

**RESTATED AGREEMENT
AND DECLARATION OF TRUST
OF THE HEALTH AND
WELFARE DEPARTMENT OF
THE CONSTRUCTION AND
GENERAL LABORERS'
DISTRICT COUNCIL
OF CHICAGO AND VICINITY**

Restated through
July 1, 2003



ARTICLE VI EMPLOYER CONTRIBUTIONS

Section 1. IN GENERAL. In order to fund the Benefits provided for by this Agreement each Employer, for the period that it is obligated by a Written Agreement, shall make contributions to the Trustees pursuant to regulations established by the Trustees at the time required by that agreement. The rate of contributions shall be determined by the applicable Collective Bargaining Agreements or Participation Agreements, together with any amendments supplements or modifications thereto. Notwithstanding the preceding sentence, if an Employer is required to make contributions by reason of a Participation Agreement or other Written Agreement that is not a Collective Bargaining Agreement, the amount of its contributions shall be not less than the amount required by the Collective Bargaining Agreement in effect between the Employer Association and the Union having jurisdiction over the geographic area in which the covered Employees perform their work. No Employee shall be permitted to contract or otherwise agree with or permit his Employer to provide wage or benefit payments which do not conform with the amount of contributions required under the foregoing provisions of this Section and any such contract or agreement shall be null and void. It shall not be a defense to any claim by the Trustees or an Employee for payment of delinquent contributions from an Employer that such Employer had entered into an agreement with any Employee purporting to waive the Employee's right to strict compliance with the provisions of the applicable Collective Bargaining Agreement or a Participation Agreement. All contributions shall be paid in the manner and form required by the Trustees.

Section 2. DEFAULT IN PAYMENT OF CONTRIBUTIONS. Nonpayment by an Employer of any contributions when due shall not relieve any other Employer of his obligation to make payments. The Trustees may take any action necessary to enforce payment of the contributions and penalties due hereunder, including, but not limited to, proceedings at law and in equity. Any such action shall not prejudice the Union in any action it may wish to take on account of such nonpayment. The Trustees are authorized to establish a reasonable and lawful grace period by which contributions must be received; Employers making contributions that are not received before the expiration of said period and any Employer making late payments due under an installment agreement shall be assessed liquidated damages of 10% of the amount of the contributions which are owed. All Employers party to or otherwise bound by this Agreement acknowledge that the liquidated damages will be used to defer administrative costs arising by said delinquency and acknowledge the costs to be actual and substantial though difficult to ascertain; however the Employers acknowledge these costs to be at a minimum of 10% waiving the necessity of any additional proof thereof. In addition, the delinquent contributions and any payments by the Employer pursuant to an installment agreement, shall bear interest, up to the prime rate plus two points, charged by the Fund's custodian bank (or any other bank selected by the Trustees) or such other lawful amount as determined by the Trustees from the due date until totally satisfied. The Trustees are hereby given the power and authority, in their discretion, to assess a lesser amount or to waive or suspend payment of liquidated damages, interest, audit fees or investigative costs in accordance with rules and procedures adopted by the Collection Committee of the Board of Trustees and to compromise claims for delinquent contributions and related liabilities and collection costs where appropriate to settle cases favorably for the Welfare

Fund. The Collection Committee may include trustees of the Laborers' Pension Fund as members of such Collection Committee.

In the event an Employer party to this Agreement or otherwise bound thereby becomes delinquent in his contributions or an installment agreement, or fails to post a bond as required, or refuses to provide the records required to be kept by contributing employers or submit to an audit, said delinquent Employer shall be liable for reasonable attorneys' fees and for all reasonable costs incurred in the collection process, including but not limited to, court fees, audit fees and investigative costs. The term "reasonable attorneys' fees" as used herein shall mean all attorneys' fees in the amounts for which the Trustees become legally obligated for actions seeking delinquent contributions, to compel an audit, or for recovery of liquidated damages, audit costs, filing fees and any other expenses incurred by the Trustees.

The Trustees are hereby given the power and authority in their discretion, to require any Employer to deposit with the Trustees, in advance, as a guarantee for the payment of monthly contributions, an amount equal to three (3) times the monthly contributions of such Employer, as estimated by the Trustees. At the option of the Trustees the Employer shall furnish the Trustees in lieu of any cash deposit a bond in an amount not less than Five Thousand Dollars (\$5,000.00), or in an amount consistent with the terms of the current Collective Bargaining Agreement to which the Employer is subject. In the event an Employer is repeatedly delinquent in its contribution payments to the Welfare Fund, the Trustees have the power and authority to require that Employer to purchase a bond in excess of \$5,000.00 or the amounts set forth in the current Collective Bargaining Agreements in an amount equal to three (3) times the highest monthly contributions of the Employer in the twelve months prior to any delinquency. The Trustees, in their discretion, may also waive the requirement of a cash deposit or a surety bond in lieu of a personal guaranty when such waiver is warranted.

Section 3. REPORT ON CONTRIBUTIONS AND PRODUCTION OF RECORDS.

The Employers shall make all reports on contributions required by the Trustees. Each Employer shall promptly furnish to the Trustees, on demand, the names of its employees, their social security numbers, the hours worked by each employee, and such other information as the Trustees may reasonably require in connection with the administration of the Trust. The Trustees may at any time have an audit made by an independent accounting firm of the payroll of any Employer in connection with the said contributions and/or reports. All Employers shall be required to maintain records in compliance with procedures from the beginning of such Employer's participation in the Trust until given written authorization by the Administrator, upon request, to destroy said records. The Administrator shall require the Employer to designate the classification of all of his employees and if the Employer fails to do so, the Trustees shall conduct an investigation for the purpose of determining the classification of such employees and the results of said investigation shall be conclusive. Attached hereto as Addendum A are the current collection policies concerning the Scheduling of Audits and Retention and Production of Employer Records adopted by the Trustees.

ADDENDUM A

RECORDS REQUIRED TO BE RETAINED BY EMPLOYERS AND PRODUCED FOR AUDITS

The following records shall be maintained and retained by all contributing employers to the Benefit Funds for at least six years from the contribution date and shall be produced for inspection and copying by an auditor of the Benefit Funds upon written request:

1. Quarterly and annual payroll tax returns, including, but not limited to, federal quarterly form 941's, federal annual form W-2's, W-3's, 940's, 1099's and state quarterly unemployment returns (form UC-3).
2. Payroll journals and/or registers which include or identify employees' social security numbers, hourly rates of pay, hours worked and the time period in which the work was performed.
3. Individual earnings records for all employees of the employer not shown on payroll journals or registers, including social security number and work classification (or code or clock or ID number), hourly rates of pay, hours worked and the time period in which the work was performed.
4. Cash disbursement journals and general ledgers.
5. Copies of all contribution reports and proof of payment (canceled checks or records of canceled checks) of all contributions to the Laborers' Funds and to all other trade union fringe benefit funds to which the employer contributed.
6. Copies of all dues records and proof of payment (canceled checks or records of canceled checks) of all union dues submitted to the Laborers' District Council.
7. Records showing all amounts paid to all persons or entities that performed work for the employer as independent contractors or subcontractors, if any, including copies of any federal form 1099's issued by the employer.
8. Daily time records filed by employees or supervisors.
9. Source documents and lists of job codes and equipment codes.
10. Certified payrolls for public sector jobs where such payrolls are required.
11. Employee personnel files including, but not limited to, last known addresses and telephone numbers, any documents which demonstrate employees' job classifications and/or status as an apprentice, journeyman, foreman, superintendent, or supervisor. (Confidential medical records or other private records not relevant to the establishment of an employee's job classification shall not be disclosed.)

12. Bank account statements and canceled checks from any account used in conjunction with the employer's business.

13. If records of all hours worked, rates of pay and classifications are not provided in the records listed in items 1 through 10, the employer shall maintain monthly lists of all employees not shown on payroll records, showing Social Security number and work classification (or code or clock or ID number), rates of pay and hours worked.

Honor Roll Employers shall be required only to produce basic records needed by the Benefit Funds' auditors to do an audit, specifically items 1 through 7 above. However, if an initial examination of such limited records discloses significant record keeping errors or failures to contribute, the auditor may request additional records listed above. In the absence of evidence of a deliberate failure by an Honor Roll Employer to contribute on behalf of a bargaining unit employee, the rebuttable presumptions provided for in the attached Policy for Retention and Production of Employer Records shall not apply to such Honor Roll Employer.

Notwithstanding the foregoing, the Collection Committee or the Director of the Field Department may, in their discretion, determine that a full audit shall be done of any employer or that, where a sampling audit is to be conducted, specific records shall be produced. The judgment of the trustees in interpreting and applying this policy shall be conclusive and binding on all parties.

Adopted January 9, 2002

LABORERS' PENSION AND WELFARE FUNDS

POLICY FOR RETENTION AND PRODUCTION OF EMPLOYER RECORDS

As Adopted by the Boards of Trustees
Effective as of April 1, 2006

WHEREAS, Section 209 of the Employee Retirement Income Security Act of 1974 , as amended ("ERISA"), 29 U.S.C. Section 1059, requires employers obligated to contribute to employee benefit funds to maintain records with respect to its employees which are sufficient to determine benefits due to such employees of which may become due to them; and

WHEREAS, the Trustees of the Laborers' Pension Fund and the Trustees of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (collectively, the "Benefit Funds") have the authority under their respective Trust Agreements to establish rules, regulations and policies regarding records which must be maintained by employers in order to administer the Benefit Funds; and

WHEREAS, the Trustees of the Benefit Funds have found that most contributing employers maintain proper records and make all required contributions to the Benefit Funds, nevertheless, there are employers who are bound by the Trust Agreements of the Benefit Funds who fail to maintain records which are adequate for the Funds to determine whether proper contributions have been made on behalf of eligible employees and that some of such employers do so deliberately in order to avoid their obligations to make such payments; and

WHEREAS, the practices of employers who fail to maintain records sufficient to enable the Benefit Funds to conduct thorough payroll audits cause their employees to lose valuable pension and welfare benefits and cause the Benefit Funds to lose contractually required contributions and investment earnings on those contributions; and

WHEREAS, the practices of employers who fail to maintain adequate records cause the Benefit Funds to incur substantial additional administrative and legal expenses in order to determine proper amounts owed to the Funds by such employers; and

WHEREAS, enforcement of a policy specifying the records required to be maintained and produced increases the ability of the Funds to prove the contributions owed by delinquent employers and thereby to provide proper credit to the employees and their beneficiaries;

NOW THEREFORE, the Trustees resolve that the following policies are adopted by the Benefit Funds effective as of March 1, 2002:

1. Except as otherwise provided herein, all contributing employers to the Benefit Funds shall maintain and make available for inspection and copying by an auditor of the Benefit Funds the records listed on Appendix A, attached hereto.

2. Any employer obligated to contribute to the Benefit Funds who fails to maintain and make available for inspection and copying to an auditor of the Benefit Funds the requisite records listed on Appendix A shall bear the burden of proof with respect to the exclusion of any employee from coverage by the collective bargaining agreement with the Union. In those cases where an employer asserts that an employee is excluded because he/she is a member of another bargaining unit, the employer must submit tangible evidence of that fact, e.g., a union membership card, contribution records maintained for the benefit funds of the other bargaining unit, commercial drivers' license if it is asserted that an employee is a truck driver rather than a laborer and workers' compensation policies, forms and applications listing an employee's job classification or other business records. The affidavit of an employer's representative or officer unsupported by documentary evidence shall not be sufficient to meet the employer's burden of proof. Affidavits solicited and obtained ex parte by an employer's representative from employees, for which there is no corroborative evidence in the form of records maintained in the ordinary course of business, shall not be sufficient to meet the employer's burden of proof.

3. When an employer has failed to maintain or make available the requisite records, there shall be a rebuttable presumption that any employee listed as a possible laborer by an auditor, Field Representative or attorney representing the Benefit Funds was a laborer. There shall also be rebuttable presumptions concerning the hourly rate and number of hours worked as follows: (a) that the employee was paid only \$10.00 per hour if no record of wage rates was made by the employer, and/or (b) that the employee worked 72 hours per week if no record of the number of hours was maintained; whichever of these presumptions results in the higher amount of contributions shall be applied. When evidence exists that a different hourly rate was paid to employees of an employer that failed to maintain the required records, at the discretion of the Director of the Field Department, a different hourly rate may be presumed for purposes of determining the amount of contributions owed by the employer. If that evidence shows that the employer paid a rate lower than \$10.00 per hour to any employees doing bargaining unit work, then that lower rate shall be presumed to be the actual rate paid to all employees for whom adequate records were not kept. Similarly, where evidence exists of a different number of hours worked, the Director may apply a different number of hours for determining the contributions owed, and this number of hours worked shall be presumed correct. All wages computed as provided in this paragraph shall be presumed to be paid as straight time wages regardless of the number of hours worked unless the employer has provided documentation, in the form required by the terms of this policy, showing that it followed the requirements of the Fair Labor Standards Act and/or the applicable collective bargaining agreement as to the payment of overtime.

4. An employer that fails to maintain the requisite records and fails to cooperate with the Trustees in establishing the paid wage rates, actual hours of work and contributions owed to the Benefit Funds shall be liable to the Benefit Funds and any related organizations, for the contribution amounts determined as provided herein and also for 20% liquidated damages, compound interest at the rate of prime plus 2 points (as determined by the Administrator), auditor's and attorney's fees and any other expenses of collection including investigative costs.

LABORERS' PENSION AND WELFARE FUNDS

POLICY FOR SCHEDULING OF AUDITS

As Adopted by The Boards of Trustees
Effective as of April 1, 2006

Contributing employers to the Laborers' Pension Fund and the Health and Welfare Department of Construction and General Laborers' District Council of Chicago and Vicinity (collectively, the "Benefit Funds"), shall be audited periodically in accordance with the procedures adopted by the Collection Committee of the Benefit Funds. The Director of the Field Department, in cooperation with the Benefit Funds' auditors, shall prepare a schedule for auditing contributing employers in accordance with the following procedures.

Two types of audits shall be conducted: "full audits" in which payroll and other records on all employees are examined and "sampling audits" in which a selection of payroll and other records are tested to enable the compliance auditor to make a reasonable determination that there are no delinquencies. A sampling audit should include a review of all types of records (e.g. payroll records, tax records, cash disbursement records, reports to other benefit funds, etc.) Where a sampling audit discloses delinquencies or related record discrepancies, a full audit shall be conducted.

Employers shall be scheduled for either full audits or sampling audits in groups based upon the contribution histories of the employers. Either a sampling or full audit shall be conducted at least once every five (5) years. Any employer that fails to schedule an audit and submit records for review within 45 days from the date of the audit request will be liable for all costs of compelling and enforcing the audit request. The following procedures shall be used:

AUDIT PERIOD

1. **New Employers.** New employers shall be scheduled for audits within the first year in which contributions to the Benefit Funds are required.

2. **Honor Roll Employers.** Employers with a history of adequate record keeping and timely payments to the Benefit Funds ("Honor Roll Employers"), shall be required to submit to audits every three (3) to five (5) years. Following an audit showing adequate record keeping and correct payments, such an employer shall be designated an Honor Roll Employer and shall be selected randomly for an audit between the third and fifth year thereafter. (Such employers may opt for a scheduled audit every three years.) An inadvertent shortage of no more than the greater of \$1000 or two percent (2%) of required contributions determined on a full audit covering three or more years of contributions to the Benefit Funds shall not disqualify an employer from inclusion in this group.

3. **Other Contributing Employers.** Employers that are not classified as New or Honor Roll Employers or who have been assessed significant delinquencies to the Benefit Funds or any of the ancillary funds to which contributions are owed pursuant to the collective bargaining agreements of the Laborers' District Council shall be scheduled for full audits at least once every three (3) years.

4. Employers Subject to Special Audits. At the discretion of the Director of the Field Department full audits of employers obligated to contribute to the Benefit Funds may be conducted at any time based upon information concerning possible delinquencies, e.g., failure to file monthly remittance reports, failure to pay contractually required wage rates, information concerning a possible closing or sale of the business, information that the employer is operating an alter ego or similar bases suggesting possible delinquencies.

FULL AND SAMPLING AUDITS

1. New Employers. If there is a sufficient number of employees of a New Employer, the auditor of the Benefit Funds may do a sampling audit to determine if the employer is maintaining accurate records and making required contributions, otherwise the auditor will do a full audit. An important purpose of audits for new employers is to inform employers of the procedures for contributing to the Benefit Funds and the requisite records to be maintained. *

2. Honor Roll Employers. Sampling audits shall be used for Honor Roll Employers if they have sufficient employees to warrant use of sampling methods. If a sampling audit discloses inaccurate or incomplete record keeping or evidence of significant delinquencies, a full audit shall be done.

3. Other Contributing Employers. Full audits shall be conducted if employers are not qualified as New or Honor Roll Employers.

4. Notwithstanding the foregoing, the Collection Committee or the Director of the Field Department may, in their discretion, determine that a full audit shall be done of any employer or that, where a sampling audit is to be conducted, specific records shall be produced.*

* For information concerning the requisite records to be maintained, see the Laborers' Pension and Welfare Funds Policy for Retention and Production of Employer Records, effective as of April 1, 2006 and the Records Required to be Retained By Employers and Produced for Audits adopted January 9, 2002.

AMENDMENT TO THE
RESTATED AGREEMENT AND DECLARATION OF TRUST
OF THE HEALTH AND WELFARE DEPARTMENT OF THE CONSTRUCTION AND
GENERAL LABORERS' DISTRICT COUNCIL OF CHICAGO AND VICINITY

WHEREAS, Article XI of the Restated Agreement and Declaration of Trust ("Trust Agreement") provides that the Board of Trustees of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity ("Fund") have the authority to amend the Trust Agreement;

WHEREAS, Article IV of the Fund's Trust Agreement sets forth the powers and duties of the Trustees;

WHEREAS, the Trustees have an obligation to protect the interests of the Plan's Participants and to protect the assets of the Fund;

WHEREAS, the Trustees are aware of situations in which contributing Employers have ceased business operations leaving a large indebtedness to the Fund without a reasonable likelihood of the Fund collecting such delinquent contributions;

WHEREAS, the individual officers and owners of some Employers have secured jobs knowing that they will not comply with their legal obligations to the Fund by keeping accurate records of their laborer employees' employment and make all the required contributions to the Fund; and

WHEREAS, such illegal conduct causes substantial losses to the Fund and deprives Employers who comply with its obligations to the Fund of opportunities to secure employment for their laborer employees; and

WHEREAS, the individual officers, partners or owners of some contributing Employers have used various entities to avoid liability to the Fund for contributions that would otherwise be due and then created new companies in order to continue to operate using such illegal practices;

WHEREAS, in some instances such individual officers or owners have accepted employment as a supervisor or manager with another contributing Employer and been responsible for causing such Employers to fail to comply with their obligations to keep accurate records and make all required contributions;

WHEREAS, the Trustees have determined that certain individuals and entities (as hereinafter defined "Deadbeat Employers") who engage in these practices willfully or with reckless disregard for their legal obligations or with repeated incompetence at the expense of their employees and the Fund have caused the Fund to incur large financial losses and employees to lose benefit coverage for which they had worked;

WHEREAS, the Trustees have concluded that such Deadbeat Employers' practices result in unfair competition for other contributing Employers often with the result of enriching themselves and depriving lawful Employers of needed work, and depriving the Fund's participants of benefits;

WHEREAS, it is the desire of the Trustees to amend the Trust Agreement in order expressly to provide that the Fund may impose appropriate protective financial requirements on any Employer that is owned by or that hires a Deadbeat Employer in a managerial or supervisory role;

NOW THEREFORE, the undersigned Trustees of the Fund, pursuant to the authority of Article XII of the Restated Agreement and Declaration of Trust, do hereby adopt the following Amendment to the Restated Agreement and Declaration of Trust effective as of August 1, 2006:

I.

The following is added as an additional Paragraph under Article I, "Certain Definitions", Section 2, "Employer":

"A "Deadbeat Employer" is defined as any entity or individual (including, but not limited to a corporation, partnership, or sole proprietorship and its respective officers, partners or owners) who have, or previously had in the last 10 years, incurred substantial liability to the Fund for delinquent contributions and then ceased operations or became insolvent, without satisfying such substantial liability and without any reasonable likelihood of paying the amounts due to the Fund. For purposes of this Section, substantial liability shall not be less than \$30,000."

II.

The following is added as Section (4) to Article VI, "Employer Contributions":

"Section 4. ADDITIONAL REQUIREMENTS FOR DEADBEAT EMPLOYERS.

(a) EMPLOYER OWNED BY DEADBEAT EMPLOYER. Subject to the provisions of subsection (c) and following 30 days after receipt by the Employer of the Notice described therein, any Employer that is owned, whether in whole or in part, by a Deadbeat Employer shall be deemed by the Fund as a successor employer to the Deadbeat Employer for purposes of the delinquent contribution obligations of the Deadbeat Employer to the Fund and shall (i) be liable to the Fund for the unpaid liabilities of the Deadbeat Employer and (ii) be required to post a bond for the benefit of the Fund in an amount equal to twice the amount of the Deadbeat Employer's prior delinquencies to the Fund.

(b) EMPLOYER OPERATED BY DEADBEAT EMPLOYER. Subject to the provisions of subsection (c) and following 30 days after receipt by the Employer of the Notice described therein, any Employer whom the Trustees reasonably believe employs an officer, partner or owner of a Deadbeat Employer in a managerial or supervisory position or in any other responsible position in which the Deadbeat Employer may exercise any control over the assets of

the Employer or contribution obligations of the Employer to the Fund shall be deemed by the Fund as a successor employer to the Deadbeat Employer for purposes of the delinquent contribution obligations of the Deadbeat Employer to the Fund and shall (i) be liable to the Fund for the unpaid liabilities of the Deadbeat Employer and (ii) be required to post a bond for the benefit of the Fund in an amount equal to twice the amount of the Deadbeat Employer's prior delinquencies to the Fund.

(c) PROCEDURES BY WHICH AN EMPLOYER MAY AVOID LIABILITY UNDER THIS SECTION. The Fund shall send written notice (the "Notice") to any Employer whom the Trustees reasonably believe, is owned, in whole or part by a Deadbeat Employer, or who employs an officer, partner or owner of a Deadbeat Employer in a managerial or supervisory position or in any other responsible position in which the Deadbeat Employer may exercise any control over the assets of the Employer or contribution obligations to the Fund. The Notice will provide the Employer with a date certain, no less than 30 days after the date of transmittal of the Notice to the Employer, to provide evidence, satisfactory to the Trustees, that the Employer should not be subject to the provisions of subsections (a) or (b), as applicable, as the Employer deems appropriate in order to avoid liability under this Section. Any Employer, following the date set forth in the Notice from the Fund, who does not provide such satisfactory evidence to the Trustees, shall be subject to the obligations set forth in subsections (a) or (b), as applicable. Any Employer who employs an officer or owner of a Deadbeat Employer in a non-managerial or non-supervisory position or in any other position in which the Deadbeat Employer does not exercise any control over the assets of the Employer or contribution obligations to the Fund will not be considered a successor employer and will not be required to post the bond described in this Section.

(d) MISCELLANEOUS PROVISIONS. The bond referenced in this Section shall be in addition to any other bond requirements set forth in the Written Agreement. The Trustees shall have discretion to waive the additional bond requirement or to reduce the amount of the bond, when, based on the specific circumstances, the Trustees determine it is reasonable to do so. Whenever a family member of a Deadbeat Employer purportedly has an ownership interest of an Employer that employs an officer, partner or owner of a Deadbeat Employer, there will be a rebuttable presumption that the Deadbeat Employer has substantial control over the assets of that Employer."

III.

Except as hereinbefore amended, the Trust Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the undersigned Trustees have caused this Amendment to be executed on the dates appearing opposite their respective names.

Charles J. Gallagher
CHARLES J. GALLAGHER DATE

James P. Connolly 9/19/06
JAMES P. CONNOLLY DATE

Alan C. Esche 9/19/06
ALAN ESCHER DATE

Randy Dalton 9/19/06
RANDY DALTON DATE

Richard E. Grabowski 9/19/06
RICHARD E. GRABOWSKI DATE

Martin Flanagan 9-19-06
MARTIN FLANAGAN DATE

David H. Lorig 9/19/06
DAVID H. LORIG DATE

Liberato Naimoli 9/19/06
LIBERATO NAIMOLI DATE

Dennis Martin 9/19/06
DENNIS MARTIN DATE

Scott Pavlis 9/19/06
SCOTT PAVLIS DATE

Tim J. Scully 9/19/06
TIM J. SCULLY DATE

Frank Riley 9/19/06
FRANK RILEY DATE

INSTALLMENT NOTE

Installment Note ("Note") is made between the Fox Valley Laborers' Health and Welfare Fund ("Welfare Fund") and the Fox Valley Laborers' Pension Fund ("Pension Fund") (collectively the "Fox Valley Funds") on its own behalf and on behalf of the Laborers' Pension Fund and Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (collectively the "Laborers' Funds") and the Construction and General Laborers' District Council of Chicago and Vicinity (hereinafter the "District Council")(Fox Valley Funds, Laborers' Funds and District Council collectively referred to as the "Funds") and Brewer Concrete Construction, Inc. (the "Company"), and Scott Brewer ("Brewer").

WHEREAS, the Company has at all relevant times been a party to a collective bargaining agreement (the "CBA") with the Construction and General Laborers' District Council of Chicago and Vicinity, the terms of which obligate the Company to make contributions to the above referenced Fox Valley Funds and Laborers' Funds on behalf of its covered employees, and to remit payment of all employee union dues to the District Council;

WHEREAS, the Company has failed to timely pay certain contributions owed to the Fox Valley Funds for the period of December 2006 through June 2007 and to the Laborers' Funds for May 2007 through June 2007;

WHEREAS, as a result of its delinquencies to the Fox Valley Funds, the Fox Valley Funds filed a lawsuit (hereinafter "lawsuit") captioned in Shales, et al. v. Brewer Concrete Construction, Inc., et al., Case No. 07 C 2290 in the United States District Court for the Northern District of Illinois;

WHEREAS, the Company desires to settle the Fox Valley Funds lawsuit and to pay the contribution amounts calculated to be owed to the Fox Valley Funds and the Laborers' Funds for all delinquencies owed through June 2007, together with costs, interest, liquidated damages, and attorneys' fees as set forth below; and the Fox Valley Funds and the Laborers' Funds have agreed to pursue the delinquencies owed to each of them collectively;

THE PARTIES AGREE AS FOLLOWS:

1. The Company and Brewer will pay a total amount of \$45,876.37 to the Fox Valley Funds and \$72,561.37 to the Laborers' Funds (\$118,437.74 collectively referred to as the "Delinquent Amounts") plus accruing interest, comprised of the following:

	<u>Fox Valley Funds</u>
Contributions (12/06-06/07)	\$ 34,485.53
Liquidated Damages (20%)	\$ 6,897.11
Attorneys fees and costs	<u>\$ 4,493.73</u>
Total	\$ 45,876.37



	<u>Laborers' Funds</u>
Welfare (05/07-06/07)	\$27,241.72
Pension (05/07-06/07)	\$18,435.38
MARBA (05/07-06/07)	\$ 130.20
Training (05/07-06/07)	\$ 678.17
Cisco (05/07-06/07)	-
Subtotal	<u>\$46,485.47</u>
Liquidated Damages @ 20%	\$ 9,271.05
Interest	\$ 93.53
Accumulated Penalties - Pension	\$ 66.67
Attorneys Fees & Costs @ 7/5/07	<u>\$16,644.65</u>
Total	\$72,561.37

2. The Company and Brewer will make an initial down payment ("down payment") totaling \$33,753.13, payable on September 5, 2007 and September 15, 2007, as follows: Company and Brewer will make one payment of \$13,000.00, which shall be payable to the Fox Valley Funds and remitted for receipt by September 5, 2007; and Company and Brewer shall make a second payment totaling \$20,753.13, to be divided between the Funds so that \$9,422.97 shall be payable to the Fox Valley Funds and \$11,330.16 shall be payable to the Laborers' Funds, both payments to be received by September 17, 2007. All payments referenced in this Paragraph 2 to be collectively referred to as the "down payment." All subsequent payments under this Note for the balance due to the Fox Valley Funds and the Laborers' Funds, shall be payable as set forth in Paragraph 3.
3. The Company and Brewer, in addition to the down payment described in Paragraph 2 above, shall make twelve (12) consecutive equal monthly installments of \$2,165.50 to the Fox Valley Funds and twelve (12) consecutive equal monthly installments of \$5,196.35 to the Laborers' Funds, both payments commencing on October 15, 2007, and continuing through September 15, 2008, according to the following schedule:

	<u>FOX VALLEY FUNDS</u>	<u>LABORERS' FUNDS</u>
October 15, 2007	\$2,165.50	\$5,196.35
November 15, 2007	\$2,165.50	\$5,196.35
December 15, 2007	\$2,165.50	\$5,196.35
January 15, 2008	\$2,165.50	\$5,196.35
February 15, 2008	\$2,165.50	\$5,196.35
March 15, 2008	\$2,165.50	\$5,196.35
April 15, 2008	\$2,165.50	\$5,196.35
May 15, 2008	\$2,165.50	\$5,196.35
June 15, 2008	\$2,165.50	\$5,196.35
July 15, 2008	\$2,165.50	\$5,196.35

August 15, 2008	\$2,165.50	\$5,196.35
September 15, 2008	\$2,165.50	\$5,196.35

4. The Company and Brewer will remit all payments due under this Agreement as follows: all payments to the Fox Valley Funds shall be remitted to the Fox Valley Funds' attorneys, Dowd, Bloch & Bennett, 8 South Michigan Avenue, Suite 1900, Chicago, IL 60603; and all payments to Laborers' Funds shall be remitted directly Laborers' Funds, c/o Jim Fosco, 11465 Cermak Road, Westchester, Illinois, 60154.
5. Payments made pursuant to this Installment Note shall be considered "contributions" as defined under the terms of the CBA between the Company and the Funds' respective Agreements and Declarations of Trust. In the event the Company and Brewer fail to pay its contributions due to any of the Funds, all contributions to all Funds shall be considered delinquent and all charges which apply to the late payment of contributions under the terms of the CBA and the Funds' respective Agreements and Declaration of Trusts shall apply, including, but not limited to the assessment of interest and liquidated damages. Further, in the event the Company and Brewer fail to make timely payments described in this Note, all amounts described in paragraph 1 shall immediately become due on the 1st day following the date on which payment should have been received under this Note and the Company and Brewer further agree to pay all attorneys' fees and costs incurred by the Funds in any action to enforce any part of this Installment Note.
6. The Installment Note is conditioned upon the Company staying current on its obligations to each of the Funds under the terms of the CBA and the Funds' respective Agreements and Declaration of Trust. In the event that the Company fails to maintain its obligations under the terms of the CBA and the Funds' respective Agreements and Declaration of Trusts, including but not limited to its obligations to submit timely contribution reports and to make timely contributions required by the CBA, the Funds shall have the right to accelerate and collect all amounts due to all Funds under this Installment Note, plus payment of all attorneys' fees and costs incurred in any action to accelerate this Installment Note. Furthermore, notwithstanding any right to accelerate payment against the Company, the Funds may also enforce the terms of this Note against the individual guarantor who is jointly and severally liable with the Company under the terms of this Note.
7. The Funds' remedies under this Note shall be cumulative and concurrent and may be pursued singly, successively, or together against the Company and Brewer and the Funds may resort to every other right or remedy available at law or in equity. Failure of the Funds to accelerate the maturity of this Note shall not constitute a waiver of the right to exercise such option. The Funds shall not by any other omission or act be deemed to waive any of its rights or remedies hereunder unless such waiver is in writing and signed by the Funds, and then only to the extent specifically set forth therein. A waiver in connection with one event shall not be construed as continuing or as a bar to or waiver of

- any right or remedy in connection with a subsequent event or by any other Fund.
8. Should the Funds extend the time of payment of any amounts due under this Note such extension shall not modify or release any liability of the Company or individual guarantor under this Note or any rights of recourse the Funds may have against them.
 9. The Company shall have the right to prepay the entire amount due under this Note prior to the date upon which the payment is due without penalty and without payment of any precalculated Note interest that has not accrued as of the date full payment has been made.
 10. The Company and Brewer understand and agrees that this Installment Note is based on reports submitted by the Company to each of the Funds and that each of the Funds reserve the right to conduct an audit to determine benefit contribution compliance for any unaudited period, including periods covered under this Note and to collect any unpaid contributions, union dues, interest, liquidated damages, and audit costs as shown in the audit.
 11. The Company further agrees to obtain and maintain a surety bond in favor of the Funds to insure the payment of wages and benefit contributions as required under the terms of the CBA.
 12. To secure this Note, the Company and Brewer agree to execute a continuing security agreement in favor of the Funds named herein and that said agreement shall continue until all obligations under this Note and the CBA, are satisfied.
 13. The Company and Brewer acknowledge that nothing in this Note shall cover delinquencies beyond the work month of June 2007 and that the Company's obligations to remit contributions/union dues and reports when due pursuant to the CBA shall continue. The failure of the Company to timely remit contributions/union dues and reports for any month including July 2007, shall constitute a breach of this Note and all the terms as set forth in Paragraph 5 above shall be applicable in such a case.
 14. The Funds shall have a right to apply all payments under this Note as they determine regardless as to whom the payment is designated.
 15. The Company and Brewer agree that they shall be responsible for payment of any additional attorneys fees incurred by the Funds as a result of their effort to enforce the terms of this Note and/or to collect any sums that may be due under the Note.
 16. A faxed copy shall be as valid as an original.

APR-08-2008 02:44PM FROM-FV LABORERS

APR-09-2008 10:04AM FROM-FV LABORERS

047 022 1224;

Apr-9-08 2:41PM;

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T-587 P.008/008 F-232

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09/18/2007 15:48 312372539

BREWER CONCRETE

DAVID BLOCH & BENNETT

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The Districts are in agreement with the above and signify by signing below:

On behalf of the Fox Valley Laborers Health & Welfare and Pension Funds:

By: [Signature] Date: 4/9/08

By: [Signature] Date: 4/9/08

On behalf of Brewer Concrete Construction, Inc.:

By: [Signature] Date: 9/10/07

Name: Scott Brewer

Title: President

Individual Guarantor:

By: [Signature] Date: 9/10/07

Name: Scott Brewer

Home Address: 321 E 15th St,
Chicago, IL 60616

RECEIVED
APR -9 2008
F.V. LABORERS

GUARANTY OF PAYMENT AND INDEMNIFICATION

This Guaranty ("Guaranty") is made as of _____ by the undersigned, Scott Brewer, (the "Guarantor"), to and for the benefit of the Fox Valley Laborers' Health and Welfare Fund ("Welfare Fund") and the Fox Valley Laborers' Pension Fund ("Pension Fund") (collectively the "Fox Valley Funds") on its own behalf and on behalf of the Laborers' Pension Fund and Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (collectively the "Laborers' Funds") and the Construction and General Laborers' District Council of Chicago and Vicinity (hereinafter the "District Council")(Fox Valley Funds, Laborers' Funds and District Council collectively referred to as the "Funds").

WHEREAS, **Brewer Concrete Construction, Inc. (the "Company")**, has agreed to pay a total of **\$118,437.74** to the Funds for delinquent contributions and other sums owed to the Funds and to be paid under the terms of an Installment Note (the "Note").

WHEREAS, the Funds are unwilling to enter into the Note unless the guarantor executes this Guaranty; and

WHEREAS, the Guarantor has a financial interest in the Company and will be benefitted by the Note;

NOW WHEREAS, in consideration of the foregoing, the Guarantor agrees as follows:

1. Guaranty of Payment and Indemnification. The undersigned guarantees, absolutely and unconditionally: (a) the payment when due of the entire principal indebtedness and all interest evidenced by the Note during the twelve (12) month payment period including interest, liquidated damages for late or unpaid payments due on the Note; and (b) the full and complete payment of any and all fees and costs incurred pursuant to default under the terms of the Note; whether litigation is involved or not, and if involved, whether at the trial or appellate levels or in pre- or post- judgment bankruptcy proceedings in enforcing or realizing upon the obligations of the Guarantor hereunder (the obligations of Guarantor under this Paragraph 1 are collectively hereinafter referred to as the "Obligations"). The Guarantor also agrees to be personally liable for all monthly benefit contributions, union dues and/or wages owed from the Company to the Funds, the District Council, all ancillary funds, and/or the participants, that are due at the time the Note and Guaranty as entered into and/or are incurred and become due and owing for the duration of the Note, including all interest, liquidated damages, audit cost, attorneys' fees and costs.

2. Continuing Guaranty. This Guaranty shall be a continuing Guaranty, and shall not be discharged, impaired or affected by: (a) the existence or continuance of any obligation on the part of the Company with respect to the Note; (b) any forbearance or extension of time of payment of the Note; (c) the validity or invalidity of the Note; (d) any defenses whatsoever that the Company or any of the parties thereto may have to the performance or observance of any term, covenant or condition contained in the Note; (e) the existence or non-existence of the



Company as a legal entity; (f) any limitation or exculpation of (other than the payment and performance in full of all the Company's Obligations) that Guarantor may have as to his undertakings, liabilities and obligations hereunder, including any defenses based upon any legal disability of the Company or any discharge or limitation of the disability of the Company, whether consensual or arising by operation of law or any bankruptcy, insolvency or debtor-relief proceedings, or from any other cause, each and every such defense being hereby waived by the Guarantor.

3. Waivers. Guarantor waives diligence, presentment, protest, notice of dishonor, demand for payment, extension of time of payment, notice of acceptance of this Guaranty, non-payment at maturity and indulgences and notices of every kind as provided for under this Guaranty. It is the intention of this Guaranty that Guarantor shall remain liable as principal, notwithstanding any act, omission or thing which might otherwise operate as a legal or equitable discharge of Guarantor, until all of the Company's Obligations shall have been fully paid and performed.

4. Subrogation. Notwithstanding anything to the contrary elsewhere contained herein or in the Note, the Guarantor expressly waives with respect to the Company, any and all rights at law or in equity to subrogation, to reimbursement, to exoneration, to contribution, to set off or to any other rights that could accrue to a surety against a principal, to the Guarantor against a maker or obligor, to an accommodation party against the party accommodated, or to a holder or transferor against a maker, and which the guarantor may have or hereafter acquire against the Company in connection with or as a result of Guarantor's execution, delivery and/or performance of this Guaranty or the Note. The Guarantor agrees that he shall not have or assert any such rights against the Company or its successors and assigns or any other person (including a surety), either directly or as an attempted set off to any action commenced against the Guarantor, the Company (as borrower or in any other capacity) or any other person.

5. Independent Obligations. The Funds may enforce this Guaranty without first resorting to or without first having recourse to the Note; provided, however, that nothing herein contained shall preclude the Funds from suing on the Note or from exercising any other rights; and the Funds shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of any payment hereunder or enforcement thereof.

6. Acceleration. In the event that payments due under the Note shall be accelerated, the Guarantor's Obligations hereunder shall also be accelerated without further notice from the Funds.

7. Effect of Bankruptcy. This Guaranty shall continue in full force and effect notwithstanding the institution by or against the Company of bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or the disaffirmance of the Note in any such proceedings, or others.

8. Termination. This Guaranty shall remain in full force and effect as to the Guarantor until all of the Company's Obligations under the Note outstanding shall be finally and

irrevocably paid in full. Payment of all of the Company's Obligations from time to time shall not operate as a discontinuance of this Guaranty. If after receipt of any payment of all or any part of the Company's Obligations, the Funds are for any reason compelled to surrender such payment to any person or entity, because such payment is determined to be void or voidable as a preference, impermissible set off, or a diversion of trust fund, or for any reason, this Guaranty shall continue in full force notwithstanding any contract action which may have been taken by the Funds in reliance upon such payment, any such contrary action so taken shall be without prejudice to the Funds' rights under this Guaranty and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

9. The Company's Financial Condition. The Guarantor assumes full responsibility for keeping fully informed of the Company's financial condition and all other circumstances affecting the Company's ability to perform its Obligations, and the Funds will have no duty to report to Guarantor any information which the Funds receive about the Company's financial condition or any circumstances bearing on its ability to perform.

10. Expenses. The undersigned agrees to pay and reimburse the Funds for all costs and attorneys' fees, which they may expend or incur in the enforcement of this Guaranty or any of the Company's Obligations under the Note.

11. Delay, Cumulative Remedies. No delay or failure of the Funds to exercise any right to remedy against the Company or Guarantor will be construed as a waiver of that right or remedy. All remedies of the Funds against the Company and the Guarantor are cumulative.

12. Binding Effect. This Guaranty shall incur to the benefit of and may be enforced by the Funds, and shall be binding upon and enforceable against the Guarantor and the Guarantor's heirs, legal representatives, successors and assigns. In the event of the death of the Guarantor, Obligations of such deceased Guarantor shall continue in full force and effect against his estate, personal representatives, successors and assigns. Without limiting the generality of the foregoing, the Funds (or their successors and assigns) may from time to time and without notice to the undersigned, assign any and all of their rights under this Guaranty without in any way affecting or diminishing the Obligations of the undersigned hereunder, who shall continue to remain bound by the obligated to perform under the Note and with respect to this Guaranty as though there had been no such assignment.

13. Warranties. Guarantor makes to the Funds the following representations and warranties:

(a) Authorization. Guarantor has full right, power, and authorization to enter into this Guaranty and carry out his Obligations hereunder;

(b) No Conflict. The execution, delivery and performance by the Guarantor of this Guaranty will not violate or be in conflict with, results in a breach of, or constitute a default under, any indenture, agreement or any other instrument to which Guarantor is a party or by which Guarantor or any of his assets or properties is bound, or any order, writ, injunction or

decree of any court or governmental institute.

(c) Litigation. There are no actions, suits or proceedings pending or to the knowledge of the Guarantor, threatened against or adversely affecting any Guarantor at law or in equity or before or by governmental agency or instrumentality which involves any of the transactions herein contemplated, or the possibility of any judgment or liability which may result in any material and adverse change in the financial condition of any Guarantor. Guarantor is not in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court.

(d) Enforceability. This guaranty is a legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the rights of creditors generally.

14. Notices. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (I) delivered in person, (II) three (3) days after deposit in a regularly maintained receptor of the United States mail as registered or certified mail, postage prepaid, (III) when received if sent by private courier or service, or (IV) on the day on which Guarantor refuses delivery by mail or by private courier service, and (b) addressed as follows:

In Case of Guarantor:
Scott Brewer
3432 S. Normal Avenue
Chicago, IL 60618

In Case of the Fox Valley Funds:
Dowd, Bloch & Bennett
8 S. Michigan Avenue, 19th Floor
Chicago, IL 60603

In Case of the Laborers' Funds:
Laborers Pension & Welfare Fund
Attn: Patrick T. Wallace, Collection Counsel
Sub Office
53 W. Jackson Blvd., Suite 550
Chicago, IL 60604

or such other addresses as may from time to time be designated by the party to be addressed by notice to the other in the manner provided. The Funds will use their best efforts to send courtesy copies of notices provided hereunder to Guarantor's attorney should one be retained and information be provided for the attorney. But failure by the Funds to send courtesy copies to Guarantor's attorney shall not limit or restrict the Funds' rights under this Guaranty in any manner nor relieve Guarantor or any obligations under this guaranty.

16. Additional Waivers. Guarantor expressly and unconditionally waives, in connection with any suit, action or proceeding brought by the Funds on this Guaranty, any and every right he may have to (I) injunctive relief, (II) trial by jury, (III) interpose any counterclaim therein and (IV) seek to have the same consolidated with any other or separate suit, action or proceeding.

17. Severability. If all or any portion of any provision of this Guaranty is declared or found by a court of competent jurisdiction to be unenforceable or null and void, such provision or portion thereof shall be deemed stricken and severed from this Guaranty and the remaining provision and portions hereof shall continue in full force and effect.

18. Applicable Law, Venue. This Guaranty and the transactions evidenced hereby shall be construed and interpreted under the laws of the State of Illinois. Guarantor, in order to induce the Funds to accept this Guaranty and enter into the loan agreement, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees that all actions or proceedings arising directly, indirectly, or otherwise in connection with, out of, related to or from this Guaranty shall be litigated, at the Funds' sole discretion and election, only in courts having situs within the county of Cook, State of Illinois, Eastern Division. Guarantor hereby waives any right he may have to transfer or change venue or any litigation brought against him by the Funds on this agreement in accordance with this paragraph.

19. Time of the Essence. Time is of the essence of this Guaranty as to the performance of the undersigned.

20. Death of the Guarantor. In the event of the death of the Guarantor, the Funds shall have the right to accelerate the indebtedness evidenced by the Note unless, within sixty (60) days of his death, Guarantor's estate assumes his obligations hereunder by an instrument satisfactory to the Funds and delivers to the Funds security for performance of such obligations.

21. Copy. A faxed copy shall be as valid as an original.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this instrument as of the date and year first above written.

Name: Scott Brewer

Social Security Number: _____

APPROVED AS TO FORM AND SUBSTANCE
ON BEHALF OF THE GUARANTOR:

Signature: [Signature]

Date: 9/10/07

COMMERCIAL SECURITY AGREEMENT

A. PARTIES

1. Brewer Concrete Construction, Inc., (Referred to herein as "Company Debtor")
c/o Scott Brewer, President
3432 S. Normal Avenue
Chicago, IL 60616

Scott Brewer (Referred to herein as "Individual Debtor")
321 E. 17th Street
Chicago, IL 60616
(Company Debtor and Individual Debtor collectively referred to herein as "Debtors")
2. The Fox Valley Laborers' Health & Welfare and Pension Funds (the "Fox Valley Funds")
2400 Big Timber Rd., Building B, Suite 206
Elgin, IL 60123

Laborers' Pension Fund and Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (the "Laborers' Funds")
11465 Cermak Road
Westchester, IL 60154

Construction and General Laborers District Council of Chicago and Vicinity (the "District Council")
999 McClintock Drive, Suite 300
Burr Ridge, IL 60527
(Fox Valley Funds, Laborers' Funds, and District Council, collectively referred to herein as "Secured Party")

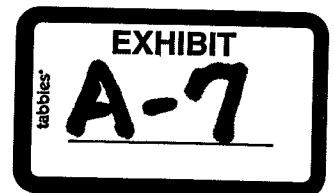
B. CREATION OF SECURITY INTEREST

Subject to the terms of this security agreement ("Agreement"), the Debtors grant to Secured Party a continuing security interest in the Collateral to secure the payment of the Obligation.

C. OBLIGATION

The obligation secured by this Agreement ("Obligation") is:

1. The Debtors' obligations to pay applicable union dues and fringe benefits under the terms of a collective bargaining agreement;
2. The Debtors' obligations under the terms of the Installment Note covering delinquencies to the Fox Valley Funds for the period December 2006 through June



- 2007 and to the Laborers' Funds for the period of May 2007 through June 2007;
- 3 All existing and future liabilities, of any kind, nature, or description, of Debtors to Secured Party arising out of any loan, labor contract, agreement, assignment, endorsement, guarantee, security agreement, federal law, or other transaction, regardless of any other collateral or security delivered or held in connection therewith;
 - 4 All costs incurred by Secured Party to obtain, preserve, or enforce this security interest, collect the Obligation, or maintain or preserve the Collateral, including (but not limited to) taxes, assessments, insurance premiums, repairs, reasonable attorneys' fees and legal expenses, rent, storage costs, and expenses of sale; and
 - 5 Interest and liquidated damages on the above amounts at the maximum rate permitted by law.

This is a continuing security agreement and will continue in effect even though all or any part of the Obligation is paid in full and even though for a period of time Debtors may not be indebted to Secured Party.

D. COLLATERAL

The property to which the security interest attaches under this Agreement ("Collateral") is:

1. All equipment, as that term is defined in the Illinois Uniform Commercial Code, now owned or hereafter acquired by Debtors;
2. All accounts, as that term is defined in the Illinois Uniform Commercial Code, now or hereafter in existence of Debtors;
3. All substitutes and replacements for, accessions, attachments, and other additions to, and tools, parts, accessories and supplies used in connection with, any property described in this Collateral section, now owned or hereafter acquired by Debtors;
4. All products and produce of any property described in this Collateral section;
5. All proceeds (including insurance proceeds) from the sale, destruction, loss or other disposition of any property described in this Collateral section;
6. All records and data (including, but not limited to, ledger sheets, files, documents, photographs, microfilm, microfiche, and electronic media) evidencing an interest in or relating to any property described in this Collateral section, together with all of Debtors' right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media; and

E. AGREEMENTS AND WARRANTIES OF DEBTORS

1. **Title.** Debtors represent and warrant to Secured Party that the Company-Debtor or Individual-Debtor or both Debtors hold good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement (and the same will be true of Collateral acquired hereafter when acquired), and that none of the Collateral is affixed to real estate or an accession to other goods, nor will Collateral acquired hereafter be affixed to real estate or an accession to other goods when acquired, unless Debtors have furnished Secured Party the consents or disclaimers necessary to make this security interest valid against persons holding interest in the real estate or other goods. No financing statement covering any of the Collateral is on file in any public office other than those that reflect the security interest created by this Agreement or to which Secured Party has specifically consented. Debtors shall defend Secured Party's rights in the Collateral against the claims and demands of all other persons.

2. **Enforceability of Collateral.** To the extent the Collateral consists of accounts, chattel paper, or general intangibles, the Collateral is enforceable in accordance with its terms, is genuine, and complies with applicable laws concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. At the time any account becomes subject to a security interest in favor of Secured Party, the account shall be a good and valid account representing an undisputed, bona fide indebtedness incurred by the account debtor for goods sold or services performed by Debtors, and there shall be no setoffs or counterclaims against any such account, and no agreement under which any deductions or discounts may be claimed shall have been made with the account debtor except those disclosed to Secured Party in writing.

3. **Perfection of Security Interest.** Debtors agree to execute such financing statements and to take whatever other actions are requested by Secured Party to perfect and continue Secured Party's security interest in the Collateral. Upon request of the Secured Party, Debtors will deliver to Secured Party any and all of the documents evidencing or constituting the Collateral, and Debtors will note Secured Party's interest upon any and all chattel paper if not delivered to Secured Party for possession by Secured Party. Debtors hereby appoint Secured Party as its irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect or continue the security interest granted in this Agreement. Secured Party may at any time, and without further authorization from Debtors, file a carbon, photographic or other reproduction of any financing statement or of the Agreement for use as a financing statement. Debtors will reimburse Secured Party for all expenses for the perfection and the continuation of the perfection of Secured Party's security interest in the

collateral.

4. **Collateral Schedules.** Debtors, as often as Secured Party may require, shall deliver to Secured Party, in form satisfactory to Secured Party a schedule of real properties and Collateral locations relating to Debtors' operations (including all subsidiaries and related companies), including without limitation the following: (a) all real property owned or being purchased by Debtors; (b) all real property being rented or leased by Debtors; (c) all storage facilities owned, rented, leased, or being used by Debtors; and (d) all other properties where Collateral is or may be located. Such schedule shall contain such information as Secured Party may require to identify the nature, extent, and location of Collateral (or to the extent the Collateral consists of intangible property such as accounts, the records concerning the Collateral). To the extent the Collateral consists of accounts, the schedule shall contain such information as Secured Party may require to identify the nature and age of accounts and the names of account debtors.
5. **Removal of Collateral.** Debtors shall keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts, the records concerning the Collateral) at Debtors' address shown above, or at such other locations as are acceptable to Secured Party. Except in the ordinary course of its business, including the sale of inventory, Debtors shall not remove the Collateral from its existing locations without the prior written consent of Secured Party. To the extent that the Collateral consists of vehicles or other titled property, Debtors shall not take or permit any action which would require application for certificates of title for the vehicle outside the State of Illinois, without the prior written consent of Secured Party.
6. **Transactions Involving Collateral.** Except for inventory sold in the ordinary course of Debtors' business, Debtors shall not sell, lease, manufacture, process, assemble, furnish under contracts of service, or otherwise transfer or dispose of the Collateral. While Debtors are not in Default under this Agreement, Debtors may sell inventory, but only in the ordinary course of its business and only to buyers who qualify as a buyer in the ordinary course of business. A sale in the ordinary course of Debtors' business does not include a transfer in partial or total satisfaction of a debt or any bulk sale. Debtors shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Secured Party, even if junior in right to the security interest granted under this Agreement. Debtors shall not allow the Collateral to become an accession to other goods or to become affixed to real estate. Unless waived by Secured Party, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Secured Party and shall not be commingled with any other funds; however, this requirement shall not constitute consent by Secured Party to any sale

or other disposition. Upon receipt, Debtors shall immediately deliver any such proceeds to Secured Party.

7. **Maintenance and Inspection of Collateral.** Debtors shall maintain all tangible Collateral in good condition and repair. Debtors will not cause or permit damage to or destruction of the Collateral or any part of the Collateral. Secured Party and its designated representatives and agents shall have the right at all reasonable times to examine, inspect, and audit the Collateral wherever located. Debtors shall immediately notify Secured Party of all occurrences affecting the Collateral or the value or amount of the Collateral, including, but not limited to, any loss of or damage to tangible Collateral, any request for credit or adjustment to any account, or any dispute arising with respect to any Collateral.
8. **Maintenance of Casualty Insurance.** Debtors shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Secured Party may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Secured Party and issued by a company or companies reasonably acceptable to Secured Party. Debtors, upon request of Secured Party, will deliver to Secured Party from time to time the policies or certificates of insurance in form satisfactory to Secured Party, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Secured Party and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Secured Party will not be impaired in any way by any act, omission or default of Debtors or any other person. In connection with all policies covering assets in which Secured Party holds or is offered a security interest, Debtors will provided Secured Party with such loss payable or other endorsements as Secured Party may require. If Debtors at any time fails to obtain or maintain any insurance as required under the Agreement, Secured Party may (but shall not be obligated to) obtain at Debtors' expense such insurance as Secured Party deems appropriate, including if it so chooses "single interest insurance," which will cover only Secured Party's interest in the Collateral.
9. **Application of Insurance Proceeds.** Debtors shall promptly notify Secured Party of any loss or damage to the Collateral. Secured Party may make proof of loss if Debtors fail to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Secured Party, to be distributed as follows: If Secured Party consents to repair or replacement of the damaged or destroyed Collateral, Secured Party shall, upon satisfactory proof of expenditure, pay or reimburse Debtors from the proceeds for the reasonable cost of repair or replacement. Any remaining proceeds shall be first applied toward the Obligation, with any balance distributed to Debtors. If Secured Party does not consent to repair or replacement of the Collateral, Secured Party shall

retain a sufficient amount of the proceeds to pay the Obligation, and shall pay the balance to Debtors.

10. **Insurance Reports.** Debtors, upon request of Secured Party, shall furnish to Secured Party reports on each existing policy of insurance showing such information as Secured Party may reasonably request, including the following: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured; (e) the then-current value on the basis of which insurance has been obtained and manner of determining that value; and (f) the expiration date of the policy. In addition, Debtors shall upon request by Secured Party have an independent appraiser satisfactory to Secured Party determine, as applicable, the cash value or replacement cost of the Collateral.
11. **Taxes, Assessments and Liens.** Debtors will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, this Agreement, and any promissory note or notes evidencing the Obligation and related documents executed in connection with the Obligation. Debtors may in good faith commence an appropriate proceeding to contest such tax, assessment, or lien, and may withhold payment during any such proceedings, including appropriate appeals, so long as, in Secured Party's sole opinion, Secured Party's interest in the Collateral is not jeopardized by such action. If the Collateral is subject to a lien which is not discharged within fifteen (15) days, Debtors shall deposit with Secured Party cash, a sufficient corporate surety bond or other security satisfactory to Secured Party in any amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Debtors shall defend itself and Secured Party, and shall satisfy any final adverse judgment before enforcement against the Collateral. Debtors shall name Secured Party as an additional obligee under any surety bond furnished in the contest proceedings.
12. **Compliance with Governmental Regulations.** Debtors shall comply with all laws, ordinances, rules, and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral. Debtors may in good faith commence an appropriate proceeding to contest such law, ordinance, rule, or regulation, and may withhold compliance during any such proceedings, including appropriate appeals, so long as, in Secured Party's sole opinion, Secured Party's interest in the Collateral is not jeopardized by such action.
13. **Indemnification.** Debtors assume liability for, and agrees to indemnify and hold Secured Party harmless from and against, and covenants to defend Secured Party against, all claims, causes of action, liabilities, and damages of any kind arising out of or related to the use, maintenance, possession, or management of the Collateral. This agreement to indemnify shall survive the payment of the Obligation and the

satisfaction of this Agreement.

14. **Hazardous Substances.** Debtors represent and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any hazardous waste or substance, as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No., 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products, or any fractions thereof, and asbestos. The representations and warranties contained herein are based on Debtors' due diligence in investigating the Collateral for hazardous wastes and substances. Debtors hereby (a) release and waive any future claims against Secured Party for indemnity or contribution in the event Debtors become liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Secured Party against any and all claims and losses resulting from a breach of this provision of the Agreement. This agreement to indemnify shall survive the payment of the Obligation and the satisfaction of this Agreement.
15. **Change of Name or Address.** Debtors shall not change its name, or the location of its principal place of business, executive office, or the place where it keeps its business records without thirty (30) days prior written notice to Secured Party.
16. **No Violation.** Debtors are duly formed, organized, validly existing and in good standing in the state of its incorporation or organization, duly qualified and in good standing in every jurisdiction where the nature of its business requires it to be so qualified, and authorized by all requisite action of its stockholders and directors, general partners, or managers to execute, deliver and perform this Agreement.

F. POSSESSION OF COLLATERAL AND COLLECTION OF ACCOUNTS

Until Default, and except as otherwise provided below with respect to accounts, Debtors may have possession and beneficial use of the Collateral, and may use it in any lawful manner not inconsistent with this Agreement, provided that Debtors' right to possession and beneficial use shall not apply to any Collateral of which possession by Secured Party is required by law to perfect Secured Party's security interest in such Collateral. Until otherwise notified by Secured Party, Debtors may collect any of the Collateral consisting of accounts. Without prior written consent of Secured Party, Debtors shall not grant any extension of the time of payment of any account, compromise any account for less than its full amount, release in whole or in part any person liable

for the payment of all or part of any account, or allow any credit upon an account except for the amount of cash paid thereon. Upon notice to Debtors, Secured Party may at any time prior to Default collect accounts and notify account debtors to make payments directly to Secured Party for application to the Obligation.

G. EXPENDITURES BY SECURED PARTY

Secured Party may (but shall not be obligated to) take any action that Debtors are required to take under this Agreement or that is otherwise necessary to obtain, preserve, and enforce this security interest or maintain and preserve the Collateral, without notice to Debtors, and add costs of same, including interest at the maximum rate provided by law from the date incurred to the date of repayment, to the Obligation.

H. REINSTATEMENT OF SECURITY INTEREST

If payment is made on the Obligation by Debtors, whether voluntarily or otherwise, or by any third party, and thereafter Secured Party remits any amount of that payment (a) by reason of any federal or state bankruptcy law or law for the relief of debtors to Debtors' trustee in bankruptcy or to any similar person, (b) by reason of any judgment, decree or order of any court or administrative body having jurisdiction over Secured Party or any of Secured Party's property, or (c) by reason of any settlement or compromise by Secured Party of any claim made by any claimant (including without limitation Debtors), such amount shall be considered not to have been paid for purposes of enforcement of this Agreement, and this Agreement shall continue to be effective or shall be reinstated, as the case may be, notwithstanding any cancellation of this Agreement or of any note or other instrument or agreement evidencing the Obligation, and the Collateral will continue to secure the amount repaid or recovered to the same extent as if that amount had never been received by Secured Party, and Debtors shall be bound by any judgment, decree, order, settlement or compromise relating to the Obligation or to this Agreement.

I. DEFAULT

Each of the following constitutes an event of default under this Agreement ("Default"):

1. **Default on Obligation.** Debtor's failure to make any payment when due under the terms of the Judgment;
2. **Non-Compliance with Agreements.** Debtors' failure to comply with or to perform any term, obligation, covenant or condition contained in the Judgment, this Agreement, the Labor Agreement between the Debtor-Company and the Laborers District Council, or any other agreement between Secured Party and Debtors;
3. **Default to Third Parties.** Debtor's default under any loan, extension of credit,

- security agreement, Promissory Note, purchase or sales agreement, or any other agreement with any other person, that may materially affect any of Debtors' property or ability to repay the Obligation or perform its duties under this Agreement;
4. **False Statements.** Debtors' making any false or misleading warranty, representation, or statement to Secured Party relating to this Agreement;
 5. **Dissolution or Merger.** The dissolution or termination of Company-Debtor's existence as a going business, or the merger or consolidation of Debtors with another entity;
 6. **Insolvency.** The insolvency of Company-Debtor, the appointment of a receiver for any part of Company-Debtor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company-Debtor and/or Individual-Debtor.
 7. **Collateral Loss or Damage.** Loss, theft, substantial damage, destruction, sale, reduction in value, encumbrance of (other than pursuant to this Agreement), damage to, or change in the Collateral;
 8. **Judicial or Other Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Debtors or any governmental agency against the Collateral. Commencement of such proceedings shall not constitute an event of default if there is a good faith dispute by Debtors as to the validity or reasonableness of the claim which is the basis of the proceeding and if Debtors give Secured Party written notice of the proceeding and deposits with Secured Party monies or a surety bond for the proceeding, in an amount determined by Secured Party, in its sole discretion, as being an adequate reserve or bond for the dispute;
 9. **Events Affecting Guarantor.** The occurrence of any of the preceding events with respect to any Guarantor of any part of the Obligation, or the death or incompetence of such Guarantor. Secured Party, at its option, may but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Secured Party and, in doing so, cure the Default;
 10. **Adverse Change.** The occurrence of a material adverse change in Debtors' financial condition, or the belief of Secured Party that the prospect of payment or performance of the Obligation is impaired;
 11. **Insecurity.** Secured Party, in good faith, deems itself insecure.

If any Default, other than Debtors' failure to make payment when due under the Judgment, is curable and if Debtors have not been given prior notice of the Default, it may be cured (and no Default will have occurred), if Debtors, after Secured Party send written notice demanding cure of such Default, (a) cures the default within five days, or (b) if the cure requires more than five days, immediately initiates steps that Secured Party deems in its sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

J. RIGHTS AND REMEDIES ON DEFAULT

If Default occurs under this Agreement, at any time thereafter Secured Party shall have all the rights of a secured party under the Illinois Uniform Commercial Code. In addition, and without limitation, Secured Party may exercise any one or more of the following rights and remedies:

1. **Accelerate Obligation.** Secured Party may declare the entire Obligation, including any prepayment penalty that Debtors would be required to pay, immediately due and payable, without notice.
2. **Assemble Collateral.** Secured Party may require Debtors to deliver to Secured Party all or any portion of the Collateral and any and all certificates of title and other documents related to the Collateral. Secured Party may require Debtors to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party. Secured Party also shall have full power to enter upon the property of Debtors to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Debtors agree that Secured Party may take such other goods, provided the Secured Party makes reasonable efforts to return them to Debtors after repossession.
3. **Sell the Collateral.** Secured Party shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in its own name or that of Debtors. Secured Party may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will give Debtors reasonable notice of the time after which any private sale or any other intended disposition of the Collateral is to be made. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Obligation secured by this Agreement and shall be payable on demand, with interest at the maximum rate provided by law from the date incurred to the date of repayment.

4. **Appoint Receiver.** To the extent permitted by applicable law, Secured Party may have a receiver appointed. The receiver may be an employee of Secured Party and may serve without bond, and all fees of the receiver and his or her attorneys shall become part of the Obligation and shall be payable on demand, with interest at the maximum rate provided by law from the date incurred to the date of repayment.
5. **Collect Revenues, Apply Accounts.** Secured Party, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Secured Party may at any time in its discretion transfer any Collateral into its own name or that of its nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Obligation or apply it to payment of the Obligation in such order of preference as Secured Party may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Secured Party may demand, collect, receipt for, settle, compromise, adjust, sue to foreclose, or realize on the Collateral. For these purposes, Secured Party may, on behalf of and in the name of Debtors, receive, open and dispose of mail addressed to Debtors, change any address to which mail and payments are to be sent, and endorse notes, checks, drafts, money orders, documents of title instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Secured Party may notify account debtors and obligors on any Collateral to make payments directly to Secured Party.
6. **Obtain Deficiency.** If Secured Party chooses to sell any or all of the Collateral, Secured Party may obtain a judgment against Debtors for any deficiency remaining on the Obligation after application of all amounts received from the exercise of the rights provided in this Agreement.
7. **Other Rights and Remedies.** Secured Party shall have all the rights and remedies of a secured party under the provisions of the Illinois Uniform Commercial Code, as may be amended from time to time. In addition, Secured Party shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

All of Secured Party's rights and remedies, whether evidenced by this Agreement or any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Secured Party to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform any obligations of Debtors under this Agreement, after Debtors' failure to perform, shall not affect Secured Party's right to declare a Default and to exercise its remedies.

K. MISCELLANEOUS PROVISIONS

1. **Amendments.** This Agreement, together with all documents executed in connection with the Obligation, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
2. **Applicable Law.** This Agreement has been delivered to Secured Party and accepted by Secured Party in the State of Illinois. If there is a lawsuit, Debtors agree upon Secured Party's request to submit to the jurisdiction of the courts of the State of Illinois. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.
3. **Expenses.** Debtors assume and agree to indemnify, pay and hold harmless Secured Party and its trustees, employees and agents from all expenses, losses, costs, claims, actions, causes of action, damages of any kind, liabilities, expenses and attorneys fees and costs that Secured Party may incur or sustain in obtaining or enforcing payment or performance of the Obligation, in exercising its rights and remedies under this Agreement, or in connection with any action, proceeding, or appeal arising out of or related to this Agreement, the Obligation, or the Collateral, whether brought by Secured Party, Debtors or any third party.
4. **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not be used to interpret or define the provisions of this Agreement.
5. **Signatories for Debtors.** If more than one person executes this Agreement as a Debtor, their obligations under this Agreement shall be joint and several.
6. **Notices.** All notices required to be given under this Agreement shall be given in writing, may be sent by telefacsimile (unless otherwise required by law), and shall be effective when actually delivered or when deposited with a nationally recognized overnight courier or deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address show above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. To the extent permitted by applicable law, if there is more than one Debtor, notice to any Debtor will constitute notice to all Debtors. For notice purposes, Debtors will keep Secured Party informed at all times of Debtors' current address(es).
7. **Power of Attorney.** Debtors hereby appoint Secured Party as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (a) to demand, collect, receive, receipt for, sue and recover all sum of money or other

property which may now or hereafter become due, owing or payable from the Collateral; (b) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in payment for the Collateral; (c) to settle or compromise any and all claims arising under the Collateral; and, if the place and stead of Debtors, to execute and deliver its release and settlement for the claim; and (d) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Debtors, or otherwise, which in the discretion of Secured Party may seem to be necessary or advisable. This power is given as security for the Obligation, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Secured Party.

8. **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstances, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
9. **Successor Interests.** Subject to the limitations set forth above on transfer of the Collateral, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.
10. **Waiver.** Secured Party shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Secured Party. No delay or omission on the part of Secured Party in exercising any right shall operate as a waiver of such right or any other right. A waiver by Secured Party of a provision of this Agreement shall not prejudice or constitute a waiver of Secured Party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Secured Party, nor any course of dealing between Secured Party and Debtors, shall constitute a waiver of any of Secured Party's rights or of any of Debtors' obligations as to any future transactions. Whenever the consent of Secured Party is required under the Agreement, the granting of such consent by Secured Party in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all case such consent may be granted or withheld in the sole discretion of Secured Party.
11. **Prior Agreement.** The Debtors acknowledge that this agreement shall not replace or affect the rights of the Secured Party under the prior Security Agreement entered into between the Debtors and the Secured Party to cover prior delinquencies to the Laborers' Funds for amounts due as a result of an audit covering the period of March 18, 2004 through October 31, 2005, liquidated damages on late payments for the

months of February through May 2005, attorneys' fees and costs, liquidated damages on late paid dues reports for the period of April 2004 through September 2005, delinquent contributions, liquidated damages, interest, audit costs, and interest owed to the Fox Valley Funds for March 18, 2004 through October 31, 2005. All named secured parties named under this Security Agreement shall be secured parties under the prior Security Agreement and this Agreement, both of which shall provide continuing security interests.

DEBTORS ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT, AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED _____ 2017.

Company Debtor:

By:  Scott Brewer

Its: President

Individual Debtor:

By:  Scott Brewer

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LABORERS' PENSION FUND and)
LABORERS' WELFARE FUND OF THE)
HEALTH AND WELFARE DEPARTMENT)
OF THE CONSTRUCTION AND GENERAL)
LABORERS' DISTRICT COUNCIL OF)
CHICAGO AND VICINITY, and JAMES S.)
JORGENSEN, Administrator of the Funds,)

and)

MIKE SHALES, JOHN BRYAN, SR. AL)
OROSZ, DAN BREJEC, TOBY KOTH, and)
VERN BAUMANN, not individually but as)
Trustees of THE FOX VALLEY LABORERS')
HEALTH AND WELFARE FUND,)

and)

MIKE SHALES, JOHN BRYAN SR., AL)
OROSZ, TOBY KOTH, GORDON ANDERSON))
and DAN BREJEC, not individually but as)
Trustees of THE FOX VALLEY LABORERS')
PENSION FUND,)

Plaintiffs,)

v.)

BREWER CONCRETE CONSTRUCTION,)
INC. an Illinois corporation, and SCOTT)
DAVID BREWER, individually,)

Defendants.)

Judge Kennelly

Case No.: 08-C-2103

DECLARATION OF PATRICIA SHALES

I, Patricia Shales, declare and state as follows:


1. My name is Patricia Shales. I am the Administrator of the Fox Valley Laborers' Pension Fund and the Fox Valley Laborers' Health and Welfare Fund (hereinafter "Fox Valley Funds"). I have first-hand knowledge regarding the representations contained herein.



2. One of my duties as Administrator of the Fox Valley Funds is to monitor the payment of benefit contributions made by companies obligated by the terms of their collective bargaining agreements with the Construction and General Laborers District Council of Chicago and Vicinity and/or affiliated local unions and the respective Agreements and Declarations of Trust of the Fox Valley Funds to submit benefit contributions to the Fox Valley Funds. Brewer Concrete Construction, Inc. is obligated to submit benefit contributions to the Fox Valley Funds. The Company entered into an Installment Note on or about September 10, 2007, a true and accurate copy of which is attached hereto as Exhibit B-1, to repay benefit contributions owed to the Fox Valley Funds for the period of December 2006 through June 2007. Contemporaneous with the signing the Installment Note, the Company executed a Commercial Security Agreement and Scott David Brewer, an Officer and Shareholder of the Company, executed a Guaranty of Payment and Indemnification personally guaranteeing the amounts due on the Note. True and accurate copies of the Commercial Security Agreement and Guaranty of Payment and Indemnification are attached hereto as Exhibits B-2 and B-3.

3. The Company has failed to submit its final two payments due on the Note. Under the terms of the Note, the Company owes \$6,311.43 in principal and interest.

I, the undersigned, certify under penalty of perjury that the foregoing is true and correct.



Patricia Shales

Dated: _____

9/4/08

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**LABORERS' PENSION FUND and
LABORERS' WELFARE FUND OF THE
HEALTH AND WELFARE DEPARTMENT
OF THE CONSTRUCTION AND GENERAL
LABORERS' DISTRICT COUNCIL OF
CHICAGO AND VICINITY, and JAMES S.
JORGENSEN, Administrator of the Funds,**

and

**MIKE SHALES, JOHN BRYAN, SR. AL
OROSZ, DAN BREJEC, TOBY KOTH, and
VERN BAUMANN, not individually but as
Trustees of THE FOX VALLEY LABORERS'
HEALTH AND WELFARE FUND,**

and

**MIKE SHALES, JOHN BRYAN SR., AL
OROSZ, TOBY KOTH, GORDON ANDERSON)
and DAN BREJEC, not individually but as
Trustees of THE FOX VALLEY LABORERS'
PENSION FUND,**

Plaintiffs,

v.

**BREWER CONCRETE CONSTRUCTION,
INC. an Illinois corporation, and SCOTT
DAVID BREWER, individually,**

Defendants.

Judge Kennelly

Case No.: 08-C-2103

DECLARATION OF PATRICK T. WALLACE

I, PATRICK T. WALLACE, declare and state as follows:

1. I am Funds Counsel for Plaintiffs Laborers' Pension Fund and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District



Council of Chicago and Vicinity (the "Laborers' Funds"), Plaintiffs in the above-referenced action. This Declaration is submitted in support of the Laborers' Funds' Motion for Entry of Default Judgment in Sum Certain.

2. Shareholders of the law firms of Allison, Slutsky & Kennedy, and the Law Offices of Marc Pekay, out-of-house collection counsel for the Laborers' Funds, bill the Laborers' Funds at a rate of \$175.00 per hour for shareholders, \$150.00 per hour for associates, and \$75.00 per hour for paralegals. Affiant, as in-house counsel for the Laborers' Funds, has first-hand knowledge that the foregoing hourly rates have been found reasonable and have been awarded by many courts in collection proceedings.

3. I received a Bachelor of Arts Degree from the University of Illinois at Urbana-Champaign in 1992 and a Juris Doctor Degree from the University of DePaul College of Law in 1995. I was admitted to the bar of the State of Illinois in November 1995 and to the bar of the United States District Court for the Northern District of Illinois in December 1995. I have also been admitted to the bar of the United States District Court for the Central District of Illinois. I was admitted to the Trial Bar of the Northern District of Illinois on September 20, 2000. From November 1995 to August 2000 I practiced labor and employment law as an associate at the law firm of Katz, Friedman, Eagle, Eisenstein & Johnson (formerly Katz, Friedman, Schur & Eagle). In September 2000, I became Funds Counsel for the Laborers' Pension Fund and Laborers' Welfare Fund for the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity.

4. Jerrod Olszewski, in-house counsel for the Laborers' Funds, received a Bachelor of Arts Degree from Benedictine University in 1993 and a Juris Doctor Degree from the John

Marshall Law School in 2002. He was admitted to the bar of the State of Illinois in May, 2002, and to the bar of the United States District Court for the Northern District of Illinois in May, 2002. From May, 2002 to December, 2004, he practiced labor and employment law as an associate at the law firm of Katz, Friedman, Eagle, Eisenstein & Johnson, former out-of-house counsel to the Laborers' Funds, with the majority of his work being spent representing the Laborers' Funds. In December, 2004, he became in-house counsel for the Laborers' Funds.

5. Based on the foregoing, \$175.00 represents a fair and reasonable market rate for my and Jerrod Olszewski's in-house legal services to the Funds in this matter.

6. Christina Krivanek, in-house counsel for the Laborers' Funds, received a Bachelor of Arts Degree from The Ohio State University in 2002 and a Juris Doctor Degree from the DePaul University College of Law in 2005. She was admitted to the bar of the state of Illinois in November 2005 and to the bar of the United States District Court for the Northern District of Illinois in January 2006. In January 2006, she became in-house counsel for the Laborers' Funds.

7. Based on the foregoing, \$175.00 represents a fair and reasonable market rate for Christina Krivanek's in-house legal services to the Funds in this matter.

8. Amy N. Carollo, in-house counsel for the Laborers' Funds, received a Bachelor of Arts Degree from Illinois State University in 2000, Masters of Science from University of Illinois at Chicago in 2002 and a Juris Doctor from Chicago-Kent College of Law in 2005. She was admitted to the bar of the State of Illinois in November of 2005 and to the bar of the United States District Court for the Northern District in January 2006. In March 2006, she became in-house counsel for the Laborers' Funds.

9. Based on the foregoing, \$175.00 represents a fair and reasonable market rate for Amy N. Carollo's in-house legal services to the Funds in this matter.

10. Charles Ingrassia, in-house counsel for the Laborers' Funds, received a Bachelor of Science Degree from Radford University in 2002 and a Juris Doctor from the University of Illinois College of Law at Urbana-Champaign in 2006. He was admitted to the bar of the State of Illinois in November of 2006 and to the bar of the United States District Court for the Northern District in July 2007. In July 2007, he became in-house counsel for the Laborers' Funds.

11. Based on the foregoing, \$150.00 represents a fair and reasonable market rate for Charles Ingrassia's in-house legal services to the Funds in this matter.

12. Exhibit 1 attached hereto sets forth the time expended to date by Fund Counsel on this matter. As set forth in that Exhibit, we have expended 24.8 hours totaling \$4,240.00 in attorneys' fees and \$694.60 in expenses totaling \$4,934.60.

I, the undersigned, certify under penalty of perjury that the foregoing is true and correct.

Date: 9/12/08

Patrick T. Wallace
Patrick T. Wallace

Laborers Pension and Welfare Funds
11465 Cermak Rd.
Westchester, IL 60154

Invoice submitted to:
Brewer Concrete Construction 2

September 12, 2008

Invoice #10087

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
12/17/2007	PTW Telephone conference with J. Fosco; Telephone conference with M. Reynolds; letter to S. Brewer.	0.40 175.00/hr	70.00
12/18/2007	PTW Email to Lakisha; telephone call to J. Fosco.	0.30 175.00/hr	52.50
12/20/2007	PTW Email to KT; edits to letter; fax to KT.	0.20 175.00/hr	35.00
1/8/2008	PTW Telephone conference with J. fosco	0.10 175.00/hr	17.50
1/2/2008	PTW Telephone conference with Jim Fosco; Telephone conference with S. Brewer; Telephone conference with J. Fosco	0.20 175.00/hr	35.00
1/9/2008	PTW Email to Lakesha re: status of payment; Telephone conference with J. Masho; Telephone conference with Lakesha.	0.40 175.00/hr	70.00
1/18/2008	PTW Conference with J. Fosco and J. Jorgensen; telephone call to S. Brewer; email to Lakesha at Dowd's office.	0.30 175.00/hr	52.50
1/21/2008	PTW Email to Lakesha at Dowd's office.	0.10 175.00/hr	17.50
1/22/2008	PTW Telephone call to S. Brewer; email to Lakesha.	0.20 175.00/hr	35.00
2/5/2008	PTW Telephone conference with J. Fosco; fax to and from Lakesha at Dowd's office.	0.20 175.00/hr	35.00



		<u>Hrs/Rate</u>	<u>Amount</u>
2/6/2008	PTW Telephone call to Lakesha re: new suit.	0.10 175.00/hr	17.50
2/7/2008	PTW Telephone conference with M. Reynolds and Lakesha re new suit.	0.20 175.00/hr	35.00
2/8/2008	PTW Review of report; email to Lakesha; Conference with J. Fosco; update report.	0.30 175.00/hr	52.50
2/14/2008	PTW Telephone call to S. Brewer.	0.10 175.00/hr	17.50
2/18/2008	PTW Review of email; telephone call to J. Fosco.	0.10 175.00/hr	17.50
2/21/2008	PTW Telephone conference with J. Fosco; update report.	0.10 175.00/hr	17.50
2/25/2008	PTW Telephone conference with JF; email to Lakesha; Telephone conference with S. Brewer.	0.20 175.00/hr	35.00
2/27/2008	PTW Telephone conference with JF; email to Lakesha at Dowd.	0.30 175.00/hr	52.50
2/28/2008	PTW Conference with JF; Telephone conference with Company; Conference with JF re: December report.	0.40 175.00/hr	70.00
3/20/2008	PTW Telephone conference with J. Fosco.	0.10 175.00/hr	17.50
3/24/2008	PTW Conference with J. Fosco; review of email; telephone call to S. Brewer.	0.30 175.00/hr	52.50
4/1/2008	PTW Emails to and from Lakisha re new suit.	0.20 175.00/hr	35.00
4/2/2008	PTW Begin drafting Complaint; Telephone conference with J. Fosco; email to Lakesha re: Fox Valley.	1.00 175.00/hr	175.00
4/3/2008	PTW Emails to Lakisha; drafted Complaint.	0.60 175.00/hr	105.00
4/7/2008	PTW Drafted Complaint; email to Lakisha.	2.00 175.00/hr	350.00
4/11/2008	PTW Edits to Complaint.	1.70 175.00/hr	297.50
4/14/2008	PTW Edits to Complaint; update report; letter to Unions.	0.70 175.00/hr	122.50

		<u>Hrs/Rate</u>	<u>Amount</u>
4/18/2008	PTW Review of new suit response; fax to JF.	0.20 175.00/hr	35.00
4/28/2008	PTW Telephone conference with J. Fosco; Telephone conference with J. Fosco; Update report; Email Lakesha	0.30 175.00/hr	52.50
4/29/2008	PTW Telephone conference with Denise Ayala	0.10 175.00/hr	17.50
5/5/2008	PTW Telephone conference with Antonio Castro; Telephone conference with JB; Telephone conference with D. Ayala; Telephone conference with A. Castro; Telephone conference with J. Fosco; Telephone conference with Karen at Brewer.	0.70 175.00/hr	122.50
5/7/2008	PTW Email to Lakeesha; Telephone message to Tim Kalnes; Telephone conference with Kalnes	0.30 175.00/hr	52.50
5/8/2008	PTW Review of letter; Letter to Brewer re: audit	0.20 175.00/hr	35.00
5/9/2008	PTW Review Order letter to Scott Brewer	0.10 175.00/hr	17.50
5/19/2008	PTW Telephone conference with T. Kalnes re: audit.	0.10 175.00/hr	17.50
5/29/2008	PTW Email to Lakesha.	0.10 175.00/hr	17.50
6/3/2008	PTW Telephone conference with J. Fosco re: motion for default; Telephone conference with D. Ayala.	0.30 175.00/hr	52.50
6/10/2008	PTW Review of fee declaration; Telephone conference with L. Kinzey; drafted Affidavit for Motion for Entry of Default Judgment; Telephone conference with S. Brewer; review of fees.	1.00 175.00/hr	175.00
6/11/2008	PTW Telephone conference with T. Kalnes re: audit.	0.10 175.00/hr	17.50
6/12/2008	PTW Conference with J. Fosco re: February payment; email to L. Kinzey.	0.30 175.00/hr	52.50
7/8/2008	PTW Telephone conference with representative of Burling Builders; review of fax.	0.30 175.00/hr	52.50
7/9/2008	PGL Draft Motion to Extend Deadline to Serve Summons and Complaint.	0.30 75.00/hr	22.50
7/23/2008	PTW Telephone conference with D. Ayala; Telephone conference with FCL representative; memo to file re: same.	0.30 175.00/hr	52.50

		<u>Hrs/Rate</u>	<u>Amount</u>
7/2/2008	PTW Telephone conference with K. Walker; memo to file re: same.	0.30 175.00/hr	52.50
7/7/2008	PTW Conference with J. Fosco re: payment.	0.10 175.00/hr	17.50
7/16/2008	PTW Telephone conference with S. Brewer; Appearance before Judge Kennelly; letter to S. Brewer.	1.00 175.00/hr	175.00
7/17/2008	PTW Email to Lakisha; fax to Lakisha.	0.20 175.00/hr	35.00
7/18/2008	PTW Telephone conference with S. Brewer; Telephone conference with Kim Walker; telephone call to Jeni Pakan; memo to file re: same.	0.50 175.00/hr	87.50
8/6/2008	PTW Telephone call to FCL. Email to M. Reynolds.	0.10 175.00/hr	17.50
8/7/2008	PTW Telephone conference with M. Reynolds; Telephone conference with C. Lynne at FCL; Telephone call to S. Brewer; email to KT.	0.50 175.00/hr	87.50
8/20/2008	PTW Telephone call to T. Kalnes.	0.10 175.00/hr	17.50
8/25/2008	PTW Telephone conference with D. Ayala; memo to file re: same.	0.20 175.00/hr	35.00
8/26/2008	PTW Conference with KT re: service.	0.10 175.00/hr	17.50
8/28/2008	PGL Preparation of three Affidavits of Process Server for Motion for Special Service; Notice of Motion; draft Order.	0.50 75.00/hr	37.50
9/2/2008	PGL Declaration of PTW.	0.20 75.00/hr	15.00
8/27/2008	PTW Telephone conference with J. Kalnes; Telephone conference with M. Reynolds; Appearance before Judge Kennelly; drafted Motion for Special Service.	2.10 175.00/hr	367.50
8/29/2008	PTW Edits to Motion for Special Service.	0.50 175.00/hr	87.50
9/2/2008	PTW Telephone conference with F. Riley.	0.20 175.00/hr	35.00
9/3/2008	PTW Drafted Affidavit for Motion for Entry of Default Judgment.	1.00 175.00/hr	175.00
9/9/2008	PTW Appearance before Judge Kennelly; memo to file re: same; letter to S. Brewer.	0.80 175.00/hr	140.00

	<u>Hrs/Rate</u>	<u>Amount</u>
9/11/2008 PTW Drafted Motion for Entry of Default Judgment.	0.90 175.00/hr	157.50
For professional services rendered	<u>24.80</u>	<u>\$4,240.00</u>
Additional Charges :		
4/14/2008 Photocopies of Complaint, etc.		9.60
Filing fee.		350.00
5/19/2008 Service of Summons on Corporate Defendant; attempted service on individual.		185.00
8/25/2008 Attempted service of Summons and Complaint on individual Defendant and surveillance.		150.00
Total additional charges		<u>\$694.60</u>
Total amount of this bill		<u>\$4,934.60</u>
Balance due		<u><u>\$4,934.60</u></u>

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Paralegal	1.00	75.00	\$75.00
Patrick T. Wallace	23.80	175.00	\$4,165.00

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LABORERS' PENSION FUND and)
LABORERS' WELFARE FUND OF THE)
HEALTH & WELFARE DEPARTMENT)
OF THE CONSTRUCTION AND GENERAL)
LABORERS' DISTRICT COUNCIL OF)
CHICAGO AND VICINITY, and JAMES S.)
JORGENSEN, Administrator of the Funds,)

and)

MIKE SHALES, JOHN BRYAN, SR., AL)
OROSZ, DAN BREJC, TOBY KOTH, and)
VERN BAUMANN, not individually but as)
Trustees of THE FOX VALLEY LABORERS')
HEALTH and WELFARE FUND,)

and)

MIKE SHALES, JOHN BRYAN, SR., AL)
OROSZ, TOBY KOTH, GORDON ANDERSON)
and DAN BREJC, not individually but as)
Trustees of THE FOX VALLEY LABORERS')
PENSION FUND,)

Plaintiffs,)

v.)

BREWER CONCRETE CONSTRUCTION,)
INC., an Illinois corporation, and SCOTT)
DAVID BREWER, individually,)

Defendants.)

Case No.: 08 C 2103

Judge Kennelly
Magistrate Judge Valdez

AFFIDAVIT OF MICHELE M. REYNOLDS

COUNTY OF COOK)
) SS
STATE OF ILLINOIS)



I, Michele M. Reynolds, of full age, being duly sworn on my oath, hereby depose and say as follows:

1. I am an attorney admitted to the regular and trial bars of this Court and the State of Illinois.

2. I am a senior associate in the firm Dowd, Bloch & Bennett where I practice exclusively in the areas of ERISA, labor and employment law. In this position I have the responsibility, along with other associates in my office, for representing the Fox Valley Laborers' Health and Welfare Fund and the Fox Valley Laborers' Pension Fund (collectively the "Funds") related to collection proceedings against Brewer Concrete Construction, Inc. (the "Defendant Company"), and Scott Brewer (collectively the "Defendants") for unpaid contributions and other sums due pursuant to an Installment Note ("Note" or "Installment Note") executed by the Defendants and that are required to be made pursuant to the Defendant Company's collective bargaining agreement. This affidavit is in support of those attorneys' fees and costs incurred by the Funds for work performed in connection with the issues raised in the lawsuit *Laborers' Pension Fund, et al v. Brewer Concrete Construction, Inc., et al*, Case No. 08 C 2103, to which the Funds are a party.

3. This affidavit is based on my personal knowledge and, if necessary, I could testify to the facts contained in this affidavit.

4. The Funds previously filed a lawsuit against Brewer Concrete Construction, Inc., and Scott Brewer, captioned *Shales, et al v. Brewer Concrete Construction, Inc., et al*, Case No. 07-C-2290, for unpaid contributions, dues and other sums owed to the Funds for the period of December 2006 through June 2007. To settle that lawsuit and to resolve payment of the delinquencies owed for this period, the parties entered into an Installment Note covering the amounts owed to the Funds as well as to the Laborers' Pension and Welfare Funds as of the date the Installment Note was

prepared.

5. The Installment Note included attorneys' fees and costs the Funds incurred related to its collection efforts prior to the Note's execution of \$4,493.73.

6. The Installment Note required, among other things, that the Defendant Company remain current on its obligations to the Funds under the terms of its collective bargaining agreement and the Funds' Agreements and Declaration of Trust, and to timely remit all contributions owed to the Funds including installment payments or be in default of the Note. Defendant Scott Brewer personally guaranteed these obligations.

7. The terms of the Installment Note provide that, upon default of the Note, the Funds are entitled to collect all amounts due to the Funds under the Installment Note, including all attorneys' fees and costs incurred related to any action to enforce any part of the Installment Note.

8. Since the Installment Note's execution, the Defendant Company has repeatedly failed to timely remit payments due under the Installment Note or otherwise comply with the terms of the Installment Note. As a result, the Funds have incurred substantial attorneys' fees and costs related to enforcing the Installment Note and the obligations set forth therein.

9. The Firm has devoted a total of approximately 75.15 hours to the representation of the Funds, part of which was for time and effort related to collection efforts prior to the Defendants' execution of the Installment Note. Since the Installment was executed, the Firm has spent time conferring with Funds' representatives regarding collections in this matter and speaking with the Defendants regarding their obligations under the Installment Note and delinquencies owed, coordinating collection efforts regarding the Installment Note amounts with counsel for the Laborers' Pension and Welfare Funds (hereinafter "collection counsel"), monitoring the Defendant Company's obligations under the Note to ensure compliance, reviewing remittances from the Defendant

Company and notifying the Funds of payments made, preparing numerous letters and other correspondence to my client and to the Defendants regarding Installment Note payments and/or delinquencies, recording the Security Agreement against the Defendants, discussing litigation strategy with collection counsel and reviewing the Complaint filed in this Case, and conferring with collection counsel regarding the proceedings in the instant litigation.

10. The time mentioned in Paragraph 9 does not include an additional approximately 1.0 hours that the Funds' counsel has expended in reviewing the file and other documents necessary to prepare this affidavit as well as the time and effort spent and preparing the affidavit and corresponding with collection counsel regarding it. Therefore, as of the date of this filing, the Firm has devoted a total of approximately 76.15 hours to the representation of the Funds in connection with this case, all of which are relevant for purposes of accelerating and collecting on the Installment Note.

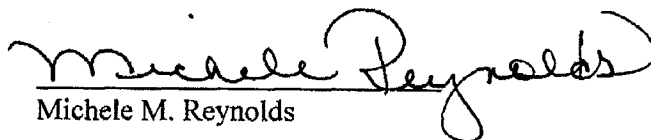
11. The rate that our firm charges the Funds for my work is \$175.00 per hour, \$155.00 per hour for the work of other associates, \$200.00 per hour for the work of Mr. J. Peter Dowd, \$115.00 per hour for the work of law clerks, and \$95.00 per hour for the work of paralegals.

12. Based on 76.15 hours of work which the firm has performed or will perform on behalf of the Funds, the Funds will incur attorneys' fees in the total amount of \$12,442.25, which includes attorneys' fees included in the Installment Note.

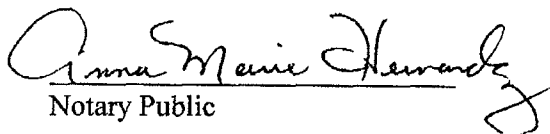
13. Additionally, the Funds have incurred costs in the amount of \$546.97, \$526.97 of which was included in the Installment Note, specifically for the \$350.00 filing fee related to the Funds' lawsuit 07-C-2290, \$.88 for PACER charges, \$9.34 for LEXIS charges, \$6.75 for photocopying fees and \$160.00 for process server fees and also includes costs incurred since the Note's execution of \$20.00 for the UCC filing fee.

14. Accordingly, the Funds have incurred or will incur attorneys' fees and costs totaling \$12,989.22 and therefore, seek recovery of the attorneys' fees and costs incurred since the Note's execution and specifically related to the enforcement of the Installment Note totaling \$8,495.49 plus those attorneys' fees and costs that are included as a part of the Installment Note of \$4,493.73.

I have read the foregoing affidavit and swear that it is true and correct to the best of my knowledge, information, and belief.


Michele M. Reynolds

Subscribed and sworn to
before me this 28th day of
August, 2008,


Notary Public



CERTIFICATE OF SERVICE

The undersigned certifies that he caused a copy of the foregoing Motion for Entry of Default Judgment in Sum Certain to be served upon the following persons, via U.S. Mail, this 12th day of September 2008.

Brewer Concrete Construction, Inc.
c/o Scott Brewer, Registered Agent
3432 S. Normal Ave.
Chicago, IL 60616

Scott Brewer
1341 W. Fullerton, #357
Chicago, IL 60614

Scott Brewer
321 E. 17th St.
Chicago, IL 60616-1156

/s/ Patrick T. Wallace