

2009  
AMENDED AND RESTATED AGREEMENT  
AND DECLARATION OF TRUST CREATING THE  
SOUTHERN ELECTRICAL RETIREMENT FUND

TABLE OF CONTENTS

|   | <u>Page</u> |
|---|-------------|
| ARTICLE I – DEFINITIONS                         | 2           |
| Section 1.1 Administrator                       | 2           |
| Section 1.2 Alternate Payee                     | 2           |
| Section 1.3 Association                         | 3           |
| Section 1.4 Beneficiary                         | 3           |
| Section 1.5 Collective Bargaining Agreement     | 3           |
| Section 1.6 Contributions                       | 3           |
| Section 1.7 Covered Employment                  | 3           |
| Section 1.8 Employee                            | 3           |
| Section 1.9 Employer                            | 4           |
| Section 1.10 ERISA                              | 5           |
| Section 1.11 Fund                               | 5           |
| Section 1.12 Participant                        | 5           |
| Section 1.13 Participation Agreement            | 5           |
| Section 1.14 Plan                               | 5           |
| Section 1.15 Qualified Domestic Relations Order | 6           |
| Section 1.16 Trustees                           | 6           |
| Section 1.17 Union                              | 6           |
| Section 1.18 Wage Area                          | 6           |
| ARTICLE II – CREATION AND PURPOSES OF FUND      | 6           |
| Section 2.1 Creation and Name                   | 6           |

|                                    |   |    |
|------------------------------------|---|----|
| Section 2.2                        | Purpose of Fund                           | 7  |
| Section 2.3                        | Compliance with Trust Agreement           | 7  |
| ARTICLE III – CONTENTS OF THE FUND |   | 8  |
| Section 3.1                        | Contents                                  | 8  |
| Section 3.2                        | Contributions as Trust Assets             | 8  |
| Section 3.3                        | Contributions: Manner of Payment          | 9  |
| Section 3.4                        | Title of Trust Assets                     | 9  |
| ARTICLE IV – BOARD OF TRUSTEES     |   | 9  |
| Section 4.1                        | Initial Trustees                          | 9  |
| Section 4.2                        | Subsequent Trustees: Appointment, Number  | 10 |
| Section 4.3                        | Termination of Office of Trustee          | 10 |
| Section 4.4                        | Term of Office                            | 10 |
| Section 4.5                        | Resignation and Removal                   | 10 |
| Section 4.6                        | Successor Trustees: Appointment           | 11 |
| Section 4.7                        | Successor Trustee: Assumption of Office   | 12 |
| Section 4.8                        | Acceptance of the Trust by Trustees       | 12 |
| Section 4.9                        | Equal Representation                      | 12 |
| Section 4.10                       | Limitation of Liability of Trustees       | 12 |
| Section 4.11                       | Officers                                  | 13 |
| Section 4.12                       | Meetings; Notices                         | 13 |
| Section 4.13                       | Special Meetings                          | 14 |
| Section 4.14                       | Quorum; Votes                             | 14 |
| Section 4.15                       | Manner of Acting in the Event of Deadlock | 14 |

|   |   |    |
|---|---|----|
| Section 4.16                              | Removal of Trustee (Violation of ERISA)                 | 15 |
| Section 4.17                              | Removal of Trustee (Failure to Attend Meetings)         | 15 |
| Section 4.18                              | Designation of Address                                  | 15 |
| ARTICLE V – POWERS AND DUTIES OF TRUSTEES |   | 15 |
| Section 5.1                               | Conduct of Trust Business                               | 15 |
| Section 5.2                               | Use of Fund for Expenses                                | 16 |
| Section 5.3                               | Use of Fund to Provide Benefits                         | 16 |
| Section 5.4                               | Investments   | 16 |
| Section 5.5                               | Deposits and Disbursements                              | 17 |
| Section 5.6                               | Allocation and Delegation of Fiduciary Responsibilities | 18 |
| Section 5.7                               | Committees of the Board of Trustees                     | 18 |
| Section 5.8                               | Administrative Manager                                  | 21 |
| Section 5.9                               | Administrative Rules and Regulations                    | 21 |
| Section 5.10                              | Reciprocal Agreements                                   | 22 |
| Section 5.11                              | Minimum Participation Standards                         | 22 |
| Section 5.12                              | Additional Authority                                    | 22 |
| Section 5.13                              | Bonds   | 24 |
| Section 5.14                              | Insurance   | 24 |
| Section 5.15                              | Personal Liability                                      | 24 |
| Section 5.16                              | Information to Participants and Beneficiaries           | 25 |
| Section 5.17                              | Accountants   | 25 |
| Section 5.18                              | Compensation and Expenses                               | 25 |
| Section 5.19                              | Reports   | 26 |

|  |   |    |
|--|---|----|
| Section 5.20   | Records of Trustee Transactions                 | 26 |
| Section 5.21   | Construction and Determination of Trustees      | 26 |
| Section 5.22   | Liability                                       | 27 |
| Section 5.23   | Reliance on Written Instruments                 | 27 |
| Section 5.24   | Establishment of Plan                           | 27 |
| Section 5.25   | Amendment of Plan                               | 28 |
| ARTICLE VI – CONTROVERSIES AND DISPUTES                      |   | 28 |
| Section 6.1  | Reliance on Records                             | 28 |
| Section 6.2  | Submission to Trustees                          | 28 |
| Section 6.3  | Settling Disputes                               | 29 |
| ARTICLE VII – EMPLOYER CONTRIBUTIONS, AUDITS AND COLLECTIONS |   | 29 |
| Section 7.1  | Employer Contributions                          | 29 |
| Section 7.2  | Contracts                                       | 30 |
| Section 7.3  | Reporting and Collection Procedures             | 30 |
| Section 7.4  | Collection and Enforcement of Payments          | 31 |
| Section 7.5  | Production of Records                           | 31 |
| Section 7.6  | Effect of Nonpayment                            | 32 |
| Section 7.7  | Credits or Refunds of Contributions             | 32 |
| Section 7.8  | Conveyance of Assets                            | 32 |
| ARTICLE VIII – AUDITS AND REPORTS                            |   | 33 |
| Section 8.1  | Annual Audit; Accounting                        | 33 |
| Section 8.2  | Production of Information by Union and Employer | 33 |
| Section 8.3  | Annual Reports                                  | 33 |

|   |    |
|---|----|
| ARTICLE IX – NON-ALIENATION OF BENEFITS                                     | 33 |
| Section 9.1 Non-Alienation; Qualified Domestic Relations Order              | 33 |
| Section 9.2 Funds Not Liable for Others' Liability                          | 34 |
| ARTICLE X – MERGER  | 34 |
| Section 10.1 Merger, Consolidation, Transfer to and from Other Fund or Plan | 34 |
| Section 10.2 Trustees' Powers if Merger With This Plan                      | 34 |
| Section 10.3 No Mergers, Consolidations, or Transfers Authorized            | 35 |
| ARTICLE XI – TERMINATION  | 35 |
| Section 11.1 Conditions of Termination                                      | 35 |
| Section 11.2 Irrevocable Trust  | 36 |
| Section 11.3 Use of Assets after Termination                                | 36 |
| Section 11.4 Non-Reversion  | 36 |
| ARTICLE XII – AMENDMENTS  | 36 |
| Section 12.1 Amendment  | 36 |
| Section 12.2 Conflicts  | 37 |
| ARTICLE XIII – MISCELLANEOUS  | 37 |
| Section 13.1 Law Applicable   | 37 |
| Section 13.2 Savings Clause   | 37 |
| Section 13.3 Extension of Coverage  | 37 |
| Section 13.4 Judicial Settlement and Actions by Trustees                    | 38 |
| Section 13.5 Withholding Payment  | 38 |
| Section 13.6 Gender   | 38 |
| Section 13.7 Article and Section Titles                                     | 39 |



2009<sup>1</sup>  
AMENDED AND RESTATED AGREEMENT  
AND DECLARATION OF TRUST CREATING THE  
SOUTHERN ELECTRICAL RETIREMENT FUND

WHEREAS, there was initially an Agreement and Declaration of Trust, dated February 28, 1975 and subsequently restated on August 22, 1975 and August 19, 1992, and with amendments thereafter, all of which provided for creation and operation of the Southern Electrical Retirement Fund; and

WHEREAS, the Southern Electrical Retirement Fund has qualified as and is administered as a "profit-sharing plan" as that term is defined in Treasury Regulations Section 1.401-1(b)(1)(ii) and as further described in Treasury Regulations Section 1.401-1(a)(2)(ii); and

WHEREAS, Employers or Employer Associations have entered into, or will from time to time hereafter enter into, Collective Bargaining Agreements with Local Unions or groups affiliated with the International Brotherhood of Electrical Workers on behalf of Employees represented by them which Collective Bargaining Agreement may provide for the payment by Employers of contributions to the Southern Electrical Retirement Fund for retirement purposes on behalf of certain Employees as set forth in the Collective Bargaining Agreements; and

WHEREAS, the contributions payable to the Southern Electrical Retirement Fund are to be considered as an asset of the Southern Electrical Retirement Fund on the date payments are due and are for the purposes of providing retirement benefits as now are or may hereafter be authorized or permitted by law for eligible Employees, their families and dependents, as determined hereunder; and

---

<sup>1</sup> Incorporating Proposed Revisions for 2009

WHEREAS, it is desired to establish and maintain a Trust Fund that will conform to the applicable requirements of the Labor-Management Relations Act of 1947, as amended, the Employee Retirement Income Security Act of 1974, as amended, and the Internal Revenue Code, as amended; and

WHEREAS, under the present Trust Agreement, the Trustees, by majority vote, have the power and authority to amend the Trust 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 to restate the same in 2009 so as to incorporate amendments and changes as part of this restatement;

NOW, THEREFORE, the Trustees, designated and in office, as such, have executed this Amended and Restated Agreement and Declaration of Trust as indicating their acceptance of the respective duties imposed upon them as Trustees under the terms of this Agreement to read as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1 Administrator. The Trustees, collectively and in their representative and fiduciary capacity, shall be the "Administrator" of this Fund, as that term is used in ERISA.

Section 1.2 Alternate Payee. The term "Alternate Payee" means any spouse, former spouse, child, or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to a Participant and who is thereby deemed a Beneficiary of the Plan.

Section 1.3 Association. The term "Association" shall mean the East Tennessee Chapter, Chattanooga Division, N.E.C.A. and such other associations of electrical contractors and/or the chapters of the National Electrical Contractors Association, Inc., which become parties to the Trust Agreement, as herein provided.

Section 1.4 Beneficiary. The term "Beneficiary" shall mean a person designated by the terms of the Plan created pursuant to this Agreement who is, or may become, entitled to a benefit.

Section 1.5 Collective Bargaining Agreement. The term "Collective Bargaining Agreement" shall mean any written labor contract or other type of written agreement regardless of its form, now existing or to be executed in the future by and between an Employer and the Union, which provides for contributions to this Trust Fund in a manner acceptable to the Trustees, as well as any extensions, amendments, modifications, and renewals thereof, or successor agreements thereto.

Section 1.6 Contributions. The term "Contributions" shall mean payments due from Employers to the Trust Fund for each hour of covered employment as required by the Collective Bargaining Agreement or Participation Agreement.

Section 1.7 Covered Employment. The term "Covered Employment" shall mean employment performed by an Employee for which contributions are required to be made to the Trust Fund on the Employee's behalf.

Section 1.8 Employee. The term "Employee" shall mean and include:

- (a) All Employees employed by an Employer on whose behalf a Union acts as bargaining representative and who are covered by a Collective Bargaining Agreement requiring Contributions by the Employer to the Trust Fund;
- (b) All Employees of an Employer that is a corporation who are employed in a like job classification but are not included in the bargaining unit, and on behalf of all

of whom said Employer agrees to make and the Trustees agree to accept contributions;

- (c) All Employees of the Union on behalf of all of whom said Union agrees to make and the Trustees agree to accept contributions;
- (d) All Employees of the Association on behalf of all of whom said Association agrees to make and the Trustees agree to accept contributions;
- (e) All Employees of a Joint Apprenticeship Training Committee on behalf of all of whom said Joint Apprenticeship Training Committee agrees to make and the Trustees agree to accept contributions;
- (f) All Employees of a Building Corporation of any Local Union, a Credit Union of any Local Union, or a Trust established by the Union and the Employer, provided that the Employer agrees to make, and the Trustees agree to accept, contributions on all such Employees;
- (g) All Employees of the Trustees on behalf of all of whom the Trustees agree to make contributions to the Trust Fund.
- (h) All Employees of any national, state or local American Federation of Labor – Congress of Industrial Organizations (“AFL-CIO”) labor council, or any national, state or local building trades council affiliated with the AFL-CIO, who are Participants on the date they commence employment for such council, and further provided said council agrees to make, and the Trustees agree to accept, contributions in behalf of such Employees.

Section 1.9 Employer. The term “Employer” shall mean and include:

- (a) Any person, partnership, firm, corporation, or governmental agency that is legally obligated by a Collective Bargaining Agreement with the Union to make contributions to the Trust Fund on behalf of Employees represented by the Union with respect to covered employment performed for the Employer;
- (b) The Association and the Union, which for the purpose of making the agreed upon contributions to the Trust Fund, shall be considered as the Employers of their Employees;
- (c) Any Joint Apprenticeship Training Committee in which the Unions and Employers participate, consistent with applicable law;
- (d) The Building Corporation of any Local Union, the Credit Union of any Local Union, and any Trust established by the Union and the Employer, provided that at least 80 percent of the Directors of such Building Corporation or Credit Union are representatives of the Local Union as directors and/or officers of the Local Union.

- (e) The Trustees of this Trust Fund.
- (f) Any national, state or local American Federation of Labor – Congress of Industrial Organizations (“AFL-CIO”) labor council, and any national, state or local building trades council affiliated with the AFL-CIO, which employs any Employees described under Section 1.8(h) hereof, but only for the purpose of making contributions to the Fund in behalf of such Employees, and further provided the Employer agrees to make, and the Trustees agree to accept, such contributions.

Section 1.10 ERISA. The term “ERISA” means the “Employee Retirement Income Security Act of 1974” as the same may be amended from time to time, and all rules and regulations issued pursuant to ERISA.

Section 1.11 Fund. The term “Fund” or “Trust Fund” shall mean the “Southern Electrical Retirement Fund” as created and established under this Agreement and the entire Trust Estate as from time to time it may be constituted, including, but not limited to all monies received in the form of contributions, income from investments, dividends, refunds or other sums payable to the Trustees, and any other property received and held by the Trustees for the use and purpose of the Trust Fund as set forth herein.

Section 1.12 Participant. The term “Participant” shall mean an Employee or former Employee who is or may become eligible to receive benefits from the Trust Fund.

Section 1.13 Participation Agreement. The term “Participation Agreement” shall mean a written agreement that legally obligates an Employer to make contributions to this Fund on behalf of Employees who are not represented by the Union in a manner acceptable to the Trustees and as permitted by this Agreement, the Plan, and applicable law.

Section 1.14 Plan. The term “Plan” or “Retirement Plan” or “Southern Electrical Retirement Plan” shall mean the plan, program, methods, rules, and procedures for the payment of benefits from the Southern Electrical Retirement Fund, including the conditions for eligibility,

as adopted by the Trustees pursuant to this Agreement and applicable law, and which may, from time to time, be amended by the Trustees.

Section 1.15 Qualified Domestic Relations Order. The term "Qualified Domestic Relations Order" means a judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property law) that recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to a Participant under the Plan, and which satisfies the requirements of ERISA and the Plan.

Section 1.16 Trustees. The term "Trustees" shall mean the persons designated herein as Trustees, together with their successors designated and appointed in accordance with Article IV of this Agreement.

Section 1.17 Union. The term "Union" shall mean Local Union No. 175, I.B.E.W., and such other labor organizations affiliated with the International Brotherhood of Electrical Workers, including the International Union itself, which are or which become party to the Trust Agreement by executing a Collective Bargaining Agreement with an Employer, as defined herein, requiring Contributions to this Fund.

Section 1.18 Wage Area. The term "Wage Area" shall mean the jurisdiction of a Local Union or the jurisdiction covered by the Agreement between the Tennessee Valley Authority and the Tennessee Valley Trades and Labor Council.

## ARTICLE II

### CREATION AND PURPOSES OF FUND

Section 2.1 Creation and Name. There is hereby created a Trust Fund known as the "Southern Electrical Retirement Fund." This Fund is and shall constitute an irrevocable trust for

the benefit of the Fund's Participants and Beneficiaries, created pursuant to the provisions of the Labor-Management Relations Act of 1947, as amended, the Employee Retirement Income Security Act of 1974, as amended, and the Internal Revenue Code, as amended.

Section 2.2 Purpose of Fund. The Trust Fund is created, established and shall be maintained, and the Trustees agree to receive, hold and administer the Trust Fund, for the purpose of providing such retirement benefits that now are, or hereafter may be, authorized or permitted by law for Participants and their Beneficiaries and as are in accordance with the provisions set forth herein and in the Plan; and for the purpose of defraying the reasonable expenses of administering this Fund and the Plan.

Section 2.3 Compliance with Trust Agreement. By executing or adopting a Collective Bargaining Agreement, Participation Agreement, or other written agreement requiring Contributions to the Trust Fund, and by making Contributions to said Fund in accordance with such Agreement with the intention of providing retirement benefits for its Employees, the Employer shall be deemed to be a party to this Trust Agreement and to have accepted and agreed to comply with and be bound by all of the terms of the Trust Agreement, in its present form and as amended from time to time, and to have ratified (without the necessity of notice), all acts and decisions taken or to be taken by the Trustees for the proper administration of the Trust as well as all rules, regulations, and procedures promulgated or to be promulgated by the Trustees to effectuate the purposes of the Trust and the Plan, and to carry out their duties as fiduciaries under ERISA.

## ARTICLE III

### CONTENTS OF THE FUND

Section 3.1 Contents. The Trust Fund shall mean the Trust Fund established under this Agreement and the entire Trust Estate as from time to time it may be constituted, including, but not limited to:

- (a) Contributions made by Employers pursuant to the provisions of Collective Bargaining Agreements, Participation Agreements, or similar written agreements acceptable to the Trustees, which require Contributions to be made to the Trust Fund or to similar funds which have merged or combined with this Fund; and any and all rate increases adopted by the Trustees as permitted by this Agreement;
- (b) any and all Contributions required to be made to conform with any minimum participation standards that may, from time to time, be adopted by the Trustees;
- (c) all contracts (including dividends, interest, refunds, and other sums payable to the Trustees on account of such contracts);
- (d) all investments made and held by the Trustees, as well as all income, increments, earnings, and profits therefrom;
- (e) any assets or any other retirement fund which may have merged or combined with or transferred its assets to this Fund; and
- (f) all other monies, property, assets, or things of value received and held by the Trustees for the purposes of this Trust.

Section 3.2 Contributions as Trust Assets. Contributions made or required to be made pursuant to a Collective Bargaining Agreement, Participation Agreement, or other similar written agreement acceptable to the Trustees, or in accordance with such rate increases or minimum

participation standards that may be adopted by the Trustees, shall be deemed part of the Trust Estate and shall constitute Trust Assets whether or not they are collected and are deemed to be an asset as of the date required to be made.

Section 3.3 Contributions: Manner of Payment. Contributions to the Trust Fund shall be made in a manner 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 Southern Electrical Retirement Fund, unless otherwise permitted and directed, and each payment shall be accompanied by a payroll report in such form as may be prescribed by the Trustees, as further described in Article VII of this Agreement.

Section 3.4 Title of Trust Assets. Title to the Trust Estate or Trust Assets, including all amounts paid or payable to the Trust Fund, shall be vested and remain exclusively in the Trustees, who shall use said Trust Estate or Trust Assets in a manner which is consistent with the terms of this Agreement and for the exclusive purposes of this Trust and the Plan. No assets of this Trust and Plan shall inure, whether directly or indirectly to the benefit of an Employer. Nor shall any Employee of others have any right, title, or interest in this Fund or its assets, except as provided in the Plan.

#### ARTICLE IV

##### BOARD OF TRUSTEES

Section 4.1 Trustees. The Fund shall be administered by a Board of Trustees, an equal number of whom shall be designated Employer Trustees and shall be appointed by the Association, and an equal number of whom shall be designated as Union Trustees and shall be appointed by the Union.

Section 4.2 Subsequent Trustees: Appointment, Number. As long as this Trust is comprised of three or more wage areas, each Union and each Association or Employer may appoint a maximum of one Trustee each, subject to the approval of the Board of Trustees and unless otherwise desired by the Board, provided that wage areas commencing participation on and after the effective date of this Agreement shall not have the authority to appoint Trustees unless they have at least one hundred participants and the initial Contribution rate for such participants is a minimum of \$1 per hour. Wage areas with fewer than one hundred participants are eligible to participate in this Trust so long as the initial Contribution rate for such participants is a minimum of \$1 per hour.

The Trustees may, at any time, increase the number of Trustees to provide representation for a governmental agency or an Employer servicing a governmental agency by one additional Trustee to be appointed by the governmental agency or such Employer and one additional Union Trustee to be appointed by the Union having jurisdiction.

Section 4.3 Termination of Office of Trustee. In the event any Union ceases to have a Collective Bargaining Agreement requiring Contributions to the Fund with an Association or Employer in a wage area authorized to appoint Trustees as permitted by this Agreement, the Office of Trustee appointed by such Union and such Association or Employer shall become vacant and terminate.

Section 4.4 Term of Office. Each present Trustee and each successor Trustee shall continue to serve as such until his death, incapacity, resignation, or removal.

Section 4.5 Resignation and Removal. A Trustee may resign and become and remain fully discharged from all further duty or responsibility hereunder upon giving thirty (30) days' notice in writing to the remaining Trustees and to the party by which he was appointed, or such shorter

notice as the remaining Trustees may accept as sufficient. In the notice, it shall be stated a date on which such resignation shall take effect. 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.

Any Employer Trustee may be removed and replaced by the Association, at will and at any time. Any Union Trustee may be removed, and replaced by a successor Union Trustee, at will and at any time, by the Union. Notice of such removal must be in writing and be delivered to the Chairman and Secretary of the Trustees and to the Trustee to be removed. A written notice of removal, replacement, or appointment of a successor Trustee, respectively, shall be sufficient evidence of the action taken by the respective party.

Any Employer Trustee and any Union Trustee shall be automatically removed from their position as Trustee upon the occasion of their absence from a third consecutive meeting of the Trustees. Such removal shall take effect immediately at the end of the third meeting from which the Trustee is absent, and a courtesy notification of such automatic removal will be furnished to the Association and Union in wage areas authorized to appoint Trustees as stated in Section 4.2.

Section 4.6 Successor Trustees: Appointment. If any Employer Trustee shall die, become incapable of acting hereunder, resign, or be removed, a successor Employer Trustee shall be designated by the Association, such appointment to be in writing and to be delivered to the Chairman and Secretary of the Trustees serving at that time. If any Employee Trustee shall die, become incapable of acting hereunder, resign, or be removed, a successor Union Trustee shall be appointed by the Union, such appointment to be in writing and to be delivered to the Chairman and Secretary of the Trustees serving at that time. The written appointment shall state the term,

if any, during which the Trustee is to serve. For purposes of Sections 4.5 and 4.6, the terms "Employer" and "Union" refer to Employers and Unions in wage areas authorized to appoint Trustees as stated in Section 4.2.

Section 4.7 Successor Trustee: Assumption of Office. Any successor Trustee shall immediately upon his appointment as a Trustee and upon his acceptance of the Trusteeship in writing, as provided in Section 4.8, 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 of other instrument of title.

Section 4.8 Acceptance of the Trust as Trustees. A Trustee shall execute a written acceptance in a form satisfactory to the Trustees and consistent with ERISA 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. Execution of this Agreement by the Trustees presently in office shall constitute acceptance of the Trust as required herein.

Section 4.9 Equal Representation. It is the intention of the parties hereto that the Trust Fund shall at all times be administered in accordance with the equal representation requirement of Section 302(c)(5) of the Labor-Management Relations Act, and that the aggregate votes of Employer Trustees and Union Trustees shall at all times be equal. In the event of a vacancy among the Trustees, until the appointment and acceptance of a successor Trustee or Trustees, the remaining Trustees shall have full power to act, subject only to the quorum requirements provided hereinafter under Section 4.14 of this Article.

Section 4.10 Limitation of Liability of Trustees. No Trustee shall be liable or responsible for his own acts except as otherwise provided for by law. No successor Trustee shall in any way

be liable or responsible for anything done or committed in the administration of the Trust prior to the date he became Trustee.

Section 4.11 Officers.

- (a) The Trustees shall select their own Chairman for a two-year term. The Chairman shall act as an executive officer. In addition to the Chairman, the officers of the Board of Trustees shall consist of a Secretary, who shall be elected for a two-year term. When the Chairman of the Board of Trustees is a representative of the Employer, the Secretary shall be selected from the Union Trustees; when the Chairman is a representative of the Union, the Secretary shall be selected from the Employer Trustees. The offices of the Chairman and Secretary shall be rotated between the Employer and Union Trustees every two years.
- (b) Officers for the two-year term shall be elected at an annual meeting to be held in the first three months of a calendar year. Officers shall begin their term of office at the conclusion of the meeting at which they were elected.

In the event an office becomes vacant or an elected official is unable to serve, the Trustees shall elect a replacement for the unexpired term from the same group as the replaced officer at a specially called meeting or at the next regular meeting.

Section 4.12 Meetings; Notices. The Trustees shall meet at least once a year and at such other times as they deem it necessary to transact their business, and all official meetings of the Trustees shall be attended only by the Trustees and shall not be open to the public, except that such other persons as designated by the Trustees may attend when invited to do so. The Chairman shall preside at all meetings of the Trustees. In the event of the absence of the Chairman from the meeting, the Secretary shall serve in his place for the duration of the meeting. The Secretary of the Board shall be responsible for giving notice of the time and place of such meetings of the Trustees. The Secretary, or such other person as the Trustees may designate, shall keep minutes and records of all meetings, proceedings, and acts of the Trustees, a copy of which shall be furnished with reasonable promptness to each Trustee. Such minutes shall be

approved by the signature of the Chairman and Secretary. In the absence of the Secretary, the Chairman shall designate a Secretary Pro Tem for the duration of the meeting.

Section 4.13 Special Meetings. The Chairman and the Secretary of the Board of Trustees, upon agreement, may call a special meeting of the Trustees at any time upon giving three (3) days' notice of the time and place of such meeting. A special meeting of the Trustees may be held at any time without notice if all the Trustees consent thereto in writing. If all the Trustees shall agree in writing on any motion, resolution, proposal, or other action, no special meeting thereon need be held to authorize such action.

Section 4.14 Quorum; Votes.

- (a) A quorum of the Trustees shall consist of a majority of the Trustees. If at any meeting the number of Employer and Union Trustees present shall be unequal, then the group of Trustees lesser in number shall be entitled to cast the same number of votes as the other group of Trustees. The decisions of the Trustees shall be determined by a majority vote of the votes cast at the meeting.

Section 4.15 Manner of Acting 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 by a majority vote, or because of the lack of a quorum at two (2) successive meetings of the Trustees, and all of the Trustees supporting the proposal, nomination, motion, or resolution notify the remaining Trustees in writing that a deadlock exists.
- (b) In the event of such deadlock arising, the Trustees may 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 ten (10) days of receipt of notice that a deadlock exists, either group of Trustees (i.e., Employer or Employee) may petition the United States District Court for the Middle District of Tennessee to appoint an impartial umpire to hear and determine the matter. 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, attorney 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 bylaws 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 Agreement 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 Agreement.

Section 4.16 Removal of Trustee (Violation of ERISA). The Board of Trustees shall initiate an action to cause the removal of any fellow Trustee who may be serving as a Trustee in violation of ERISA. The Trustees shall notify the party that appointed the Trustee in question of any such action. The vacancy or vacancies caused by such a removal shall be filled in accordance with Sections 4.2 and 4.6 of this Article.

Section 4.17 Removal of Trustee. (Failure to Attend Meetings). Any Trustee who misses three (3) consecutive Trustee meetings shall automatically be removed as a Trustee.

Section 4.18 Designation of Address. Each signatory to this Agreement and each successor Trustee shall deposit with the Trustees a written designation of address to which all notices and reports required or permitted herein may be mailed.

## ARTICLE V

### POWERS AND DUTIES OF TRUSTEES

Section 5.1 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 this Trust Agreement and applicable law. The Trustees shall hold, manage, and protect the Trust Fund and collect the income therefrom and Contributions thereto. Except as otherwise provided herein, the Trustees may, in the course of conducting the business of the

Trust, execute all instruments in the name of the Fund, which instruments shall be signed by the Chairman and Secretary.

Section 5.2 Use of Fund for Expenses. The Trustees shall have the power and authority to use and apply the Trust Fund to pay or provide for the payment of all reasonable and necessary expenses of: (a) collecting the Employer contributions and payments and other monies and property to which the Fund may be entitled and (b) administering the affairs of this Trust, including the employment of, and payment of compensation to and expenses of, such administrative, legal, expert, and clerical assistance, the purchase or lease of such premises, materials, supplies and equipment, the furnishing of such information to Participants and Beneficiaries as required by law, and the performance of such other acts as the Trustees, in their sole discretion, find necessary or appropriate in the performance of their duties.

Section 5.3 Use of Fund to Provide Benefits. The Trustees shall also have the power and authority to use and apply the Trust Fund for the purpose of providing benefits to eligible Participants and Beneficiaries in accordance with the terms, provisions, and conditions of the Plan to be formulated and agreed upon hereunder by the Trustees. The Trustees, the Employers, and the Union shall not be liable for the furnishing of any specific type or amount of benefits to any Employee.

Section 5.4 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 for the benefits provided and for expenses, as they may from time to time determine, in such investments as are legal investments under applicable law. The Trustees may sell, exchange, or otherwise dispose of such investments at any time, and from time to time, as provided in Section 5.12(h). The Trustees shall also have the 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. 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, powers, and privileges as might be lawfully exercised by any person owning similar stocks, bonds, and other property in his own right. Notwithstanding any other provision of this Agreement, the Trustees may cause any part or all of this Trust to be commingled with the money of trusts created by others. Money of this Trust so added to any commingled fund at any time shall be subject to all of the provisions of the Declaration of Trust creating said commingled fund, as it is amended from time to time. Said Declaration of Trust creating the commingled fund is hereby made a part of this Agreement.

(b) Delegation and Allocation of Investment Functions.

1. The Trustees are authorized, in their discretion, by resolution, to allocate to an Investment Review Committee such duties and responsibilities to invest and reinvest such Fund assets as they shall specify in such allocation.
2. The Trustees or the Investment Review Committee shall have the power and authority to appoint one or more investment managers (as defined in Section 3(38) of ERISA) 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 or the Investment Review Committee upon written notice, or as specified in written agreements with such manager(s). The fees of any 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 5.5 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 and authorized by the Trustees or by an investment manager so authorized and appointed in accordance with Sections 5.4(b)(2) of this Article. All withdrawals

from such bank or banks shall be made only by check, signed by the person or person(s) authorized to sign or countersign.

Section 5.6 Allocation and Delegation of Fiduciary Responsibilities. The Trustees may, by resolution or administrative rule, or by provision 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 ERISA.

Section 5.7 Committees of the Board of Trustees.

- (a) Standing Committees. The Standing Committees of the Board of Trustees may consist of an Executive Committee, an Investment Review Committee, and such other Standing Committees as the Trustees may wish to create by bylaw or resolution.
- (b) Executive Committee.
  1. A Committee shall be elected by the Trustees. The Committee shall consist of twelve Trustees. One-half of the Committee shall be elected by and from the Trustees representing the Union and one-half shall be elected by and from the Trustees representing the Employers. All elections to the Committee shall be by caucus of the respective Trustees representing the Union or the Employers.
  2. At the first meeting of the Trustees convened in each calendar year, the terms of four (4) Committee members shall expire and the Trustees shall elect four (4) new members to replace them. The following rules will apply in determining the terms of office of each Committee member and in the election of future Committee members:
    - (a) The Chairman and Secretary of the Trustees shall at all times be members of the Committee.
    - (b) The terms of the remaining members shall expire on a rotating basis. The terms of the four (4) earliest election dates shall expire in each calendar year. When more than one (1) election date is used to determine expiration dates in accordance with the provisions of this resolution, the expiration dates of the Committee members comprising the group with the latest election date shall be determined alphabetically, with the terms of the Committee member(s) whose last name(s) fall(s) first alphabetically, expiring first.

(c) The Chairman of the Trustees shall appoint a Trustee to replace any Committee member who dies, resigns, retires or is replaced by the appointing party on the Board of Trustees provided, however, that the number of Committee members representing the Employers and the Union shall at all times remain equal. The term of such replacement Committee member will extend only until the expiration date of the term of office of the Committee member whom he was appointed to replace.

3. Nothing in this policy statement shall prevent a Committee member from serving two (2) or more consecutive terms, provided he has been duly elected by the Employer Trustees or the Union Trustees as provided under the terms of this resolution.
4. A quorum of the Committee for purposes of conducting business at a duly called meeting shall consist of a majority of the Committee members then serving.
5. The Chairman and Secretary of the Trustees shall serve as Chairman and Secretary, respectively, of the Executive Committee.
6. The Chairman of the Committee shall have the authority to call such meetings of the Committee as is deemed appropriate. Further, a meeting of the Committee may be convened by consent of a majority of the Committee members provided notice of such meeting is served in writing upon each Committee member then serving.
7. The Executive Committee shall supervise the operation of the Trust Fund between the meetings of the Board of Trustees. The Executive Committee shall formulate general or special policies for submission to and consideration by the Board of Trustees. It shall advise the officers, Trustees, and Administrative Manager in matters of policy and administration not inconsistent with the Trust Agreement or with any policy or decision heretofore adopted or made by the Board of Trustees. Pending the convening of a meeting of the Board of Trustees, it shall decide and pass upon matters requiring immediate action, subject to ratification at the next meeting of the Board of Trustees to whom a report shall be made of any such immediate action, as well as of its recommendations. The Executive Committee shall have sole authority to establish an agenda for consideration at any meeting of the Board of Trustees, and no matter may be brought before the Board of Trustees until consideration by the Executive Committee and inclusion on the agenda.
8. Action of the Executive Committee may be taken in writing without a meeting, such as through mailed ballots, emails, faxes, and the like, provided that no decision of the Executive Committee shall be made without a meeting unless members are unanimous in agreeing upon the action to be taken.

(c) Investment Review Committee.

1. An Investment Review Committee shall consist of six (6) Trustees. One-half of the committee shall be from Trustees representing the Union and one-half shall be from Trustees representing the Employers. The Chairman and Secretary of the Board of Trustees shall at all times be members of the Investment Review Committee. The other members of the Committee shall be appointed by the Chairman and the Chairman shall have the right to replace the members of the Investment Review Committee at his discretion.
2. A quorum of the Investment Review Committee for purposes of conducting business at a duly called meeting shall consist of a majority of the Committee members then serving, so long as there is at least one Committee member representing the Union and one Committee member representing the Employers.
3. The Chairman and Secretary of the Trustees shall serve as Chairman and Secretary, respectfully, of the Investment Review Committee.
4. The Chairman of the Committee shall have the authority to call such meetings of the Committee as is deemed appropriate.
5. The Investment Review Committee shall have the following duties:
  - (a) The Investment Review Committee is empowered to appoint and retain one or more qualified "investment managers" as that term is defined in Section 3(38) of ERISA, who may be business organizations or individuals, and to delegate to such investment manager(s) full authority to manage, acquire and dispose of such assets of the Fund as the Committee shall specify, subject to the requirements of applicable law. The investment manager(s) shall report to the Investment Review Committee as to its activities, investments, holdings, acquisitions and disposal of assets.
  - (b) No Trustee shall be liable for the acts or omissions of such investment manager(s) or be under any obligation to invest or otherwise manage any of the Fund which is subject to the management of such investment manager(s).
  - (c) In connection with any allocation or delegation of investment functions or responsibilities, the Investment Review Committee may, from time to time, adopt appropriate investment policies or guidelines and is empowered to employ such professionals as it deems necessary or appropriate to provide advice about investment functions, so long as such action by the Investment Review Committee is consistent with and not in conflict with any Investment Policy Statement adopted by the Board of Trustees.

(d) The Investment Review Committee shall also perform such other functions, duties, and responsibilities as may be delegated or assigned to it by the Board of Trustees under the Trust Agreement and applicable law, or as may be allocated to it pursuant to Sections 5.4 and 5.6 of this article; any actions taken or duties performed under such allocation shall not be subject to ratification by the full Board of Trustees, unless the delegation or assignment expressly provides otherwise.

Section 5.8 Administrative Manager.

- (a) The Trustees may employ or contract for the services of an individual, firm, or corporation, to be known as the "Administrative Manager," who shall, under the direction of the Trustees or under the direction of any appropriate committee of Trustees, administer the accounting, bookkeeping, and clerical services, provide for the coordination of any necessary consultant services, prepare (in cooperation, where appropriate, with a consultant and/or 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 may be the custodian on behalf of the Trustees of all documents and other records of Trustees and of the Trust Fund.
- (b) The Trustees are authorized and empowered and may, at their discretion, see to the preparation of and expenditure for instruction programs or seminars for the training and direction of administrative managers, or of other entities retained or designated by the Trustees to perform required administrative services for the Trust.

Section 5.9 Administrative Rules and Regulations.

The Trustees are hereby empowered and authorized to adopt Administrative Rules and Regulations 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 or applicable law. All such 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.

Section 5.10 Reciprocal Agreements. The Trustees shall have the power to enter into reciprocal agreements with other retirement funds covering Employees in the electrical trades so as to provide for benefit accrual for Participants of both Funds, on such terms and conditions as shall be established by the Trustees, and as a result of such reciprocal agreements, are authorized to transfer or exchange to the trustees or the corporate trustee of such related retirement funds and plans, money or credit for Employees not domiciled in the geographical jurisdiction of the Fund for whom Contributions were received from Employers, and may receive money or credits from such related retirement funds for Employees domiciled in the geographical jurisdiction of the Fund for whom contributions were made to related retirement funds.

Section 5.11 Minimum Participation Standards. The Trustees are authorized to establish and adopt minimum requirements for participation in this Fund, consistent with the objectives of the Plan and the requirements of ERISA, and to enforce such requirements by any method deemed reasonable and necessary for the proper administration of the Trust, including, but not limited to, refusing to accept Contributions from any Employer whose Collective Bargaining Agreement and/or Participation Agreement fails to conform to these requirements, immediately terminating an Employer upon discovery of its nonconformity, or by collecting such additional amounts as would be required if the Collective Bargaining Agreement and/or Participation Agreement did conform.

Section 5.12 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 any Participants or Beneficiaries involved;

- (b) to enforce the performance of all obligations arising under this Agreement, the Plan, and ERISA, and to institute proceedings of any nature whatsoever to enforce the same;
- (c) to settle, compromise, adjust, or release any claim, debt, or liability due or owing or alleged to be due and owing from or to the Fund, consistent with ERISA;
- (d) to establish rules for granting of credits and refunds in the event an Employer makes Contributions as the result of a bona fide mistake of law or fact, as permitted by ERISA;
- (e) to keep property and securities registered in the names of the Trustees or of the Fund in the name of any other individual or entity duly designated by the Trustees;
- (f) 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;
- (g) to borrow money for the purposes of the Fund in such amounts and upon such conditions as the Trustees may deem advisable, to give their promissory note in return therefor, and to pledge all or part of the assets of the Fund as security therefor. Said note or other legal instruments shall be cosigned by the Chairman and Secretary. Persons dealing with the Fund with respect to such loan transactions shall in no event be responsible for the validity or propriety of such transactions under the terms of this Agreement;
- (h) 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;
- (i) to establish and carry out a funding policy and method consistent with the objectives of the Plan and ERISA;
- (j) to formulate and maintain a claims procedure consistent with ERISA;
- (k) to initiate such lawsuits or other legal proceedings and to defend lawsuits and other legal proceedings and to pay costs and expenses of such proceedings;
- (l) to determine, in its sole discretion, all questions concerning the construction and interpretation of the Plan and also any disputed facts relevant to exercise of such discretion;
- (m) to accept or reject participation in the Fund by, and to expel participation from the Fund, any Employer, notwithstanding the terms of any Collective Bargaining

Agreement, when it is determined such action is necessary or appropriate to protect the interests of the Fund;

- (n) 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.

Section 5.13 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 the premiums for such bonds shall be paid out of the Trust Fund.

Section 5.14 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, its administrators and other fiduciaries, as well as employees, agents or the professional consultants of the Trustees and of the Trust Fund, while engaged in business and related activities for and on behalf of the Trust Fund, including policies: (1) with respect to liability to the Fund and others as a result of acts, errors or omissions of such individuals, respectively, provided such insurance policy shall provide recourse by the insurer against such individuals, as may be required by law, and provided further that, as permitted by law, such policies may provide for waiver of such right of recourse if the additional premium for such waiver is paid by a party other than the Trust Fund; and (2) with respect to accidental death or injuries received or property damage suffered by them. The premiums for such policies of insurance, or appropriate portions thereof, shall be paid out of the Trust Fund where not prohibited by law.

Section 5.15 Personal Liability. In recognition that the Fund is a legal entity separate and apart from Union and Employers, and in further recognition of the need to attract and retain competent Trustees, to the fullest extent permitted by applicable law:

- (a) No other person or entity shall be responsible or liable in any respect for any acts, omissions or obligations of the Fund or of the Trustees, individually or collectively.

- (b) No other person or entity shall be responsible or liable in any respect for the validity of this Agreement or the Plan of benefits, the form, validity, sufficiency or effect of any contract or policy entered into by the Fund, and the payment of any sums beyond those received by the Board of Trustees.
- (c) Neither the Board of Trustees or the Fund shall be bound by any representations about the Fund other than those representations contained in authorized written documentation from the Board of Trustees.
- (d) No Trustee shall be liable or responsible for his or her own acts or admissions, or for any acts or admissions of any other fiduciary or person, except for his or her own acts as determined by a court, or otherwise required by applicable law. The Fund will indemnify each Trustee against any and all claims, losses, damages, expenses and liabilities arising from any act or admission in the course of performing Fund-related duties, and shall assume the cost of defending the same, except to the extent that a Trustee is found personally liable by a court.
- (e) Trustees may from time to time consult with the Fund's legal counsel, accountant, consultant, actuaries or other professionals, and shall be protected in acting in reliance on any such advice. All such advice shall be protected by the privilege of confidentiality.

Section 5.16 Information to Participants and Beneficiaries. The Trustees shall provide Participants and Beneficiaries with such information as may be required by law.

Section 5.17 Accountants. The Trustees shall engage one or more independent qualified public accountants to perform all services as may be required by applicable law and such other services as the Trustees may deem necessary.

Section 5.18 Compensation and Expenses. The Trustees who are employed, other than hourly paid employees, shall act in such capacity without compensation from the Fund. Trustees who are paid by their Employer(s) on an hourly basis may be paid by the Fund at their hourly rate for time spent performing their duties for which they are not paid by their Employer(s). Trustees who are retired or unemployed may be paid reasonable compensation by the Fund. All Trustees shall be entitled to payment of a reimbursement for reasonable expenses properly and actually incurred in relation to the performance of their duties with the Trust Fund, including

attending meetings and other functions of the Board of Trustees or its Committees, attending educational programs, and engaging in the business of the Board of Trustees or on behalf of the Trust. In addition, except as otherwise may be provided by law, the Trust Fund shall pay or reimburse, as is appropriate, all reasonable expenses, including attorney fees, of any action or actions directly or indirectly arising out of service as a Trustee.

Section 5.19 Reports. All reports required by law to be signed by one or more Trustees shall be signed by the Chairman and Secretary on behalf of the Trustees, unless otherwise directed.

Section 5.20 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 annually by a certified public accountant.

Section 5.21 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 discretion and 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 and complete discretion to construe the provisions of this Agreement and the Plan, the terms used in those documents or instruments, and any rules, regulations, procedures, and bylaws promulgated or issued under this Agreement or the Plan. Any such determination and any such construction adopted by the Trustees in good faith shall be binding upon all of the parties to this Agreement and the Participants and Beneficiaries of the Plan. No matter respecting the foregoing or any difference arising thereunder or any matter involving or arising under this Trust Agreement shall be subject to the grievance or arbitration procedures established in any Collective Bargaining

Agreement, provided, however, that this clause shall not otherwise affect the rights and liabilities of any of the parties under any such Collective Bargaining Agreements.

Section 5.22 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. No Trustee shall be individually or personally liable for any of the obligations of the Trustees acting as such or of the Fund, except to the extent of the Employee Retirement Income Security Act of 1974, and any other applicable state or federal law, under which liability cannot be waived. Neither an Employer nor the Union shall be liable in any respect for any of the obligations of any Trustee.

Section 5.23 Reliance on Written Instruments. Any Trustee, to the extent permitted by applicable law, may rely upon any instrument in writing purported to have been signed by or on behalf of a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken or ratified the action stated to have been taken in such instrument.

Section 5.24 Establishment of Plan. The Trustees shall design or formulate a Plan for the payment of retirement and related benefits, as are feasible. Such Plan shall at all times comply with applicable federal statutes and regulations and with the provisions of this Trust Agreement. The Trustees shall not be under any obligation to pay a benefit if the payment of such benefit will result in loss of the Trust Fund's tax exempt status under the then-applicable Internal Revenue Code and any regulations or rulings issued pursuant thereto. The Trustees shall draft procedures, regulations, and conditions for the operation of the Plan, including, by way of illustration and not limitation, procedures for claiming benefits, schedules of the type and amount of benefits to be paid, and procedures for the distribution of benefits.

Section 5.25 Amendment of Plan. The Plan may be amended by the Trustees from time to time, provided that such amendments comply with the then-applicable Internal Revenue Code, all applicable federal statutes and regulations, and the purposes as set forth in this Trust Agreement.

## 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 made by any Participant, Beneficiary, or any other person, or whether as to the construction of the language or meaning of this instrument, the Plan, or any bylaws, procedures, rules, and regulations adopted by the Trustees 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 a designated committee of Trustees, if one is established, and the Trustees or the committee shall have full discretionary authority to decide such questions. The final determination of the Trustees or the 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 compromise or settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding by all parties interested in this Trust.

## ARTICLE VII

### EMPLOYER CONTRIBUTIONS, AUDITS, AND COLLECTIONS

#### Section 7.1 Employer Contributions.

- (a) Each Employer shall make prompt Contributions to the Trust Fund in a manner consistent with this Agreement in such amount and under such terms required by (1) the applicable Collective Bargaining Agreement; (2) the applicable Participation Agreement; and (3) the Fund's minimum participation standards as may be established under the authority of this Agreement and agreed to by the Employer as a condition of participation.
- (b) The Employer agrees that such Contributions shall constitute an absolute obligation to the Trust Fund, and such obligation shall not be subject to any set-off or counterclaim which the Employer may have for any liability of the Union, of another Employer, or of an Employee.
- (c) The Employer's obligation to make timely Contributions to the Trust Fund under its Collective Bargaining Agreement and/or Participation Agreement and in accordance with the Fund's minimum participation standards shall continue after expiration of the Collective Bargaining Agreement and/or Participation Agreement and during periods when a new or renewal Collective Bargaining Agreement and/or Participation Agreement is being negotiated. This obligation shall continue until such time as there is impasse followed by a strike (unless the Employer and the Union agree in written form acceptable to the Trustees that Contributions will be made during and after the strike), or until the Employer has submitted to the Fund a written notice of termination, approved by the Union, which states the legal basis for the termination and which has been approved by the Trustees in accordance with applicable procedures for termination. The Employer's continuing obligation to make Contributions after expiration of the Collective Bargaining Agreement and/or Participation Agreement, as described above, is enforceable by the Trustees in accordance with Sections 7.4 and 13.1 of this Agreement.

Section 7.2 Contracts.

- (a) All Collective Bargaining Agreements, Participation Agreements, and other contracts requiring Contributions to this Trust shall include all addenda, amendments, modifications, schedules, riders and exhibits; shall be signed by an authorized agent of the Employer and the Union; and shall otherwise conform with the requirements of Section 302(c)(5) of the Labor-Management Relations Act of 1947, as amended, 29U.S.C. Section 186(c)(5), and with any minimum participation standards that may be adopted by the Trustees.
- (b) All Collective Bargaining Agreements, Participation Agreements, and other contracts requiring Contributions to the Trust Fund shall be submitted to the Fund within a reasonable period of time after execution of the initial contract (or renewal or successor contracts). Any agreement or understanding between the parties that in any way affects the Employer's Contribution obligations as set forth in the Collective Bargaining Agreement and/or Participation Agreement shall be submitted promptly to the Fund in the same manner as the Collective Bargaining Agreement and/or Participation Agreement; any such agreement or understanding between the parties that has not been disclosed to the Fund as required by this paragraph shall not be binding on the Trustees and shall not affect the terms of the Collective Bargaining Agreement and/or Participation Agreement which alone shall be enforceable. The Trustees reserve the right to reject contributions from any Employer whose Collective Bargaining Agreement, Participation Agreement, or other agreement or understanding fails to satisfy applicable law or the requirements for participation in the Fund.
- (c) Each contract obligating an Employer to make Contributions to this Fund shall incorporate the Trust Agreement governing the Fund by reference and shall provide that the Employer and the Union agree to comply with all rules, regulations, and procedures promulgated under the authority of this Agreement and that the Employer and Union ratify, without the necessity of notice, all acts taken or to be taken by the Trustees to effectuate the purposes of the Trust and its proper administration.

Section 7.3 Reporting and Collection Procedures.

- (a) The Trustees shall have the authority to establish and implement uniform guidelines and procedures for Employer reporting and Contributions and, pursuant to those procedures and this Agreement, to enforce all Employer Contributions and delinquency charges as set forth in this Article and any collection procedures promulgated hereunder.
- (b) The Trustees shall have the authority to require Employers to submit written reports stating the hours (or other applicable time) worked by Employees and the Contributions due or payable to the Fund as required by Section 7.1.

- (c) The Trustees shall have the authority to establish a "Due Date" for the receipt of monthly reports and Contributions and to impose delinquency charges on such Contributions if the Employer fails to submit reports and to make its Contributions in a timely manner as required herein.
- (d) The "Due Date" for the submission of reports and Contributions to the Trust Fund shall be the 15th of the month following the month for which Contributions are due, and reports and Contributions must be received by that Due Date.

#### Section 7.4 Collection and Enforcement of Payments.

- (a) The Trustees, or a designated Committee of Trustees, or such attorney or Administrative Manager or other agent of the Trustees as the Trustees may appoint, shall have the power to demand and collect Employer Contributions as required herein. In accordance with the Fund's delinquency and collection procedures, the Trustees shall take such steps as they, in their sole discretion, determine to be in the best interest of the Trust Fund for the purpose of collecting such Contributions, including the institution and prosecution of, or intervention in, legal or administrative proceedings, without prejudice, however, to the rights of the Union to take steps it deems necessary and wishes to undertake for such purposes.
- (b) In the event it becomes necessary for the Trustees to institute or intervene in legal or administrative proceedings to collect delinquent Contributions, the Employer shall be liable for all reasonable expenses incurred, including attorney's fees, audit costs, accountant fees, and court costs.

#### Section 7.5 Production of Records.

- (a) The Trustees may, by their authorized representatives, audit and examine the pertinent employment and payroll records of any Employer, as described above, 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. Each Employer shall promptly furnish to the Trustees or their authorized representatives, on demand, the names of all such Employer's Employees, their social security numbers, each employee's earnings records, the number of hours worked by each Employee, all federal and state payroll tax returns, and such other information as the Trustees may reasonably require in connection with the administration of the Trust Fund. The Union shall, upon the request of the Trustees, promptly furnish information with respect to an Employee's employment status.

In addition, in the event the Employer does not maintain or otherwise does not have in his possession records of the number of hours worked by each bargaining unit Employee, the Employer agrees that in order to determine the number of hours for which Contributions are required to be submitted to the Trust Fund, the Employee's

gross wages shall be divided by the hourly wage scale set forth in the applicable Collective Bargaining Agreement for such Employee's classification.

- (b) In the event the audit indicates that the Employer has failed to make required Contributions, the Employer shall be liable for all audit costs.

Section 7.6 Effect of Nonpayment. Nonpayment by any Employer of any Contribution or other monies owed to the Fund shall not relieve any other Employer of its obligation to make required payments to the Trust Fund. Upon payment of Contributions to the Trustees, all responsibilities of the Employer for such Contributions shall cease and the Employer shall have no responsibilities for the acts of the Trustees, nor shall an Employer be obligated to see to the application of any funds or property of the Trust or to see that the terms of the Trust have been complied with, except as provided by applicable law.

Section 7.7 Credits or Refunds of Contributions. In no event shall any Employer, directly or indirectly, receive any credit or refund of Contributions made to the Trust (except in case of a bona fide mistake of fact or law resulting in an overpayment of Contributions). The Trustees shall establish rules and procedures for the granting of credits or refunds, as permitted by this Agreement and applicable law.

Section 7.8 Conveyance of Assets. Each Employer who is a party to this Agreement, and/or who submits Contributions to the Trust Fund, agrees to notify in writing the office of the Administrative Manager should such Employer cease to have an obligation to submit Contributions to the Trust Fund, or if such Employer conveys its assets to another party who does not have an obligation to contribute to the Trust Fund. In the event such a conveyance of assets does occur, the Employer making the conveyance also agrees to provide the Fund the name, address, and name of the chief executive officer of the receiver of its assets.

## ARTICLE VIII

### AUDITS AND REPORTS

Section 8.1 Annual Audit; Accounting. An annual audit of the Fund 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 Fund and at such other places as may be designated by the Trustees. More frequent audits may be made at the discretion of the Trustees.

Section 8.2 Production of Information by Union and Employer. The Employer and the 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 Retirement Plan and the efficient administration of the Fund.

Section 8.3 Annual Reports. The Trustees shall cause an annual report of the Retirement Plan to be prepared and filed in accordance with applicable law.

## ARTICLE IX

### NON-ALIENATION OF BENEFITS

Section 9.1 Non-Alienation; Qualified Domestic Relations Order. Benefits payable under this Plan shall not be subject, in any manner, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind of a voluntary or involuntary nature, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of any right to benefits payable hereunder shall be void, provided that this Article shall not apply to payments to an Alternate Payee pursuant to a Qualified Domestic Relations Order or to any levy or judgment permitted under the Internal Revenue Code or applicable Treasury Regulations, and to permissible tax withholding. The

Trustees are authorized to establish procedures for determining whether a domestic relations order is a Qualified Domestic Relations Order, within the meaning of ERISA.

Section 9.2 Funds Not Liable for Others' Liability. The Fund shall not, in any manner, be liable for or subject to the debts, contracts, liabilities, engagements, or torts of any person entitled to benefits hereunder or of any Employer or Union.

## ARTICLE X

### MERGER

#### Section 10.1 Merger, Consolidation, Transfer of Assets to and from Other Fund or Plan.

The Trustees have the authority to merge or consolidate the Trust Fund or Plan with another trust fund or plan established for similar purposes or to transfer assets and liabilities to such other fund or plan, provided that each Participant shall (if the Plan were then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit the Participant would have been entitled to receive immediately before the merger, consolidation, or transfer (if this Plan had been terminated). Subject to the same proviso, the Trustees are also authorized to agree to a merger, consolidation, or transfer of assets and liabilities of another trust or plan with or to this Trust or Plan.

Section 10.2 Trustees' Powers if Merger With This Plan. In the event another trust or plan is merged or consolidated into this Trust or Plan, or the assets and liabilities of any trust or plan are transferred to this Trust or Plan, the Trustees of this Trust shall have full and exclusive power and authority to exercise all of the powers conferred upon them by the terms of this Agreement on and after the effective date of such merger, consolidation, or transfer, provided that the merger agreement, integration agreement, or other document approved by the Trustees of both

plans shall establish the special rules (if any) for participants covered by the plan which is merged into this Plan with regard to eligibility for benefits or special types of benefits.

Section 10.3 No Mergers, Consolidations, or Transfers Authorized. No merger, consolidation, or transfer of this Plan into another plan or of another plan into this Plan shall be authorized unless such other plan is qualified as a tax-exempt plan under the then-applicable Internal Revenue Code and is otherwise in compliance with applicable federal law.

## ARTICLE XI

### TERMINATION

Section 11.1 Conditions of Termination. The parties hereto contemplate that new Collective Bargaining Agreements will be entered into from time to time, continuing the provisions for Employer Contributions for retirement purposes. This Trust shall continue during such period of time as may be necessary to carry out the provisions of said Collective Bargaining Agreements, or any of them. The expiration of any Collective Bargaining Agreement, without extension or renewal, shall not, by itself, terminate this Trust, which shall continue unless one or more of the following occurs:

- (a) the Trustees determine that the Fund shall be inadequate to carry out the intent and purpose of the Trust Agreement, or be inadequate to meet the payments due or to become due under this Trust Agreement and under the Plan; or
- (b) the Trustees determine for other reasons consistent with applicable law that the Plan should be discontinued or terminated, in whole or in part; or
- (c) there are no individuals living who can qualify as Participants or Beneficiaries under the Plan; or
- (d) there are no Collective Bargaining Agreements between the Employer and the Union requiring Contributions to this Trust Fund; or
- (e) the Trust or Plan is terminated as may otherwise be provided by law.

Section 11.2 Irrevocable Trust. Subject to the provisions of this Article, this Trust shall constitute an irrevocable trust for the sole and exclusive benefit of its Participants and Beneficiaries, and the Trust Agreement shall remain in full force and effect unless and until the Trust and Plan are terminated pursuant to this Agreement and/or applicable law.

Section 11.3 Use of Assets after Termination. Any and all assets remaining in the Fund after the termination of the Trust, and any funds acquired after the said termination, shall be used, as provided for by the Board of Trustees, solely for the purposes set forth in this Trust Agreement and Plan, and for the expenses of administration incident thereto. The Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust, and may take any action required in connection therewith. The Trustees are directed, upon termination of the Trust and Plan, to distribute all funds remaining in the Trust in accordance with the Plan.

Section 11.4 Non-Reversion. It is expressly understood that in no event shall any of the corpus, income, or assets of this Trust revert to the Union or to any Employer, or be subject to claims of any kind or nature by Employers, except for the return of an erroneous contribution, as may be permitted by the Trustees and applicable law.

## ARTICLE XII

### AMENDMENTS

Section 12.1 Amendment. The Trust Agreement may be amended by an instrument in writing, upon majority vote of the Trustees, so long as the said amendment is not inconsistent with applicable law or causes a change of or diversion of any part of the Trust Fund for purposes other than those authorized herein, or deprives any eligible person of any of his rights which have already vested in him.

Section 12.2 Conflicts. In all matters governing the administration of the Trust, the provisions of this Trust Agreement (as it currently exists and as it may be amended from time to time), and all rules, regulations, and procedures promulgated under the authority of this Trust Agreement, shall supersede any conflicting provisions of a Collective Bargaining Agreement or Participation Agreement, if such provision, rule, regulation, or procedure is consistent with the purposes of this Trust and the objectives of ERISA.

### ARTICLE XIII

#### MISCELLANEOUS

Section 13.1 Law Applicable. This Trust is created and accepted in the State of Tennessee. 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 United States, except as to those matters not governed by federal law, in which case such matters shall be governed by the laws of the State of Tennessee. The statute of limitations for actions to enforce the terms of this Trust Agreement, including, but not limited to, actions to compel an audit and to collect delinquent contributions, shall be the statute of limitations applicable to actions on written contracts in the State of Tennessee.

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 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 Trust Fund.

Section 13.3 Extension of Coverage. The Trustees are authorized to extend the coverage of this Agreement and of the Plan to Employees who are not represented by the Union, provided

that their Employer, as defined herein, is legally obligated by a Participation Agreement or similar written Agreement acceptable to the Trustees to make Contributions on behalf of said Employees in the manner and at the rate required by the Trustees, and provided, further, that such extension of coverage is consistent with this Agreement, the Plan and applicable law.

Section 13.4 Judicial Settlement and Actions 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 to be 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, any question relating to the discharge of their duties and obligations thereunder, or in connection with the administration of this Trust Fund, and as to the distribution of assets belonging to the Trust Fund. Any such determination, decision, or judgment shall be binding upon all parties to, or claiming under, this Trust Agreement.

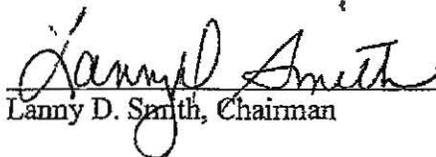
Section 13.5 Withholding Payment. In the event any question or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until there shall have been made an adjudication of such question or dispute which, in the Trustees' 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.

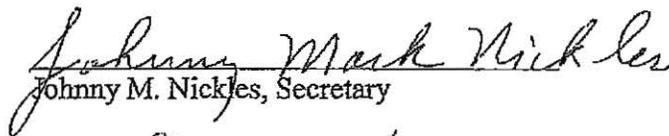
Section 13.6 Gender. Whenever any words are used in this Trust Agreement in the masculine gender, they shall also be construed to include the feminine or neuter gender in all situations where they would so apply and whenever any words are used in the plural, they shall be also construed to include the singular.

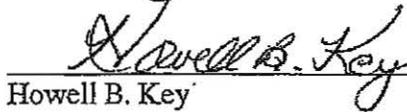
Section 13.7 Article and Section Titles. The Article and Section titles are included solely for convenience and shall, in no event, be construed to affect or modify any part of the provisions of this Trust Agreement or be construed as part thereof.

Section 13.8 Counterparts. 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 thereto.

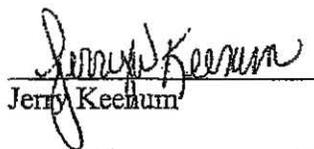
IN WITNESS WHEREOF, the Trustees have executed this Amended and Restated Agreement on the day and date below and agree to act in their representative and fiduciary capacity as Trustees in accordance with the terms and provisions of the within and foregoing instrument executed this 28th day of August, 2009.

  
Lanny D. Smith, Chairman

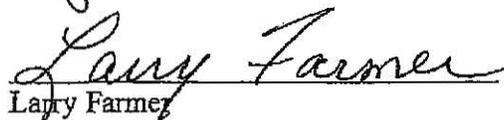
  
Johnny M. Nickles, Secretary

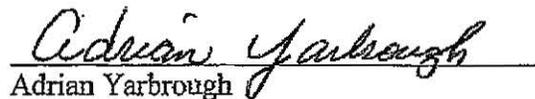
  
Howell B. Key

  
Charles D. Ewton

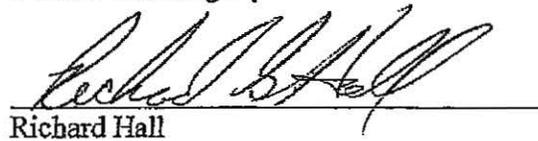
  
Jerry Keenum

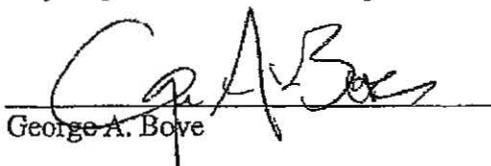
  
Michael McCain

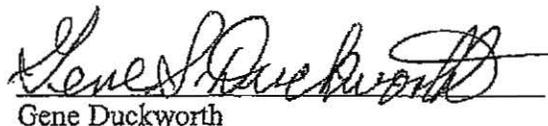
  
Larry Farmer

  
Adrian Yarbrough

  
Ray Day

  
Richard Hall

  
George A. Bove

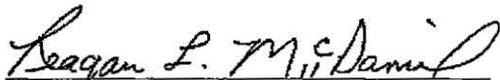
  
Gene Duckworth



Charles Moore

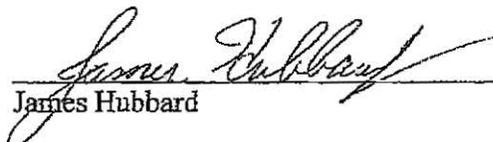


Tracy Landers



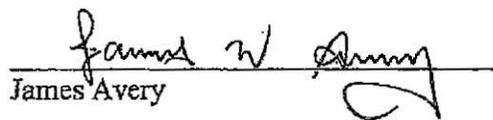
Reagan L. McDaniel

Jonathan Scurlock

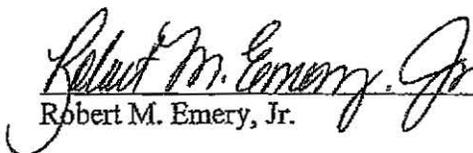


James Hubbard

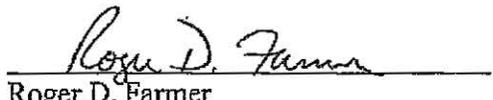
Chase Pendergraft



James Avery

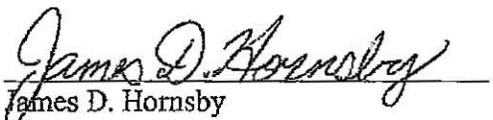


Robert M. Emery, Jr.



Roger D. Farmer

Bob Asher



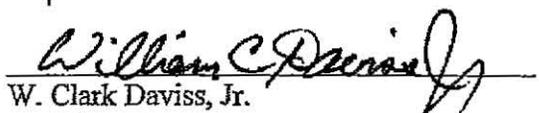
James D. Hornsby



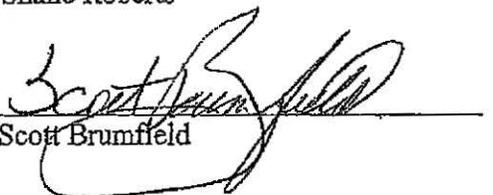
Ronnie D. Strickland



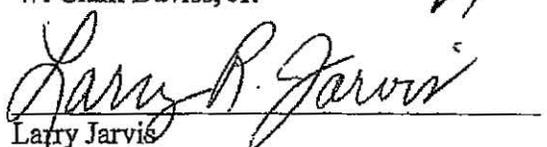
Shane Roberts



W. Clark Daviss, Jr.



Scott Brumfield



Larry Jarvis