

THIS AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST is made and entered into this 18th day of August, 2004 by and between Local Union No. 1701, International Brotherhood of Electrical Workers ("Union") and The Southern Indiana Chapter, National Electrical Contractors Association, Inc. ("Association") and the Trustees whose appointment is provided for in this document.

1. **WHEREAS**, the Union and Association entered into an Agreement and Declaration of Trust dated March 10, 1983 creating the Owensborro Electrical Joint Apprenticeship and Training Trust Fund to sponsor and provide for an educational training program for the benefit of employees as hereinafter defined; and

2. **WHEREAS**, the Parties restated and amended their Agreement and Declaration of Trust June 26, 1991; and

3. **WHEREAS**, the Association and the Union have entered into a collective bargaining agreement which is now in effect and will from time to time hereafter execute future collective bargaining agreements, providing for the terms and conditions of employment for employees as hereinafter defined and for the funding of an educational training program for the benefit of those employees; and

4. **WHEREAS**, the Parties wish to amend and restate their Agreement and Declaration of Trust.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

NAME

1. The Trust Fund created by this Amended and Restated Agreement and Declaration

of Trust (hereinafter called the "Trust Agreement") shall be known as the Owensboro Electrical Joint Apprenticeship and Training Trust.

ARTICLE II

DEFINITIONS

2.1. Amended and Restated Agreement and Declaration of Trust. The term "Amended and Restated Agreement and Declaration of Trust" or "Trust" as used herein shall mean this instrument, including any amendments, modifications and restatements as the same may, from time to time, be devised as hereinafter provided. The term shall further mean the trust created by execution of this document.

2.2. Employees. The term "employee" means any person employed by the employer and for whom the employer makes contributions to the Trust Fund. The term "employee" however, shall not mean any individual proprietor, partner, or other self-employed person, and such person shall not be allowed to participate in any of the benefits provided by the Trust Fund as a beneficiary.

2.3. Individual Employer. The term "Individual Employer" means any individual employer who is required by any Collective Bargaining Agreement to make contributions to the Trust Fund, or who in fact makes one or more contributions to the Trust Fund.

2.4. Employer Contributions. The term "Employer Contributions" as used herein shall mean payments made and owing to the Trust Fund by an Individual Employer pursuant to the terms specified in any Collective Bargaining Agreement and this Amended and Restated Agreement and Declaration of Trust.

2.5. Training Program. The term "Training Program" as used herein shall mean any instructional, training or continuing education program established for the benefit of employees

pursuant to this Amended and Restated Agreement and Declaration of Trust or similar program approved by the Board of Trustees.

2.6. Trust Fund. The term "Trust Fund" as used herein shall mean the trust estate of the Owensboro Electrical Joint Apprenticeship and Training Trust Fund, including all funds received by and obligations owing to the Trust Fund in the form of Employer Contributions, together with all increments, earnings, contributed equipment and supplies, tuition and profits therefrom, and any and all other property or Trust Funds received and held by the Trustees from any source whatsoever to the extent permitted by law, for the uses and purposes set forth in this Amended and Restated Agreement and Declaration of Trust.

2.7. Trustees. The term "Trustees" as used herein shall mean the Association Trustees and the Union Trustees collectively, together with their successors, designated in the manner provided herein.

2.8. Union. The term "Union" as used herein shall mean Local Union 1701 of the International Brotherhood of Electrical Workers .

2.9. The term "Apprenticeship Plan" means an apprenticeship plan and standards, and amendments thereto adopted or approved by the Trustees for the purpose of providing a bona fide apprenticeship training program, and which at all times will have the approval of the Kentucky State Apprenticeship Council.

2.10. The term "ERISA" means the Employee Retirement Income Security act of 1974, including any regulations issued thereunder.

2.11. The term "participant" and "beneficiary" shall have the meaning ascribed to those terms by ERISA.

2.12. The term "training center" shall mean the facility utilized for the training of apprentices.

2.13. The term "Journeyman Upgrade Training" shall mean training of employees considered by the parties not to be apprentices but in need of continuing education or skill development and to keep current on technological innovations in the craft.

ARTICLE III

PURPOSES OF THE TRUST AND APPLICATION OF THE TRUST FUND

3.1. This Trust is to be organized and operated exclusively for educational and safety related purposes. Solely in furtherance of such purposes, the Trustees shall use the assets of the Trust Fund to screen and evaluate applicants to the Training Program, to assist in the training and development of individuals who desire to acquire skills and increase their capabilities as employees within the Electrical Industry, to conduct an ongoing substance abuse screening and testing program for the benefit of all employees and to provide such Journeyman Upgrade training, including safety training, as deemed necessary for the Journeyman to adequately train other employees.

3.2. The trust established hereby shall constitute an irrevocable trust established for the exclusive benefit of employees, in accordance with Section 302(c) of the Labor-Management Relations Act of 1947, as amended, and in accordance with ERISA.

3.3 The Trustees declare that they will receive and hold the contributions herein provided for and any other money, income, rebate, dividend, or return of premium or property, which may be entrusted to them, as Trustees hereunder, with the powers and duties and for the uses and purposes set forth in this Amended and Restated Agreement and Declaration of Trust.

3.4. Neither the Union, the Association, an Employer nor an individual employee shall have any right, title, or interest in the Trust Fund or any part thereof except as required by law.

3.5. The Trustees shall use and apply the assets of the Trust Fund for the following purposes:

(a) To pay or provide for the payment of all reasonable and necessary expenses of collecting the Employer Contributions and administering the affairs of the Trust Fund, including, but without limitation, all permissible expenses which may be incurred in connection with the establishment of the Trust Fund, the employment of such administrative, accounting, legal, expert and clerical assistance, the leasing of such premises and the purchase or lease of such materials, supplies, and equipment as the Trustees, in their discretion, find necessary or appropriate in the performance of their duties.

(b) To establish and accumulate as part of the Trust Fund an adequate reserve to carry out its purposes.

(c) To compromise, settle or release claims or demands in favor of or against the Trust Fund on such terms and conditions as the Trustees shall deem appropriate.

3.6. All Trust Funds received by the Trustees hereunder as part of the Trust Fund shall be deposited by them in such financial institution or institutions as the Trustees may designate for that purpose, and all withdrawals of Trust Funds from such financial institution or institutions shall be made only by negotiable instruments endorsed by a person or persons authorized by the Trustees to sign and countersign.

3.7. Individual Employer contributions paid into the Trust Fund shall not constitute or be deemed wages due Employees, nor shall the Trust Fund be liable for or subject to the debts, contracts or liabilities of the Union, the Association, an Individual Employer, or Employees.

3.8. No Employee shall have the right to receive any part of the contributions made to this Trust Fund, except as provided in accordance with any education program maintained pursuant to this Agreement.

ARTICLE IV
BOARD OF TRUSTEES

4.1. By its execution of this trust agreement, the Association appoints and designates the individuals listed at the end of this Amended and Restated Agreement and Declaration of Trust as the Association Trustees of the Trust Fund and the Union appoints and designates the individuals listed at the end of this Amended and Restated Agreement and Declaration of Trust as the Union Trustees.

4.2. The Association may designate or terminate the designation of an Association Trustee by filing with the remaining Trustees a copy of a resolution adopted by the Association. The Union may, likewise, designate or terminate the designation of a Union Trustee by filing with the remaining Trustees a copy of a resolution of the Union. Any such designation or termination shall be effective on the date of the filing of such designation with the remaining Trustees.

4.3. 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 other Trustees or such shorter notice as they may accept as sufficient, in which notice there shall be stated a date when such resignation shall take effect. If a successor Trustee shall have been appointed at an earlier date, such resignation shall take effect immediately upon the appointment of such successor Trustee.

4.4. Any Trustee may be removed from office at any time by an instrument in writing delivered to all the Trustees then serving. In the event of a vacancy, a successor or new Trustee shall promptly be appointed by the removing settlor in the manner described above, but until such

time as a successor or new Trustee has been appointed, the remaining Trustees shall have the power to act in the manner specified in this Amended and Restated Agreement and Declaration of Trust.

4.5. Any action by the Trustees may be taken either at a meeting, by conference telephone call, if records are made, or in writing without a meeting. No action shall be taken unless there are at least two Association and two Union Trustees present either in person or by telephone, and a majority vote of the Trustees so present shall constitute official action. The Chairman shall call meetings upon 48 hours' notice, except that all Trustees present at a meeting may waive notice either orally or in writing. Meetings shall be held at least three times a year at a time and place designated by the Chairman, and the Trustee designated as Secretary shall keep and maintain a book of minutes of such meetings.

4.6. The Trustees who are empowered and authorized to negotiate negotiable instruments as aforesaid shall each be bonded in the manner and amount required by applicable law by a duly authorized surety company. Each employee employed by the Trust Fund who may be engaged in handling monies of the Trust Fund shall also be bonded in the manner and amount required by applicable law by a duly authorized surety company. To the fullest extent permitted by applicable law, the cost of the premiums on such bonds shall be paid as expenses of the Trust Fund.

4.7. The Trustees may receive reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred in the performance of their duties to the Trust Fund. Provided however, that no Trustee who already receives full time pay from the Association, an individual employer, or the Union shall receive compensation from the Trust Fund, except for reimbursement of expenses properly and actually incurred. Any such payments shall be considered an expense of the administration of the Trust Fund.

4.8. The Trustees, and each of them, by the execution of this Amended and Restated Agreement and Declaration of Trust, do hereby accept their trusteeship, the fiduciary responsibility required thereby and declare that they will receive and administer the assets of the Trust Fund as Trustees by virtue of this Amended and Restated Agreement and Declaration of Trust for the uses and purposes and with the powers and duties set forth herein.

ARTICLE V

POWER OF TRUSTEES

5.1. The Trustees shall have the exclusive right and full discretionary authority to construe provisions of this Amended and Restated Agreement and Declaration of Trust, the terms used herein, and the administration of the Trust Fund. The Trustees shall further have discretionary authority to resolve any ambiguities and determine any questions, which may arise with the application or administration of the Trust Fund. Whenever the Trustees exercise such discretionary power, it shall be done in a uniform and non-discriminatory manner. Any construction or determination adopted by the Trustees in good faith shall be binding upon the Association, the Union, the Employers, and the Employees.

5.2. The Trustees of the Trust Fund created hereunder shall be vested with the power to:

(a) Establish and maintain an office if and when required and lease or purchase such materials, supplies and equipment as in their discretion shall be necessary for the performance of their duties;

(b) Receive and collect all contributions made by employees to the Trust Fund;

(c) Formulate and adopt such uniform rules and regulations necessary to perform their duties pursuant to and consistent with the provisions of this Amended and Restated Agreement and Declaration of Trust;

(d) Maintain records and keep accounts of all receipt and disbursements;

(e) Employ or otherwise retain such clerical staff, actuaries, investment counsel, attorneys, accountants and other assistants or employees as may be necessary for the efficient performance of their duties;

(f) Designate depositories for the Trust Fund and arrange for the details of disbursing the Trust Fund. Withdrawals or disbursements from the Trust Fund shall be made only upon the signature of a prescribed number of Trustees or bonded employees, who by resolution of the Trustees, are authorized to negotiate negotiable instruments;

(g) Select from among themselves a Chairman and a Secretary and such other officers as they deem advisable and prescribe the duties of such officers;

(h) Cause their books of account, records, deposits, cancelled checks or other records to be audited once each year by any certified public accountant.

(i) obtain from a surety company a corporate surety bond covering all Trustees in such penal sum as they may determine, but in no event less than ten percent (10%) of the Trust Funds collected annually. A duly authorized surety company shall also bond each employee employed by the Trustees who may be engaged in handling monies of the Trust Fund in the same manner. The cost of the premiums on such bonds shall be paid out of the Trust Fund.

(j) Vote in person or by proxy and to exercise by attorney any other rights of whatever nature pertaining to securities or any other property at any time held by them hereunder.

(k) Keep property and securities registered in the names of the Trustees or in the name of a nominee or nominees or in bearer forms.

(l) Hold part or all of the assets of the Trust Fund uninvested.

(m) Inspect the facilities of each Individual Employer, which employs one or more apprentices trained in an educational program, funded in whole or in part, by Trust Fund for the purpose of insuring that the on-site training programs comply with all applicable standards.

(n) File, compile, distribute, or make available any documents required by ERISA, the Internal Revenue Code, or any other statute or regulation.

(o) Adopt bylaws and promulgate any and all necessary or desirable rules and regulations to facilitate the proper administration of the Trust Fund, provided the same are not inconsistent with the terms of this Trust Agreement. All bylaws, rules and regulations adopted by action of the Trustees shall be binding upon all parties hereto.

5.3. The Trustees shall have all powers necessary or desirable to enter into all agreements, do all acts, carry on all proceedings and exercise all rights and privileges, whether or not expressly authorized herein, which they may deem necessary or proper to the accomplishment of the purposes of and for the administration and protection of the Trust Fund.

5.4. Each of the Trustees shall be solely responsible for his own acts or omissions. Except to the extent provided by ERISA, no Trustee shall have any liability for a breach of fiduciary responsibility of another Trustee with respect to this Amended and Restated Agreement and Declaration of Trust unless they participate knowingly in such breach. Anything to the contrary hereby notwithstanding, unless prohibited by statute, no Trustee shall be liable for any act or omission taken pursuant to this Amended and Restated Agreement and Declaration of Trust in good faith, except for gross negligence, nor for any act or omission of any employee of the Trustees.

5.5. The Trustees may, if they so elect and at the expense of the Trust, procure liability insurance conforming to the requirements of ERISA, to insure the Trust Fund against violations by the Trustees of their fiduciary responsibilities. To the extent permitted by law, the Trustees can accept supplementary liability insurance coverage paid for by themselves or anyone else other than the Trust Fund.

5.6. The Trustees of the Trust herein created and established are hereby designated as the persons to receive the payments to be made by the Employer and the Trustees are hereby vested with all right, title, and interest in and to such monies and all interest accrued thereon and are authorized to invest, receive, pay, or distribute same, without limitation except as provided by law and this Trust Agreement.

5.7. Notwithstanding any other provisions hereof, no power or authority shall be exercised by the Trustees in any manner or for any purpose whatsoever which may jeopardize the status of the Trust Fund as an exempt organization under section 501(c)(5) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended. The Trust Fund shall make distributions at such time and in such manner as not to subject itself to tax under Section 4942 of the Internal Revenue Code (or the corresponding section of any future United States Internal Revenue Code).

5.8. The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law, to:

- (a) demand, collect, receive and hold contributions and to take such steps as may be deemed necessary or desirable to collect contributions due the Trust Fund;
- (b) compromise, settle, arbitrate and release claims or demands in favor of or against the Trust Fund or the Trustees on such terms and conditions as the Trustees may deem

advisable, commence or defend any legal, equitable or administrative proceedings brought in connection with the Trust Fund and represent the Trust Fund in all such proceedings;

(c) pay or provide for the payment of all reasonable and necessary expenses of collecting contributions and payments;

(d) enter into any and all contracts and agreements for carrying out the terms of this Amended and Restated Agreement and Declaration of Trust and the administration of the Trust Fund and any Training Program carried out in accordance with the purposes of the Trust Fund.

(e) enter into an investment contract or agreement with an insurance company or companies for the investment and reinvestment of assets of the Trust Fund;

(f) invest, reinvest and have invested and reinvested all funds of this Trust Fund, without distinction between principal and income, in any type of investment the Trustees deem prudent. There shall be no limitation restricting investments in common stock to a percentage of the Trust Fund or to a percentage of the total market value of the Trust Fund. 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 or other property in his own right;

(g) register securities or other Trust Fund property in the name of the Trust Fund or of the Trustees or in the name of one or more nominees of the Trustees and to hold instruments in bearer form;

(h) enter into and terminate agency or custody agreements with banks or trust companies chosen by the Trustees, under which agreements the Trustees may turn over to said banks or trust companies a portion or all of the funds held in the Trust Fund for safekeeping, investment or reinvestment, on such terms as the Trustees deem advisable;

(i) commingle at their discretion, all or any portion of the assets of the Trust Fund with assets of other qualified employee benefit plans for the purpose of investment in investment trusts for employee benefit plans. Said investment may, at the Trustees' discretion, be in the equity, fixed income and/or real estate funds of such investment trusts. To the extent of the Trust Fund's participation in any investment trust, that investment trust shall constitute a part of this Amended and Restated Agreement and Declaration of Trust;

(j) 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 execute and deliver any and all instruments of conveyance, lease, mortgage and transfer in connection therewith;

(k) form a corporation or corporations under the laws of any jurisdiction, or participate in the formation of such corporation or corporations, or acquire an interest in or otherwise make use of any corporation or corporations already formed, for the purpose of providing all or any aspect of education or for the purpose of investing in or holding title to any property;

(l) borrow money from any source at rates of interest which the Trustees, in their discretion, consider appropriate and guarantee notes or other indicia of indebtedness either singly or jointly with any other training Trust Fund to be fully liable on said notes or other indebtedness, both jointly or severally with any other training Trust Fund if the monies obtained (either through short- or long-term financing) are to be used for the education of individuals employed in the electrical industry, or for any other purposes, consistent with this Amended and Restated Agreement and Declaration of Trust;

(m) purchase improved or unimproved real estate and build or utilize existing buildings for the purpose of this Amended and Restated Agreement and Declaration of Trust;

(n) pay or provide for the payment of 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;

(o) retain such portion of the monies of the Trust Fund in cash balances as the Trustees may deem desirable, without any liability for interest thereon;

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

(q) allocate fiduciary responsibilities among the Trustees, or Committee of the Trustees, delegate fiduciary duties to persons other than the Trustees, and delegate Trustee responsibilities to an investment manager as provided in this Amended and Restated Agreement and Declaration of Trust and in accordance with the requirements of ERISA;

(r) appoint an investment manager or managers, as that term is defined in ERISA, and enter into an agreement with such investment manager, in accordance with the requirements of ERISA, delegating to the investment manager the responsibility to control and manage, including the power to acquire and dispose of, such of the assets of the Trust Fund as the Trustees may specify;

(s) enter into an agreement or arrangement with an administrative manager which, under the direction of the Trustees or a Committee of the Trustees, shall administer the offices of the Trust Fund, coordinate and administer its accounting, bookkeeping and clerical services, prepare all reports and other documents to be prepared, filed or disseminated by or on behalf of the Trust Fund in accordance with law, assist in the collection of contributions required to

be paid to the Trust Fund by Individual Employers and perform such other duties and furnish such other services as may be assigned, delegated, directed or contracted by or on behalf of the Trustees;

(t) employ a director of training to operate and administer the office or offices of the Education Program, maintain records, coordinate the Education Program, prepare all reports and other documents to be prepared, filed or disseminated by or on behalf of the Education Program in accordance with law and perform such other duties as may be assigned, delegated or directed by or on behalf of the Trustees;

(u) employ a reputable and qualified investment consultant to assist the Trustees in exercising their investment powers and authority by reviewing the investment policy and types and kinds of investments made by the Trustees and/or the investment manager(s);

(v) engage one or more independent certified public accountants and qualified legal counsel to perform all services as may be required by applicable law and such other services as the Trustees may deem necessary;

(w) pay or provide for the payment from the Trust of all costs incurred in employing such professionals, consultants, and managers as the Trustees deem necessary and in accordance with this Amended and Restated Agreement and Declaration of Trust and applicable law;

(x) designate an agent for service of legal process for the Trust Fund;

(y) obtain and maintain policies of insurance, to the extent permitted by law, to insure themselves, the Trust Fund as such, as well as employees or agents of the Trustees and of the Trust Fund, while engaged in business and related activities for and on behalf of the Trust Fund (i) with respect to liability to others as a result of acts, errors or omissions of such Trustee or Trustees, employees or agents, respectively, and (ii) with respect to injuries received or property damage

suffered by them. The cost of the premiums for such policies of insurance shall be paid out of the Trust Fund to the extent permitted by ERISA;

(z) merge or integrate this Trust Fund into or with another training or similar Trust Fund or to accept the transfer of all or a portion of the assets of another training or similar Trust Fund in accordance with the requirements of ERISA;

(aa) establish such rules and regulations necessary to effectuate the purposes of this Amended and Restated Agreement and Declaration of Trust and not inconsistent with the terms hereof;

(bb) do any and all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to accomplish the general objective and purpose of providing education to enrolled apprentices and journeymen.

ARTICLE VI **EMPLOYER CONTRIBUTIONS**

6.1 Each Employer shall pay to the Trust Fund the amount of money established and provided for in any signed agreement entered into between the Union and the Individual Employer. Employer hours' reports and remittances are to be received by the Trust Fund no later than the [XX] calendar day of the month following the month covered by the report. Contributions with respect to work performed during any calendar month that are payable on or before the [XX] day of the succeeding month and each monthly payment shall include all unpaid contributions which have accrued for work performed up to the close of the Employer's payroll period ending closest to the last day of the preceding calendar month. Contributions shall be payable at such location designated by the Trustees.

Each monthly contribution that is not paid by the [XX] of the month in which it is due shall be deemed delinquent. In addition to any other remedies to which the parties may be entitled, any

Employer in default for five days (5) will be required to pay interest on the monies due to the Trust Fund at the rate charged by the Internal Revenue Service at the time of the delinquency, together with all reasonable expenses of collection, including but not limited to attorney's fees. The five-day "grace period" shall not apply to any Employer with an outstanding obligation to the Trustees.

The Trust Fund may take all actions necessary to collect any amounts due the Trust Fund. Recognizing and acknowledging that the regular and prompt payment of monthly contributions to the Trust Fund is essential to the maintenance of the Education Program and that it would be extremely difficult, if not impracticable, to fix the actual expense and delay damage to the Trust Fund and its Programs from delinquent contributions, if a lawsuit is filed to collect the delinquencies, the Trust Fund shall also seek liquidated damages in the amount of twenty percent (20%) of the amount of the delinquent contributions. The Employer agrees that the Trustees may seek any additional contributions, interest, liquidated damages, costs and attorney's fees that come due between the date the lawsuit is filed and the date judgment is entered by the Court.

6.2. Nonpayment by an Individual Employer of any contribution as herein provided shall not relieve another Individual Employer of his obligation to make payments of its required contributions. The Trustees have the right to take all legal steps to collect all amounts due the Trust Funds to assure payments of the contributions due hereunder.

6.3. The Trustees shall demand, collect, receive and hold Employer Contributions and shall take such steps as may be necessary or desirable to effectuate the collection of such Employer Contributions. All proceedings to recover Employer Contributions or to enforce or protect any of the rights, demands or claims, or for any reason or purpose whatsoever on behalf of the Trustees shall be instituted in the name of the Trust Fund and/or the Trustees in their fiduciary capacities. The Trustees shall have the discretion to adopt such rules and regulations concerning payments to

the Trust Fund, audits, liquidated damages, and collection of delinquent contributions, as they deem necessary. The Trustees may, in their discretion, require a bond or deposit as security for the prompt future payment of contributions and other amounts due the Trust Fund. The Trustees may, in their discretion, adopt special rules, including, but not limited to, more frequent contributions and reporting in the event an Individual Employer has been repeatedly delinquent or, based on the Employer's financial condition, if the Trustees determine that this is necessary to prevent or limit the size of a potential delinquency.

6.4. No Individual Employer, directly or indirectly, shall receive any refund on contributions made to the Trust Fund except in accordance with the provisions of ERISA. No Employer, directly or indirectly, may participate in the disposition of the assets of the Trust Fund.

6.5 Each Individual Employer and the Union shall promptly furnish to the Trustees on demand such payroll records and data that the Trustees may require in connection with the administration of the Trust Fund with respect to the individual Employees on whose behalf contributions are payable to the Trust Fund, such information and data being limited in nature to such matters as the Employee's name, classification, Social Security number and hours worked. The Trustees, or their authorized representatives, may examine payroll, wage and other records of an Employer to determine whether such Employer is making full payments to the Trust Fund in the amounts required by the Collective Bargaining Agreement. The Trustees may take such action whenever they deem such examination necessary or advisable in connection with the proper administration of the Trust Fund. Each Individual Employer is required to maintain records sufficient to allow the Trust Fund's representative to determine all work performed for which contributions were required to be made to the Trust Fund by the Individual Employer, the identity of the Employees who performed the work, and how many hours of work were performed by the

Employees. If, as a result of the audit, the Employer owes additional contributions, the Employer will be notified of this discrepancy by the Trust Funds' attorneys or by the Administrator. If the delinquency, as revealed by the audit, equals or exceeds five percent (5%) of the contributions made by the Employer during the audit period, then the Employer shall also be obligated for all costs associated with the audit. If the Trust Fund must file suit to conduct the audit or to collect a delinquency revealed by an audit, the Trust Fund will also seek from the Employer all of its costs and attorney's fees.

ARTICLE VII **AMENDMENTS**

7.1. The provisions of this Amended and Restated Agreement and Declaration of Trust may be amended to any extent at any time or from time to time by an instrument in writing executed by the Trustees, it being expressly understood and agreed that no amendment shall direct any of the trust estate then in hand of the Trustees from the purpose of the Trust Fund.

7.2. Any action taken by the Trustees pursuant to this Article may be taken either at a meeting called in accordance with the provisions hereof or in writing without a meeting. If action is taken at a meeting, written notice of the proposed amendment must be given to each Trustee at least ten days in advance.

7.3. Any amendment adopted in accordance with these provisions may have retroactive effect if deemed necessary and appropriate by the Trustees.

ARTICLE VIII **TERMINATION OF THIS TRUST**

8.1. The Trust Fund may be terminated as follows:

(a) by an instrument in writing executed by the Trustees (1) when there is no longer in force an agreement between either the Employer and the Union requiring Employer Contributions for the purposes herein above provided; or (2) if, in the opinion of the Trustees, the Trust Fund is inadequate to carry out the intent and purposes of this Trust Agreement.

8.2. In the event of termination of the Trust, the Trustees shall apply the Trust Fund first to the purposes specified in Article III of this Agreement. Any balance which cannot be so applied may go to such other purposes as in the opinion of the Trustees will best effectuate the purposes of this Amended and Restated Agreement and Declaration of Trust within the provisions and requirements applicable to termination as provided under the provisions of applicable law, including the Internal Revenue Code of 1986, as amended, ERISA, and/or any regulations promulgated thereunder. Upon the dispersal of the entire trust estate the Owensboro Electrical Joint Apprenticeship and Training Trust Fund shall terminate.

8.3. On termination of the Trust, the Trustees shall forthwith notify the Union, the Association, each Employer, and all other interested parties. The Trustees shall continue in that capacity until such time as final dissolution is completed.

ARTICLE IX

CONTROVERSIES AND DISPUTES

9.1. In any controversy, claim, demand, lawsuit or other proceeding between the Union, the Association, any Individual Employer, Employee or any other person and the Trustees, the Trustees shall be entitled to rely, to the extent permitted by ERISA, upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, the Association, the Union or any Employer, any facts which are of public record and any other evidence pertinent to the issue involved.

9.2. 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 of any Education Program under the Trust Fund, whether as to any claim of entitlement to education proffered by an applicant, Employee, or any other person, or whether as to the construction of the language or meaning of the rules and regulations adopted by the Trustees of this Agreement and Declaration of Trust, 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, and the decision of the Trustees shall be binding upon all persons dealing with the Trust Fund or claiming education benefits thereunder.

9.3. The Association and the Union may appoint a standing impartial umpire, through a written notice to the Trustees, whose sole duty shall be to decide any and all issues upon which the Association Trustees and the Union Trustees are deadlocked. The decision shall be in writing and shall be final and binding upon any and all such issues. All expenses, if any, incurred in the employment of such impartial umpire shall be an administrative expense of this Trust Fund. In the event there is a deadlock and there is no such standing impartial umpire, the Association Trustees and the Union Trustees shall choose an arbitrator through the auspices and rules of the American Arbitration Association. A decision of said arbitrator shall be final and binding upon the Trustees and the expenses of said arbitration shall be borne by the Trust Fund.

9.4. The impartial umpire or arbitrator, as the case may be, shall be bound by all of the terms and conditions of this Amended and Restated Agreement and Declaration of Trust and shall have no authority to alter or amend the terms of any of the above. The decision of the impartial referee shall be in writing.

ARTICLE X

SITUS AND CONSTRUCTION OF TRUST

10.1. The trust is accepted by the Trustees in the Commonwealth of Kentucky and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of the Commonwealth.

10.2. If any term or provision of this Amended and Restated Agreement and Declaration of Trust or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Amended and Restated Agreement and Declaration of Trust of the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Amended and Restated Agreement and Declaration of Trust shall be valid and be enforceable to the fullest extent permitted by law.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1. No Employee nor any person claiming by or through an the Employee by reason of having been named a beneficiary, nor any Individual Employer, nor the Union or the Association, nor any other person, partnership, corporation or association shall have any right, title or interest in or to the Trust Fund or any part thereof.

11.2. No person, partnership, corporation or association dealing with the Trustees shall be obligated to see to the application of any Trust Funds or property of the Trust or to see that the terms of the Trust have been complied with or be obligated to inquire into the necessity or expediency of any act of the Trustees, and every instrument effected by the Trustees shall be conclusive in favor of any person, partnership, corporation or association relying thereon that:

(a) At the time of the delivery of said instrument the Agreement and Declaration of Trust was in full force and effect;

(b) Said instrument was effected in accordance with the terms and conditions of this Amended and Restated Agreement and Declaration of Trust; and

(c) The Trustees were duly authorized and empowered to execute such instrument.

11.3. Any notice required to be given to the Trustees or to any one or more of them pursuant to any provision of this Amended and Restated Agreement and Declaration of Trust shall be deemed to have been given and mailed to such Trustee or Trustees at the last known address of the Trustee(s).

IN WITNESS WHEREOF, the Union, the Association and the Trustees have affixed their signatures as of the day and year first above written.

**Local Union No. 1701
International Brotherhood of Electrical
Workers**

Gary D. Osborne

**The Southern Indiana Chapter
National Electrical Contractors
Association, Inc.**

Tom Millay

UNION TRUSTEES

Michael D. Roby -

Kenneth Leachman

William L. O'Brien

ASSOCIATION TRUSTEES

Henry Elden

[Signature]

Daniel H. Evans