant or dependent from the withdrawing wage area shall not either individually or collectively have the right to receive any other benefits and in particular shall not be entitled to receive an aliquot share of the assets of the Trust *res*, nor shall any withdrawing union or trust fund associated with any withdrawing union have any such right.

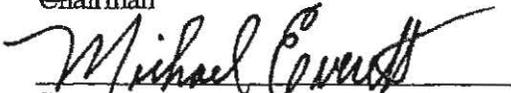
It is further specifically agreed that the drafters of this Trust Agreement declare that the obligation and duty of the Trustees is to ensure that neither the participants of the NECA-IBEW Welfare Trust Fund nor the corpus of such Trust shall be substantially adversely affected, financially, by a withdrawal. Further, and to that end, the Trustees do hereby declare that any reasonable expenses incurred by any party including, but not limited to, a successor fund, the withdrawing local union, and the NECA-IBEW Welfare Trust Fund itself shall be borne

exclusively by the withdrawing local union or successor fund and shall not be the responsibility or obligation of the NECA-IBEW Welfare Trust Fund. In addition thereto, the withdrawing local union shall take with it and assume all obligation and liability for its retired and disabled participants (and COBRA eligibles), as well as those currently undergoing treatment for illnesses or injuries, i.e. the new and/or successor Fund shall assume liability and payments therefor.

IN WITNESS WHEREOF, the Trustees have caused this Restated Agreement and Declaration of Trust to be executed this 30th day of

April, 2004.


Chairman


Secretary