

Amended & Restated
AGREEMENT & DECLARATION OF TRUST

Hampton Roads Shipping Association

International Longshoremen's Association

WELFARE FUND

Amended & Restated
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Hampton Roads Shipping Association- International
Longshoremen's Association Welfare Fund

This Amended Agreement & Declaration of Trust made this 25th day of February, 2004, by and between the Employer Members of the Hampton Roads Shipping Association (hereinafter "HRSA") and the Affiliated Locals of the Port of Hampton Roads of the International Longshoremen's Association, AFL-CIO (hereinafter "ILA") and the Trustees appointed by both parties (hereinafter "Trustees").

WITNESSETH:

Whereas, pursuant to an Agreement and Declaration of Trust dated December 31, 1948, a trust fund (the "Welfare Fund" or "Fund") was established for the purpose of providing group insurance and hospital service for the employees of the longshore industry in the Port of Hampton Roads; and

Whereas, effective October 1, 1978, the Fund was amended pursuant to the requirements of the Employee Retirement Income Security Act of 1974 ("ERISA"); and

Whereas, the Fund was thereafter supplemented and amended; and

Whereas, effective October 1, 1999, the representatives of management and labor established the Management-International Longshoremen's Association National Choice Plan ("MILA") for the purpose of providing health care benefits to qualifying employees in the various ports between Boston, MA and New Orleans, LA, and the Fund was amended to eliminate such benefits.

Now, Therefore, effective October 1, 2002, the Agreement and Declaration of Trust is hereby amended and restated in its entirety.

ARTICLE I

Definitions

- 1.1 “Calendar Year” shall mean a period of one year commencing on January 1 of each year.
- 1.2 “Code” shall mean the Internal Revenue Code of 1986, as amended.
- 1.3 “Collective Bargaining Agreement” shall mean the Collective Bargaining Agreement and/or contract then in force and effect between the Union and the HRSA, together with any modifications or amendments thereto.
- 1.4 “Contract Year” shall mean a period of one year commencing on October 1 of each year.
- 1.5 “Contributor” shall mean the Employer-Members or other employers who contribute to the Fund established herein.
- 1.6 “Credit” for purposes of determining eligibility shall mean hours of service which are credited by the Fund for periods during which an Employee or former Employee worked in the industry or received:
- (a) temporary total or temporary partial workers’ compensation benefits for an injury sustained while employed in the industry, with the exception that no Credit shall be awarded for lump sum settlements of workers’ compensation claims;
 - (b) time spent in service in the uniformed services on a voluntary or involuntary basis for the following
 - (1) active duty;
 - (2) active duty training
 - (3) initial active duty training;
 - (4) inactive duty for training;
 - (5) full time National Guard duty;

(6) time necessary for a person to be absent from employment for examination to determine the fitness of a person to perform any of the above duties; or

(7) performance of funeral honors duty;

provided that the Employee complies with the terms of the Uniformed Services Employment and Reemployment Rights Act (“USERRA”), including without limitation, providing advance notice, either written or verbal, of the impending service, is not absent from employment in the industry for service in the uniformed services for more than a cumulative total of five (5) years (with certain statutory exceptions) and applies for reemployment in a timely manner as provided for under USERRA.

1.7 “Eligibility Year” shall mean a period of one year commencing on October 1 of each year.

1.8 “Employee” shall mean any person Employed in the Industry.

1.9 “Employer” shall mean any Employer-Member or any NBU Employer.

1.10 “Employer-Member” shall mean the employer members of the Hampton Roads Shipping Association (HRSA) who are obligated to contribute to the Fund hereby established.

1.11 “Employment,” “Employed,” “Re-employed” or “Re-employment” in the “Industry” shall mean any of the following:

(a) employment by one or more present or former employer-members of the HRSA in the Ports of Hampton Roads and vicinity under the Collective Bargaining Agreement;

(b) employment by:

- (1) the ILA in the capacity of a Union Representative;
 - (2) the HRSA-ILA Trust Funds; or
 - (3) other employment by one or more Employer Members or the ILA where contributions are made for such employees;
- (c) crediting of service on account of injury incurred on the job, in accordance with Section 3.1(a) hereof; or
- (d) employment by an employer-member of the HRSA in any position determined by the Board of Trustees to have been traditionally filled by ILA labor, but not subject to the terms of the Collective Bargaining Agreement, where such employment is: (i) in the same industry; (ii) in the same geographic area covered by the Fund and (iii) in the same trade or craft. For purposes of this provision, “industry,” “geographic area” and “trade or craft” shall have the same definitions as contained in DOL Regulation §2530.203-3(c)(2).
- 1.12 “ILA” shall mean the Affiliated Locals of the International Longshoremen’s Association, AFL-CIO, in the Port of Hampton Roads, Virginia.
- 1.13 “Management-ILA Managed Health Care Trust Fund” (“MHCTF” or “MILA”) shall mean any employee welfare benefit plan or plans created pursuant to Section 20 of the Master Contract, and any amendments thereto.
- 1.14 “Master Contract” shall mean the Agreement by United States Maritime Alliance (previously the Carriers Container Council, Inc.), New York Shipping Association, Inc., Boston Shipping Association, Inc., Hampton Roads Shipping Association, New Orleans Steamship Association, Philadelphia Marine Trade Association, South Atlantic Employers Negotiating Committee, Southeast Florida Port Employers Association,

Steamship Trade Association of Baltimore, West Gulf Maritime Association, Ceres Terminals, Cooper/T. Smith Stevedoring, Fairway Terminal Corp., International Terminal Operating Co., Maher Terminals, Stevedoring Services of America, Stevens Shipping & Terminal Company, Universal Maritime Service Corp., and the International Longshoremen's Association, AFL-CIO, its Districts and Locals on the Master Contract issues," effective October 1, 1996.

- 1.15 "NBU Employer" shall mean any employer of non-collectively bargained employees eligible to participate in the Welfare Fund.
- 1.16 "Pensioner" shall mean any person who is retired under the HRSA-ILA Pension Plan and receiving a retirement pension thereunder. This term shall also include any Employee who is retired under the Hampton Roads Maritime Association Retirement plans, who was also a Participant in this Welfare Fund effective October 1, 1984.
- 1.17 "Qualifying Dependent" includes the dependent children of the Employee or former Employee and the Employee's or former Employee's Qualifying Spouse, or Surviving Spouse, provided that:
- (a) the dependent child is unmarried and (1) under age 19; or (2) under age 25 and a full time student; or (3) incapable of self-support due to disability occurring before his or her 19th birthday;
 - (b) the Surviving Spouse and dependents of a deceased Employee or former Employee shall no longer qualify upon the remarriage or death of the Surviving Spouse;
 - (c) dependent children of deceased Employees or former Employees shall be determined as of the date of death; and

(d) dependent children shall become ineligible upon the death of the Employee or former Employee and his Qualifying Spouse.

1.18 “Qualifying Spouse” means the legal spouse of an Employee, provided that:

(a) the spouse must reside with the Employee or former Employee, and

(b) the spouse and the Employee or former Employee have been married for at least one (1) year.

1.19 “Surviving Spouse” means the spouse of a deceased Employee or former Employee who was legally married to and resided with the Employee or former Employee for at least one (1) year ending on the date of death.

1.20 “Union” shall mean the Affiliated Locals of the International Longshoremen’s Association, AFL-CIO, in the Port of Hampton Roads, Virginia.

1.21 “Year of Service” shall mean each Contract Year during which an Employee works or receives credit for at least 700 hours of service in the industry credited toward HRSA-ILA Welfare Fund eligibility.



ARTICLE II

Creation of the Welfare Fund

2.1 Establishment of Fund

There is hereby created the HRSA-ILA Welfare Fund (hereinafter the “Fund”) to be used for the purposes set forth in this Agreement and Declaration of Trust.

2.2 General Purpose

The Fund is and shall constitute an irrevocable trust pursuant to Section 302(c) of the Labor Management Relations Act of 1947 to provide certain life, supplemental medical, accident and other benefits, on an insured or self-insured basis, to certain employees of the longshore industry. Fund benefits may (as determined by the Board of Trustees from time to time) include vacation benefits, recreational benefits, child care facilities, job readjustment allowances, income maintenance payments, disaster assistance, supplemental unemployment compensation benefits as defined in IRC Section 501(c)(17)(D)(i), education or training benefits, and any other benefit permitted under Section 501(c)(9). The Fund shall not provide health care or other benefits which are provided by the MILA Managed Health Care Trust Fund, or any successor thereto.

2.3 Place of Business of the Fund

The Fund shall have its place of business at 1355 International Terminal Blvd., Norfolk, Virginia 23505.

2.4 Registered Agent

The Registered Agent for the purpose of service of legal process shall be the Board of Trustees as established pursuant to ARTICLE IV herein.

2.5 401(h) Account Funding

The HRSA and ILA sponsor a 401(h) account (the “401(h) Account”) through contributions to the HRSA-ILA Pension Plan. The purpose of the 401(h) Account is to supplement the welfare benefits provided by this Fund. 401(h) Account funds will be

used to fund welfare benefits as the Board, in its sole discretion, deems reasonable, but in no event will there be a duplication of funding or benefits provided by this Fund and the 401(h) Account.

ARTICLE III

Eligibility and Types of Coverage

3.1 Requirements for Eligibility

- (a) Active Welfare Coverage for Employees and Their Qualifying Dependents. Each Employee who works, or receives Credit for 1000 hours of service during a contract year shall be eligible to receive Active Welfare Coverage for the following Calendar Year. An Employee shall receive credit for the periods during which the Employee receives workers compensation benefits for an injury incurred while employed in the industry and any credit for military service if eligible under USERRA. Each Qualifying Dependent of the Eligible Employee will also receive Active Welfare Coverage during such Calendar Year.
- (b) Reduced Benefit Coverage: Employees who work 700 to 999 hours, and who fail to work 1,000 hours due to no fault of their own, may qualify upon review for “Reduced Benefit Coverage.” The Reduced Benefit Coverage generally equals 70% of the normal benefit coverage under the Welfare Fund.
- (c) Life Insurance Coverage for New Employees: Life Insurance Coverage for new Employees begins at soon as the new Employee earns 700 hours.
- (d) Inactive Welfare Coverage for Former Employees: Each Employee who meets all the requirements of Subsection (1) or (2) at the time he is eligible for retirement shall be eligible to receive Inactive Welfare Coverage.
 - (1) Employees With at Least Ten (10) Years of Service:
 - (i) the former Employee shall have worked or received credit for at least one (1) hour of service in each of the seven (7) consecutive

Contract Years including or immediately preceding the Contract Year in which the eligibility determination is made; and

- (ii) the former Employee shall have worked or received credit for a minimum of 700 hours in five (5) out of seven (7) Contract Years described in (i) above; and
- (iii) the former Employee shall have: (i) reached age 62 or the age where the sum of the former Employee's age and Years of Service shall equal or exceed eighty (80); or (ii) reached age 40, have a minimum of fifteen (15) Years of Service and become permanently disabled.

(2) Employees With at Least Twenty (20) Years of Service:

- (i) the former Employee shall have worked or received credit for at least one (1) hour of service in each of the seven (7) consecutive Contract Years including or immediately preceding the Contract Year in which the eligibility determination is made; and
- (ii) the former Employee shall have worked or received credit for a minimum of 700 hours in four (4) out of the seven (7) Contract Years described in (i) above; and
- (iii) the former Employee shall have: (i) reached age 62 or the age where the sum of the former Employee's age and Years of Service shall equal or exceed eighty (80); or (ii) reached age 40, has a minimum of fifteen (15) Years of Service and become permanently disabled.

- (3) Commencement and Termination of Inactive Welfare Coverage. Inactive Welfare Coverage for the former Employee, the Employee's Qualifying Spouse, if he or she has been married for at least one year, and the Employee's other Qualifying Dependents shall begin on the day following the date the former Employee meets the above requirements and shall continue for each succeeding Calendar Year, provided that benefits shall terminate:
- (i) subject to Section 3.1(d)(4) below, if the former Employee becomes Re-Employed in the Industry; or
 - (ii) if a Qualifying Dependent loses his or her qualified status under Section 1.17.
- (4) Re-Employment of former Employees who retired due to a disability. For purposes of Section 3.1(d)(3)(i) above, Inactive Welfare Coverage for a former Employee who retired due to a disability and who subsequently becomes Re-Employed in the Industry shall not be terminated prior to December 31st of the calendar year following the year in which the former Employee is Re-employed.
- (e) Inactive Welfare Coverage for Qualifying Dependents of Deceased Employees: Qualifying Dependents of deceased Employees or deceased former Employees who are not eligible for Active Coverage shall be eligible to receive Inactive Welfare Coverage if the deceased Employee or deceased former Employee has met all of the requirements of Subsection (1) or (2).
- (1) Employees With at Least Ten (10) Years of Service:
 - (i) Worked or received credit for at least one (1) hour of service in each of the seven (7) consecutive Contract Years including or immediately preceding the year of retirement or death; and

(ii) Worked or received credit for a minimum of 700 hours in five (5) out of the seven (7) consecutive Contract Years described in (i) above.

(2) Employees With at Least Twenty (20) Years of Service:

(i) Worked or received credit for at least one (1) hour of service in each of the seven (7) consecutive Contract years including or immediately preceding the year of retirement or death; and

(ii) Worked or received credit for a minimum of 700 hours in four (4) out of the seven (7) Contract Years described in (i) above.

(3) Commencement and Termination of Inactive Welfare Coverage. Inactive Welfare Coverage for Qualifying Dependents shall begin on the first day following the date of death of the former Employee and shall continue for each succeeding Calendar Year, provided that benefits shall terminate upon a Qualifying Dependent's loss of qualification.

3.2 Prospective Reduction or Elimination of Benefits. Benefits under this Fund may be prospectively reduced or eliminated at any time by the Board of Trustees pursuant to Article IV hereof.

ARTICLE IV

Administration

4.1 Plan Administrator: The Board of Trustees

The Fund shall be administered by a Board of Trustees, seven (7) of whom shall be appointed by the HRSA and seven (7) of whom shall be appointed by the Union.

The HRSA may designate two (2) Alternates for the Trustees appointed by it, any one (1) of whom may act in the place of any such Trustee who is absent or unavailable. The Union may designate two (2) Alternates for the seven (7) Trustees appointed by it, any one of whom may act in the place of any such Trustee who is absent or unavailable.

4.2 Chairmen

The Trustees designated by the HRSA on behalf of the Employers shall elect by majority vote a Chairman of the Employer Trustees. The Trustees designated by the Union shall elect by majority vote a Chairman of the Union Trustees. The Chairman of the Employer Trustees and of the Union Trustees, respectively, shall alternate monthly in serving as Chairman of the full Board of Trustees in conducting meetings of the Trustees.

4.3 Powers

Subject to the terms of this Agreement, the Trustees shall have the following powers:

- (a) To determine all questions of coverage and eligibility, methods of providing or arranging for provisions for benefits and all other related matters.
- (b) To construe and interpret the provisions of this Agreement and the terms used herein. Any construction or interpretation adopted by the Trustees shall be binding upon all of the parties hereto.

- (c) To review, from time to time, the benefits provided, and to increase or decrease any such benefits to such extent as the Trustees in their prudent judgment and discretion deem advisable.
- (d) To make rules and regulations not inconsistent with the terms hereof to carry out the provisions of this Agreement.
- (e) To take such steps, including the institution and prosecution of, or the intervention in, any proceeding at law, in equity, or in bankruptcy as may be necessary or desirable to accomplish the collection of the monies due under this Agreement.
- (f) To enter into any and all contracts and agreements for carrying out the terms of this Agreement and Declaration of Trust and for the administration of the Fund and to do all acts as they, in their discretion, may deem necessary and advisable.
- (g) To compromise, settle, arbitrate, and release claims or demands in favor of or against the Fund or the Trustees on such terms and conditions as the Trustees may deem desirable.
- (h) To establish and accumulate as part of the Fund a reserve, or reserves, adequate, in the opinion of the Trustees, to carry out the purpose of this Agreement.
- (i) To pay out of the 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 Fund, or any money, property, or securities forming a part thereof.
- (j) To receive contributions or payments from any source whatsoever to the extent permitted by law.

- (k) To invest and reinvest the reserves of the Welfare Fund as provided in Section 5.6 hereof, and to take any and all action with respect to holding, buying, selling, and exchanging such investments, in their own name or in the name of their nominee, as they in their sole discretion may deem appropriate and necessary, provided that no investments shall be made in any securities of whatever nature of kind of any Employer-Member.
- (l) To hold as uninvested cash without any liability for interest thereon such sums as they deem necessary or advisable for the cash requirements of the Fund.
- (m) In their discretion and to the extent they deem it wise, beneficial or necessary, to appoint a bank or banks or trust company or trust companies to be designated as “Corporate Trustee,” and to enter into and execute a trust agreement or agreements with such bank or banks or trust company or trust companies, to provide for the investment and reinvestment of assets of the “Welfare Fund,” with such other provisions incorporated therein as may be deemed desirable in the Trustees’ sole discretion for the proper management of the “Welfare Fund” and upon such execution to convey and transfer to such corporate Trustee any assets of the “Welfare Fund” and without limit with respect to the powers which the Trustees may grant to such Corporate Trustee, in such agreement to the extent permitted by law and to the extent that such investments are legal for Trust Funds in the Commonwealth of Virginia.
- (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.

- (o) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to accomplish the general objective of enabling the Employees to obtain Welfare benefits in the most efficient and economical manner.

4.4 Compensation

The Trustees and their alternates shall serve without compensation but they shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties, including, for example, reasonable expenses incurred in attending educational programs sponsored by the International Foundation of Employee Benefit Plans.

4.5 Appointment of Agents

The Trustees may employ such agents, legal counsel, auditors, clerical and administrative personnel as may, in their discretion, be proper or necessary for the sound and efficient administration of the trust. The Trustees may also, in their discretion, enter into a working agreement with any insurance company or provider providing for the performance thereby of administrative and clerical duties in connection with the benefits provided hereunder.

4.6 Action by and Meetings of Trustees

- (a) Quorum - A quorum for the transaction of business shall be at least three (3) HRSA Trustees and three (3) ILA Trustees.
- (b) Number of Votes - At all meetings, the HRSA Trustees shall have a total of seven (7) votes and the ILA Trustees shall have a total of seven (7) votes.
- (c) Notice - Written notice of any meeting by the Trustees shall be sent by U.S. mail, facsimile or electronic mail to the Trustees at least five (5) days before the date of

the meeting; provided however, that notice of any meeting may be waived in writing signed by all of the Trustees.

- (d) Meetings - Meetings may be called by either Chairman or by any two Trustees.
- (e) Action - The exercise of any right or power granted to the Trustees hereunder shall be by the approval of a majority by the votes cast at a duly called meeting.
- (f) Written consent – The Trustees may also act by written consent following notice of the proposed action to the Trustees as provided above. The approval of a majority of the Trustees shall constitute an action by the Board.

4.7 Execution of Documents

Any written instrument authorized by the Trustees may be signed by the two Co-Chairmen or by a majority of the Trustees. Signatures on disbursement checks may be by facsimile or digitally created, to the extent authorized by the Board of Trustees. Any instrument so executed and all action taken in accordance with this provision shall have the same force and effect as if taken by all the Trustees. All parties dealing with the Trustees may rely on any instrument so executed and any action so taken as having been duly authorized.

4.8 Neutral Umpire in Case of Deadlock

In the event a disagreement or deadlock should arise over the administration of the Fund, the HRSA Trustees and the Union Trustees will attempt to agree upon a designation of an impartial umpire, who shall cast the deciding vote. If, within a reasonable time, no umpire is agreed upon, either party may petition the American Arbitration Association to appoint an impartial umpire. The decision of the umpire so

agreed upon or appointed by the American Arbitration Association shall be binding on all concerned.

4.9 Withdrawal of Trustees

The Employer-Members of HRSA may terminate the designation of any Trustee previously appointed by them by mailing or delivering to said Trustee, to each of the remaining Trustees and to the ILA, a true copy of a writing terminating said designation. The ILA may terminate the designation of any Trustee previously appointed by its mailing or delivering to said Trustee, to each of the remaining Trustees and to the HRSA, a true copy of the resolution adopted by the ILA terminating the designation.

Any Trustee may resign by instrument in writing executed for that purpose and mailed or delivered to each of the remaining Trustees, the HRSA and the ILA.

In the event of the resignation, death, incapacity, or unwillingness to serve of any of the Trustees, the Employer-Members of HRSA shall appoint the successor of any Trustee appointed by it, and the ILA shall appoint the successor of any Trustee appointed by it.

Any successor Trustee, named and appointed as hereinabove provided, shall, upon his signature to this Agreement and Declaration of Trust, without further act, become vested with all the estate, rights, powers, discretion and duties of his predecessor Trustee with like effect as if originally named as a Trustee herein.

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

The powers of the Trustees to act, as above provided, shall not be impaired or limited in any way, pending the appointment of a successor Trustee to fill any vacancy resulting from the withdrawal of any Trustee for any of the reasons herein provided.

4.10 Fiduciary Responsibility

The Trustees shall discharge their duties with respect to the Fund solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable administration expenses.

The Trustees shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

4.11 Term of Trustees

Each Trustee above named, and each successor Trustee shall continue to serve as such until his death, incapacity, resignation or removal.

ARTICLE V

Funding

5.1 Contributions

- (a) The Employer-Members shall pay into the Fund the amounts set forth in the Collective Bargaining Agreement between the HRSA and the Union. The rate of contribution shall at all times be governed by the Collective Bargaining Agreement then in force and effect, together with any amendments or supplements thereto.
- (b) The Union shall pay into the Fund a like amount for such of its employees as are covered by the Fund.
- (c) The Board of Trustees shall have the discretion and authority to prescribe the rates of contributions to the Fund for the participation of non-collectively bargained employee participants.

5.2 Manner and Time of Payment

Contributions to the Welfare Fund shall be made in the manner and within the time prescribed by the Collective Bargaining Agreement then in force and effect, or in the case of payments made on behalf of non-collectively bargained employee participants, as prescribed by the Board of Trustees.

5.3 Default by Individual Employer

In the event that any payment as above set forth shall not be made by any Employer within the time provided herein, such Employer shall be considered in default. The Trustees may apply any surplus monies of the Fund for the account of any defaulting Employer without prejudice to the right of the Trustees to collect from the defaulting Employer such payment in default and the costs and expenses of collecting the same, or may subrogate their rights to any individual, employer, association or other party who may make payment to the Trustees for the account of any defaulting Employer of the amount of the default and the costs and expenses of collecting same. The Trustees may

also refer the defaulting Employer to the Trustee Arbitration Committee, established under the Collective Bargaining Agreement, for arbitration of the amount in default, and may take action to enforce collection should the Trustee Arbitration Committee determine the amount in default is properly owed to the Fund.

5.4 Checks

Checks in payment of the contributions to the Fund shall be payable to the “HRSA-ILA Welfare Fund,” or the “HRSA-ILA Fringe Benefit Escrow Fund,” as the Trustees shall direct.

5.5 Trust Fund

- (a) Title to all monies paid into said Fund shall be vested in and remain exclusively in the Trustees of the Fund, and neither the Union nor the HRSA nor any beneficiary hereunder shall have any right, title or interest in any of the monies of the Fund. The Fund shall constitute an irrevocable Trust for the benefit of the Eligible Employees and their Qualifying Dependents. The monies to be paid into said Fund shall not constitute or be deemed wages due to the individual Employees.
- (b) In the event an Employee, Qualifying Dependent and/or other recipient receives a payment from the Fund to which he is not entitled, he shall immediately repay the Fund such amount, plus interest (at the rate(s) determined by the Board) from the date of receipt until such repayment.

5.6 Investment of the Fund.

The Board of Trustees shall invest and reinvest the monies in whole or in part, constituting the Fund as the Board shall, in its sole discretion deem appropriate and necessary, including but not limited to the following forms of investment: (1) real and personal property; (2) securities, including common and preferred stocks, bonds, common trust funds; (3) interests in mutual funds and investments trusts; and (4)

investment limited partnerships. The Board may, in its discretion, enter into one or more trust agreements or insurance contracts, or both, under the terms of which a trust fund or insured fund, or both, shall be established to receive and hold contributions to the Welfare Fund and to pay the benefits herein provided. Such trust fund or insured fund or both, if they co-exist shall be referred to as the Fund. The Board may, in its discretion, serve as Trustee of the Fund or any part of it.

The Board shall determine the form and terms of any such trust agreement and/or insurance contract and may modify any such agreement and/or contract from time to time to accomplish the purposes of the Fund. The Board may select, move and change insurance companies and/or trustees.

ARTICLE VI

Benefits

6.1 Determination of Benefits

- (a) Benefits provided under the Welfare Fund shall be limited to those which can be secured for the sum realized through contributions to the Fund less reasonable costs of administration.
- (b) The Board of Trustees shall have full authority and complete discretion to determine the nature, amount and duration of benefits to be provided by the Fund after taking into consideration all relevant facts, including, the size of the Fund, the Collective Bargaining Agreement, cost of administration, future income and the cost of providing benefits hereunder.
- (c) Notwithstanding anything contained herein to the contrary, the Welfare Fund shall not provide benefits provided in the Port of Hampton Roads by the MILA Managed Health Care Trust Fund, including the Medicare Risk HMO Program, the National Pharmacy Benefit Program covering Master Contract employees and retirees, and any other benefit programs provided by the MILA Managed Health Care Trust Fund. Benefits provided by the Welfare Fund shall be supplementary to and not duplicative of the benefits provided in this Port by the MILA Managed Health Care Trust Fund.

6.2 Method of Providing Benefits

The benefits shall be provided and maintained by such means as the Board shall in its sole discretion determine, provided, however, the Board shall have no authority to

purchase or provide any benefits provided in this Port under any welfare plan or program established by the Trustees of the MILA Managed Health Care Trust Fund.

6.3 Written Plan of Benefits

From time to time, the Board shall specify in writing the detailed basis on which payment of benefits is to be made, subject to such changes or modifications as shall similarly be specified in writing by appropriate resolution of the Board.

6.4 Claims for Benefits

- (a) Initial claims for benefits under the Welfare Fund shall be submitted to the Plan Administrator or to its designated representatives (which shall include health care and other providers that provide or administer benefits under the Fund).
- (b) If a claim for benefits is denied, the Plan Administrator or the designated representative shall provide notice to the Participant in writing of the denial, in the form and within the timeframes prescribed by ERISA and the regulations promulgated thereunder.
- (c) A Participant may appeal a denial of benefits by filing a written appeal with the Plan Administrator or its designated representative within 180 days after the date of the notice of denial of the original claim for benefits. The Plan Administrator may refer all first appeals to the provider (as designated representative) that denied the initial claim.
- (d) If a designated representative denies a Participant's appeal, the Participant may file an appeal with the Board of Trustees. The Board shall respond in writing to the appeal request in the form and within the timeframes prescribed by ERISA and the regulations promulgated thereunder.

- (e) A Participant may appeal a denial of benefits made by the Board of Trustees by filing a written appeal with sixty (60) days of the Board's denial to the Trustee Arbitration Committee of the HRSA and the ILA. The Trustee Arbitration Committee will determine whether the Board of Trustees acted within the authority vested in them by the Collective Bargaining Agreement and this Agreement in determining the Participant's eligibility for benefits.

6.5 Subrogation and Reimbursement

- (a) Fund Benefits are Subject To Right To Subrogate. In the event of any payment under this Fund, the Fund shall, to the extent of such payment, be subrogated to all the rights of recovery of the covered individual arising out of any claim or cause of action which has accrued or may accrue because of alleged negligence or any other claim against a third party for the injuries or conditions which resulted in the payments. This includes, but is not limited to, the right of the Fund to sue such third party directly in the place and stead of the covered individual, or the personal representative of same.
- (b) Fund Benefits are Subject to Reimbursement. Any covered individual, by filing for benefits, and the personal representative of same, agrees as follows:
 - (1) to reimburse the Fund for any and all benefits paid hereunder, out of any and all monies recovered from such third party as the result of suit, judgment, settlement or otherwise, up to but not exceeding the gross amount recovered from the third party, and whether the recovery be designated as medical expenses, attorney's fees or otherwise;
 - (2) that no settlement will be made nor release given without prior notification

to the Fund;

(3) to transfer and assign to the Fund all rights, title and interest in and to any and all monies that may be recovered as a result of any claim or suit arising out of the loss or injury to the extent of any and all payments made by the Fund relating to such loss or injury and agrees to authorize that such amount be deducted from any and all recoveries that may be received by the covered individual's attorney or representative and be paid over directly to the Fund;

(4) to transfer and assign to the Fund all right, title and interest in and to the Participant's HRSA-ILA Welfare Fund benefits (including, but not limited to weekly income, Medicare Part B reimbursement and life insurance benefits), and HRSA-ILA Container Royalty Fund and/or HRSA-ILA Vacation & Holiday Fund benefits to which the Participant is or may be entitled to receive, to the extent of the lesser of (i) any and all payments made by the Fund relating to such loss or injury, or (ii) the amount of any recovery received by the Participant from a third party for such loss or injury; and

(5) to take such action, to furnish such information and assistance, and to execute and deliver all necessary instruments as the Fund may require to facilitate the enforcement of its rights.

(c) Notice of Possible Subrogation. The Participant or Eligible Dependent specifically agrees on behalf of him or herself (or his or her guardian or estate) to notify the Administrator, in writing, of whatever benefits are paid by this Fund that

arise out of any injury or illness that provides or may provide the Fund subrogation rights under this Section.

- (d) Penalties for Failure to Comply. Failure to provide necessary information or to reimburse the Fund within four weeks after recovery of any sum, may disqualify, as determined by the Board of Trustees in its sole discretion, the covered individual and his dependents from receiving any future benefits under the Fund.

6.6 Return of Benefits Erroneously Paid.

If, under any circumstance, the Fund provides benefits to a Participant or his Qualifying Dependents, pursuant to this Agreement & Declaration of Trust, or any related documents or policies authorized by the Trustees, which are determined to have been paid, provided or granted in error, the Participant shall return the amount of benefits provided. If the Participant fails to reimburse the Fund, the Participant shall pay the Fund all costs incurred, including reasonable attorneys fees and court costs, in seeking reimbursement.

ARTICLE VII

Miscellaneous

7.1 Applicable Law

This Trust is accepted by the Trustees in the Commonwealth of Virginia and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of that state.

7.2 Term of Trust and Termination

This Agreement and Trust, as amended, shall continue indefinitely or until such time as the purposes of the proper consummation and administration of the Trust shall require.

The Trustees, however, shall continue thereafter to perform and carry out the provisions of the Trust, to receive such contributions as may be made to them, and to administer the Fund until the disbursements of all funds shall have been completed and all obligations made under the Agreement and under the Trust shall have been fulfilled.

Upon the termination or liquidation of the Trust, and the fulfillment of the purposes specified in ARTICLE II of this Agreement, the Trustees shall turn over any surplus monies in the Fund, any real or personal property belonging to the Trust, and such other assets, including any policies of insurance issued to the Trustees, remaining in said Trust to any existing or future Trust Fund or Welfare Fund that may be created by and between the parties prior to the termination hereof, including the HRSA-ILA Fringe Benefit Escrow Fund. If no such Fund is created, then and in that event, the Trustees, after disposing by sale, lease or otherwise of any real or personal property belonging to the Trust, shall use any surplus monies remaining in the Fund after all obligations in

connection with the administration thereof have been fulfilled, to continue to provide benefits to the extent that such surplus may make such benefits available until such surplus monies are exhausted.

7.3 Counterparts

This Agreement and Declaration of Trust may be executed in a number of counterparts each of which shall have the force of an original.

7.4 Audits and Reports

Regular financial statements shall be prepared and presented to the Board of Trustees at least quarterly by the staff employed by the Board. An annual audit of the Fund shall be made by competent auditors designated by the Trustees. More frequent audits may be made at the discretion of the Trustees. A statement of the results of said audits shall be provided to the HRSA and the ILA. The Trustees, upon request, may provide additional financial information to the HRSA and the ILA.

7.5 Employers' Records

The Employers shall furnish to the Trustees, upon request, any and all records pertaining to their respective Employees covered under any group insurance and/or hospitalization arrangement, including records of the names and classifications of such Employees, the number of hours for which payment has been made to each Employee, social security numbers, and any other information pertaining to any such Employees that the Trustees may require in connection with the sound and efficient administration of the Fund created hereby or that may be required of the Trustees by such insurance company and/or hospitalization service.

7.6 Union and NBU Employer Records

The Union and any NBU Employer shall furnish to the Trustees, upon request, any and all records or other information available to them pertaining to any Employee that the Trustees may require in connection with the sound and efficient operation of the Fund created hereby or that may be required of the Trustees by any third party administrator for the Fund.

7.7 Amendment

This Agreement and Declaration of Trust may be amended in any respect from time to time by the Trustees. The Trustees shall have the full power to fix the effective date of such amendments.

7.8 Limitation on Right to Amend

Notwithstanding section 7.7 above, no amendment may be adopted which will alter the basic principles of this Agreement and Declaration of Trust, or will be in conflict with the Collective Bargaining Agreement.

7.9 Encumbrance of Benefits

The benefits, payments, interest in or to any account or fund, proceeds or avails of any contract or any claim or right under this Agreement shall not be subject to claims of any creditor of the Employee or of any beneficiaries, and shall not be subject to attachment, garnishment or other legal process, nor shall any Employee have any right to alienate, anticipate, commute, surrender, pledge, hypothecate, encumber or assign any of said benefits, payments, interest in or to any account or fund, proceeds or avails of any contract. Notwithstanding the foregoing, after the benefit payments hereunder are in “pay status” (due to the Employee or Beneficiary), such payment shall be subject: (i) to

attachment, offset and collection by the Fund for mistakenly paid or overpaid benefits for this Fund and any other Fund maintained by the HRSA and the ILA pursuant to the Collective Bargaining Agreement, and, after such offsets; (ii) subject to levies or garnishments by federal and state tax authorities, Qualified Medical Child Support Orders and other judicial process.

ARTICLE VIII

HIPAA Privacy Rule Provisions

8.1 General.

Pursuant to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the purpose of this Article VIII is to allow the disclosure of Protected Health Information (“PHI”), as defined under HIPAA, to the Board of Trustees for the purposes specified below. If the terms or conditions of this Trust Agreement conflict with this Section, this Section shall control.

8.2 Disclosure of PHI to the Board of Trustees.

Fund shall disclose PHI to the Board of Trustees only to the extent necessary for the Board of Trustees to perform the following Fund administrative functions:

- (a) review of disability pension applications;
- (b) review of worker’s compensation settlements;
- (c) appeals from Participants for coverage exceptions of a medical related procedure;
and
- (d) appeals from Participants for coverage exceptions or extensions with regard to Short Term Disability benefits.

8.3. Use and Disclosure of PHI by the Board of Trustees.

The Board of Trustees shall use and/or disclose PHI only to the extent necessary to perform the Fund administration functions ancillary to the functions listed in Section 8.2, which it performs on behalf of the Fund.

8.4 Plan Sponsor Certification.

The Fund agrees that it will only disclose PHI to the Board of Trustees upon receipt of a certification that this addendum has been adopted and the Board of Trustees agrees to abide by such conditions. The Board of Trustees is subject to the following:

- (a) Prohibition on Unauthorized Use or Disclosure of PHI. The Board of Trustees will not use or disclose any PHI received from the Fund, except as permitted in these documents or required by law.
- (b) Subcontractors and Agents. The Board of Trustees will require each of its subcontractors or agents to whom the Board of Trustees may provide PHI to agree to written contractual provisions that impose at least the same obligations to protect PHI as are imposed on the Board of Trustees.
- (c) Permitted Purposes. The Board of Trustees will not use or disclose PHI for employment-related actions and decisions or in connection with any other decisions or actions relating to any other employee benefit funds administered by the Board of Trustees.
- (d) Reporting. The Board of Trustees will report to the Fund any impermissible or improper use or disclosure of PHI not authorized by the plan documents.
- (e) Access to PHI by Participants. The Board of Trustees will make PHI available to the Fund to permit participants to inspect and copy their PHI contained in the designated record set.
- (f) Correction of PHI. The Board of Trustees will make a Participant's PHI available to the Fund to permit participants to amend or correct PHI contained in the designated record set that is inaccurate or incomplete and the Board of Trustees will incorporate amendments provided by the Fund.

- (g) Accounting of PHI. The Board of Trustees will make a Participant's PHI available to permit the Fund to provide an accounting of disclosures.
- (h) Disclosure to Government Agencies. The Board of Trustees will make its internal practices, books and records relating to the use and disclosure of PHI available to the Fund and to the Department of Health and Human Services or its designee for the purpose of determining the Fund's compliance with HIPAA.
- (i) Return or Destruction of Health Information. When the PHI is no longer needed for the purpose for which disclosure was made, the Board of Trustees must, if feasible, return it to the Fund or destroy all PHI that the Board of Trustees received from or on behalf of the Fund. This includes all copies in any form, including any compilations derived from the PHI. If return or destruction is not feasible, the Board of Trustees agrees to restrict and limit further uses and disclosures to the purposes that make the return or destruction infeasible.
- (j) Minimum Necessary Requests. The Board of Trustees will use best efforts to request only the minimum necessary type and amount of PHI to carry out the functions for which the information is requested.

8.5 Adequate Separation.

The Board of Trustees represents that adequate separation exists between the Fund and the Board of Trustees so that PHI will be used only for plan administration. Appendix A lists the employees or persons under the control of the Board of Trustees who have access to Participants' PHI for the purposes set forth under this Article 8.

8.6 Adequate Separation Certification.

The Fund requires the Board of Trustees to certify that the employees identified in Appendix A are the only employees that will access and use participants' PHI. The Board of Trustees must further certify that the such employees will only access and use PHI for the purposes set forth in Section 8.2 above.

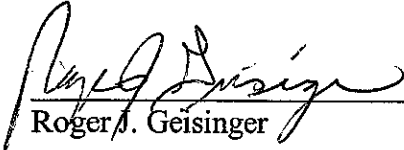
8.7 Reports of Non-Compliance.

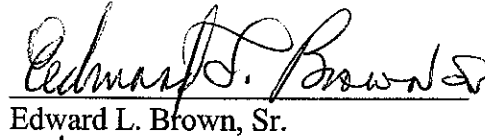
Anyone who suspects an improper use or disclosure of PHI may report the occurrence to the Fund's Privacy Official.

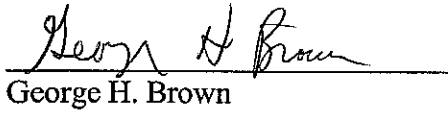


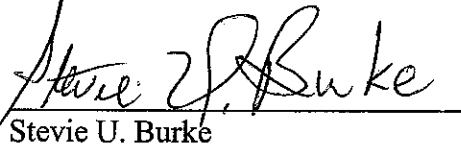
IN WITNESS WHEREOF, the Trustees, HRSA and ILA, have executed this instrument to evidence their acceptance of the Trust hereby created and their agreement to be bound thereby, and all other parties have executed this Agreement as of the day and year first above written.

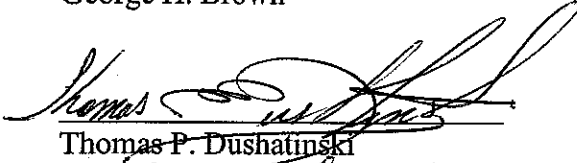
TRUSTEES:


Roger J. Geisinger

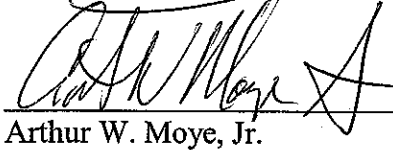

Edward L. Brown, Sr.

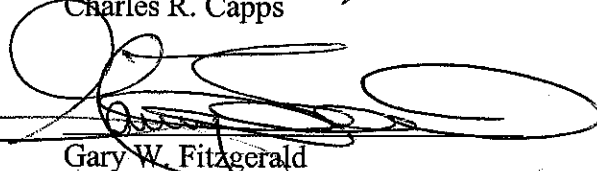

George H. Brown


Stevie U. Burke

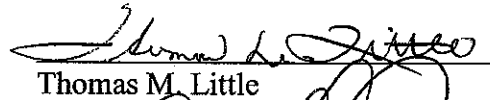

Thomas P. Dushatinski



Charles R. Capps

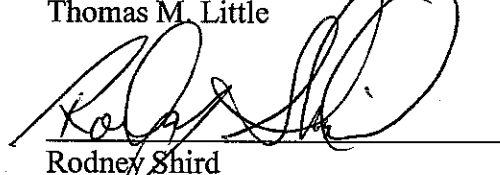

Arthur W. Moye, Jr.

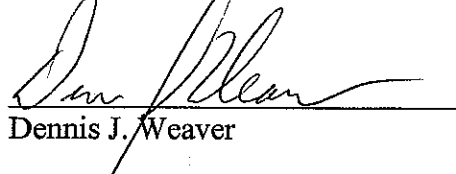

Gary W. Fitzgerald


Raymond A. Newlon


Thomas M. Little


M. Lynn Tarkenton


Rodney Shird


Dennis J. Weaver


Edward R. Ward

APPENDIX A

List of employees of the HRSA-ILA Funds who have access to PHI for the purposes set forth in Article 8.

Terry Anspach
Robert Armbruster
Myrna Brown
Paulette Brown
Juanita Browne
Pat Carmin
Bosco Cheng
Lou Cobb
Alice Ellis
Cathy Garrett
Charmane Hackley
Cindy Harrison
Terry Heck
Jeff Hetrick
Pat Lynn
Ken Orr
Lorraine Richardson
Theresa Rolle
Wilma Sherburne

HRSA-ILA WELFARE FUND
AS AMENDED AND RESTATED
EFFECTIVE October 1, 2002

AMENDMENT HISTORY

| AMENDMENT | EFFECTIVE DATE | | |
|-----------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| #1 | 1/1/82 | Article I, §1.22 Restored Article I, §1.13 Pertaining to “Rainy Day Umbrella Credits” as it ex- Existed pursuant to Amendment 5 of the Fund, Effective 11/1/90 | Pg. 7 |
| #2 | 4/21/05 | Article IX, HIPAA Security Added new Article IX | Pg. 37 |

AMENDMENT NO. 1 TO THE
HAMPTON ROADS SHIPPING ASSOCIATION
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
WELFARE FUND

Effective as of November 17, 1999, the Hampton Roads Shipping Association - International Longshoremen's Association Vacation & Holiday Fund (the "Fund") is amended as follows:

FIRST: Article I, Section 1.13, pertaining to "Rainy Day Umbrella Credits", as it existed pursuant to Amendment #5 of the Fund, effective November 1, 1990, is restored to the Fund, in its entirety, as renumbered Section 1.22, as follows:

1.22 "Rainy Day Umbrella Credits" shall mean those credits awarded for Employees who, due to long term ~~illness or~~ non-occupational injuries, fail to receive sufficient credits to qualify for Coverage for the following Calendar Year. To be eligible to receive Rainy Day Credits, the Employee must meet each of the following requirements:

- (1) Ten consecutive Years of Service with 700 or more hours of service per year.
- (2) During the Contract Year eligibility is determined, must work or receive Credit for at least 700 hours of service. For purposes of this requirement, the Employee shall be deemed to have worked 20 hours per week for weeks during which the Employee receives Weekly Income Insurance from the ~~HRSA-ILA~~ Welfare Fund.

Rainy Day Credits may only be used to obtain Active Welfare Coverage for one Calendar Year and may be used to obtain Inactive Welfare Coverage. Rainy Day Credits may not be used for qualification for benefits under other Plans maintained under the **Collective Bargaining** Agreement.

SECOND: Article I, Section 1.6 is amended to add new subsection (c) as follows:

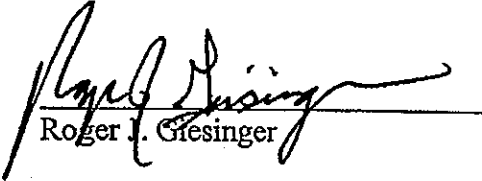
- (c) **Rainy Day Umbrella Credits**, as defined in Section 1.22.

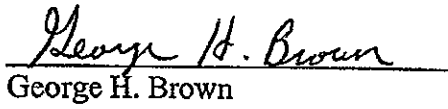
THIRD: Article III, Section 3.1 is amended to add new subsection (f) as follows:

(f) For purposes of Sections 3.1(d) and 3.1(e), an Employee or Former Employee shall be considered to have worked one (1) hour in the Contract Year in which Rainy Day Umbrella Credits are awarded.

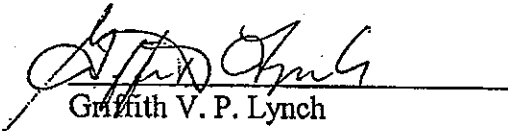
IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the 23rd
day of February, 2005.

EMPLOYER TRUSTEES:


Roger J. Giesinger

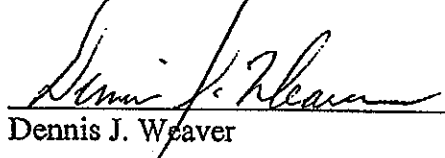

George H. Brown


Thomas P. Dushatinski

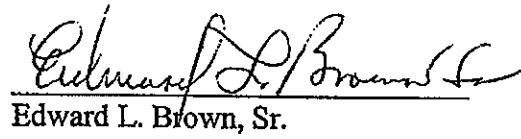

Griffith V. P. Lynch


Raymond A. Newlon

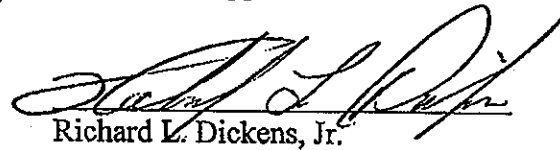

M. Lynn Tarkenton

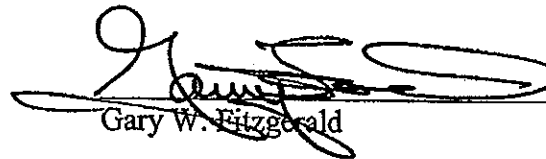

Dennis J. Weaver

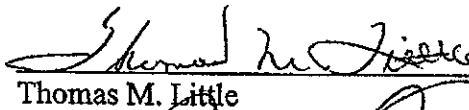
EMPLOYEE TRUSTEES:

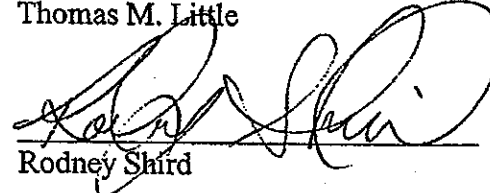

Edward L. Brown, Sr.


Charles R. Capps


Richard L. Dickens, Jr.


Gary W. Fitzgerald


Thomas M. Little


Rodney Shird


Edward R. Ward

AMENDMENT NO. 2 TO THE
HAMPTON ROADS SHIPPING ASSOCIATION -
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
WELFARE FUND

Effective as of April 21, 2005, the Hampton Roads Shipping Association - International Longshoremen's Association Welfare Fund (the "Plan") is amended by adding new Article IX as follows:

ARTICLE IX – HIPAA SECURITY

9.1 The Plan and the Board shall comply with the security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Parts 160, 162 and 164 (the "Security Regulations"). The following provisions apply to Electronic Protected Health Information ("ePHI") that is created, received, maintained or transmitted by the Board on behalf of the Plan, except for ePHI (1) it receives pursuant to an appropriate authorization (as described in 45 C.F.R. section 164.504(f)(1)(ii) or (iii)), or (2) that qualifies as Summary Health Information and that it receives for the purpose of either (a) obtaining premium bids for providing health insurance coverage under the Plan, or (b) modifying, amending or terminating the Plan (as authorized under 45 C.F.R. section 164.508). If other terms of the Plan conflict with the following provisions, the following provisions shall control. The Security Regulations are incorporated herein by reference. Unless defined otherwise in the Plan, all capitalized terms herein have the definition given to them by the Security Regulations.

9.2 The Plan Sponsor shall, in accordance with the Security Regulations:

9.2.1 Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the ePHI that it creates, receives, maintains or transmits on behalf of the Plan.

9.2.2 Ensure that "adequate separation" is supported by reasonable and appropriate security measures. "Adequate separation" means the Board will use ePHI only for Plan administration activities and not for employment-related actions or for any purpose unrelated to Plan administration. Any employee or fiduciary of the Plan or the Board who uses or discloses ePHI in violation of the Plan's security or privacy policies and procedures or this Plan provision shall be subject to the Plan's disciplinary procedure.

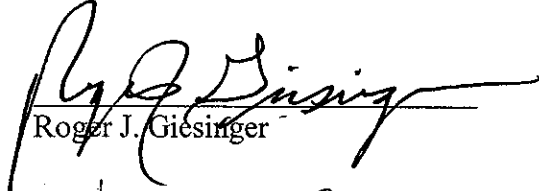
9.2.3 Ensure that any agent or subcontractor to whom it provides ePHI agrees to implement reasonable and appropriate security measures to protect the information.

9.2.4 Report to the Plan any Security Incident of which it becomes aware.

Signature page to follow:

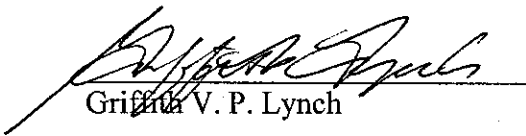
IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the 26th
day of May, 2005.

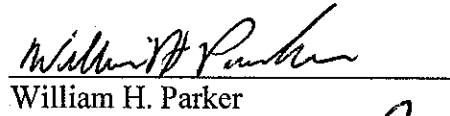
EMPLOYER TRUSTEES:

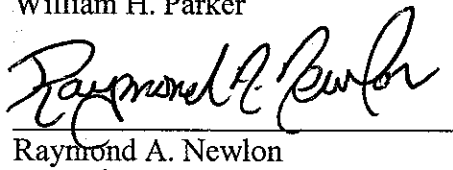

Roger J. Giesinger


George H. Brown


Thomas P. Dushatinski

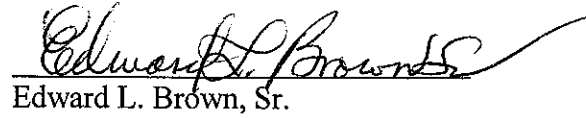

Griffith V. P. Lynch


William H. Parker

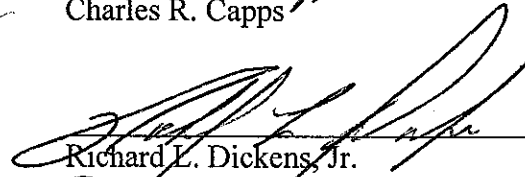

Raymond A. Newlon

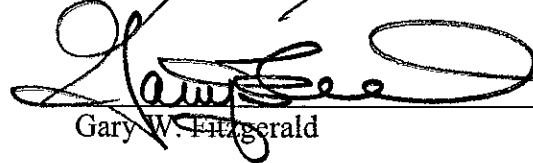

M. Lynn Tarkenton

EMPLOYEE TRUSTEES:

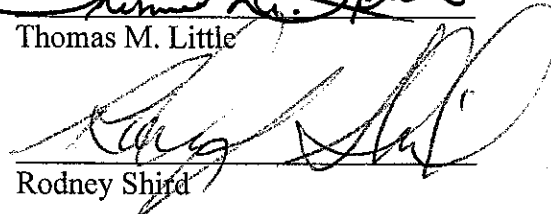

Edward L. Brown, Sr.


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Edward R. Ward