

The British Columbia Construction Association Employee Benefit Trust

Trust Agreement

Dated: September 1st, 2004, incorporating amendments made up to and including September 1st, 2008 as further amended and restated effective December 31st, 2021.

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This Trust Agreement is made as of the 1st day of September, 2004, and incorporates amendments made up to and including September 1st, 2008 as amended and restated effective December 31, 2021.

AMONG:

THE BRITISH COLUMBIA CONSTRUCTION ASSOCIATION, a society
duly incorporated under the laws of the Province of British Columbia

(the "**BCCA**")

AND:

**THE BOARD OF TRUSTEES OF THE BRITISH COLUMBIA CONSTRUCTION
ASSOCIATION EMPLOYEE BENEFIT TRUST**

(the "**Trustees**")

WHEREAS:

- A. The BCCA is the representative body of four regional construction associations: the Northern Regional Construction Association (NRCA), the Southern Interior Construction Association (SICA), the Vancouver Regional Construction Association (VRCA), and the Vancouver Island Construction Association (VICA) (collectively, the "**Regional Construction Associations**" or "**RCAs**");
- B. The BCCA previously sponsored a health and welfare plan known as the "British Columbia Construction Association Group Benefit Plan" (the "**Plan**") which provided health and welfare benefits to the employees of employers who are members of the BCCA or one of the Regional Associations;
- C. The BCCA entered into insurance arrangements with various insurers to provide the health and welfare benefits provided under the Plan, and the BCCA and the Regional Associations appointed certain individuals to facilitate the Plan's administration;
- D. In order to recognize certain administrative and other efficiencies, the BCCA wished to establish a health and welfare trust for the purpose of providing the benefits previously offered under the Plan;
- E. By a Conveyance and Sponsorship Agreement entered into concurrently with this original Agreement, the BCCA has conveyed and assigned to the Trustees all of its rights, duties and obligations under and in respect of the insurance arrangements entered into in respect of the Plan, and all other assets held in respect of the Plan, and the Trustees have agreed with the BCCA to accept such conveyance and assignment and to administer the Plan in accordance with the terms of this Agreement;
- F. The Plan and the trust created under this Agreement in respect of the Plan were for income tax purposes a "health and welfare trust" as described in Canada Revenue Agency Income Tax Folio S2-F1-C1; and

- G. The BCCA and the Trustees now wish to enter into this Agreement for the purposes of transitioning the health and welfare trust for the Plan to an Employee Life and Health Trust;

THEREFORE THE PARTIES AGREE AS FOLLOWS:

PART 1 - Interpretation

1.1. Defined Terms

In this Agreement the following Terms have the following meanings:

“Administrative Agent” means the person appointed pursuant to Section 5.2.

“Agreement” means this trust agreement as amended or supplemented from time to time.

“Appointing Party” means the BCCA or any of the Regional Associations.

“BCCA” means the “British Columbia Construction Association” and includes any successor to this association.

“Board of Trustees” or “Board” means “The Board of Trustees of the British Columbia Construction Association Employee Benefit Trust” constituted hereunder, which Board shall consist of the groups of individuals who are from time to time appointed as Trustees in accordance with this Agreement.

“Business Day” means any day from Monday to Friday, inclusive, except for any day that is a statutory holiday in British Columbia.

“Chair” means the Chair of the Board elected pursuant to Section 3.1.

“Contributions” means any and all sums of money as determined from time to time by the Trustees paid or to be paid by a Participating Employer to provide Health and Welfare Benefits in accordance with this Agreement.

“Conveyance and Sponsorship Agreement” means the agreement entered into concurrently with this Agreement and described in Recital E.

“Designated Employee Benefits” means employee benefits as defined by and which are permitted under the ELHT Rules.

“ELHT Rules” means the provisions applicable to an ELHT under sections 144.1 of the Income Tax Act (Canada).

“Employee Life and Health Trust” or “ELHT” means a trust which meets the requirement of the ELHT Rules to qualify as an ELHT.

“Employer” means:

- (a) The BCCA;
- (b) a Member; or
- (c) a Permitted Employer.

“Fund” means the British Columbia Construction Association Employee Benefit Trust Fund established pursuant to this Agreement. The fund consists of the Insurance Policies, the Other Assets, all other contracts and policies entered into by the Trustees in respect of the Plan, together with all dividends, refunds or other sums payable to the Trustees on account of such contracts and policies, all investments made and held by the Trustees, all Contributions received by or on behalf of the Trustees, all monies held or deposited with any person, firm or corporation for the purpose of funding the provision of Health and Welfare Benefits, income from investments, and any other properly purchased or received and held by the Trustees for any purpose of the trusts set forth in this Agreement.

“Health and Welfare Benefits” means the employee health and welfare benefits the Trustees determine to provide through the Plan, which benefits must be Designated Employee Benefits.

“Insurance Policies” means the insurance policies through which the BCCA currently provides the Plan’s benefits, as more fully described in the Conveyance and Sponsorship Agreement

“Member” means any employer who is a member of the BCCA or a Regional Association or a member of any other association or group approved by the Trustees.

“Other Assets” means all assets held by the BCCA in respect of the Plan other than the Insurance Policies.

“Participating Employee” means, subject to Section 1.2,

- (a) any person employed by a Participating Employer who has fulfilled all of the Plan’s eligibility requirements; or
- (b) any person who, while employed by a Participating Employer, became entitled to receive long Term disability benefits in accordance with the Plan and remains so entitled on the date, if any, upon which the Participating Employer, for whatever reason, ceases to be a Participating Employer, provided that such individual shall only remain a Participating Employee for the purposes of entitlement to long term disability benefits under the Plan.

“Participating Employer” means any Employer who has completed an application in the form attached to this Agreement as Schedule 1, in such other form as may be approved from time to time by the Trustees, has been accepted by the Trustees. Subject to Part 10 (Termination of Participation in the Plan), a Participating Employer may, with the consent of the Trustees:

- (a) change the classes of persons designated as eligible to become Participating Employees; and
- (b) change the benefits coverage provided for its Participating Employees.

“Permitted Employer” means an employer (other than the BCCA or a Member) who has received the written permission of the BCCA to participate in the Plan upon the terms and conditions established by the BCCA at the time such permission is given and upon such further terms and conditions as may be established from time to time in accordance with this Agreement.

“**Plan**” means the health and welfare benefits plan funded out of the Fund, the Terms of which plan are set out in this Agreement and the Plan Text. The formal name of the Plan is the “British Columbia Construction Association Employee Benefit Trust”.

“**Plan Text**” means the plan text adopted by the Board pursuant to Section 4.3.

“**Prime Rate**” means the rate of interest per annum from time to time publicly quoted by the Royal Bank of Canada, main branch in Vancouver, British Columbia, as being the reference rate of interest (commonly known as its “prime rate”) used by it to determine rates it will charge on loans to its commercial customers of varying degrees of creditworthiness.

“**Regional Association**” means any of NRCA, VICA, the SICA, or the VRCA.

“**SICA**” means the Southern Interior Construction Association and includes any successor to this association.

“**Trustee**” means a person designated in this Agreement to hold and administer the Fund and the Plan and includes each of those individuals named on the first page of this Agreement and any successor Trustee appointed in accordance with this Agreement.

“**Vice-Chair**” means the Vice-Chair of the Board elected pursuant to Section 3.1.

“**VRCA**” means the Vancouver Regional Construction Association and includes any successor to this association.

1.2. Interpretation: Becoming a Participating Employee

A person becomes a Participating Employee:

- (a) on the date upon which that person’s Participating Employer is accepted for participation in the Plan in accordance with this Agreement if that person then fulfils all of the Plan’s eligibility requirements;

otherwise

- (b) on the date, following acceptance of the Participating Employer for participation in the Plan in accordance with this Agreement, upon which that person first fulfils all the eligibility requirements of the Plan.

1.3. Use of Plural or Gender Specific Terms

In this Agreement and the Plan Text, according to the context:

- (a) gender specific Terms include both genders and include a corporation, partnership, society, association or union;
- (b) words in the singular include the plural and words in the plural include the singular; and

- (c) where a word or expression is defined, other parts of speech and grammatical forms of the same word or expression will have corresponding meanings.

1.4. Statutory References

In this Agreement and the Plan Text, any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto and promulgated there under and any final judicial decisions interpreting the same, with all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto.

1.5. Conflict Between Plan Text and Agreement

In the event of any conflict between the provisions of the Plan Text and the provisions of this Agreement (excluding the Schedules), the provisions of this Agreement (excluding the Schedules) shall prevail and govern.

1.6. Headings do not Affect Interpretation

In this Agreement, using separate Parts, providing a table of contents, and inserting headings are for reference only and will not affect how this Agreement is interpreted.

1.7. Schedules

The following Schedules attached to this Agreement form part of this Agreement:

Schedule 1	Employer's Application for Participation in the British Columbia Construction Association Employee Benefit Trust
Schedule 2	Acceptance of Trust

PART 2 - Trustees

2.1. Number and Appointment of Trustees

The Board of Trustees shall consist of ten Trustees, who, subject to Section 2.2, shall be appointed by the BCCA and the Regional Associations in the following manner:

- (a) one Trustee shall be appointed by the BCCA for an initial term of 3 years;
- (b) two Trustees shall be appointed by the BCCA on the nomination of the BCCA- NRCA for initial Terms of 2 and 3 years, respectively;
- (c) two Trustees shall be appointed by the BCCA on the nomination of the SICA for initial Terms of 1 and 2 years, respectively;
- (d) two Trustees shall be appointed by the BCCA on the nomination of the BCCA- VICA for initial Terms of 1 and 3 years, respectively; and
- (e) three Trustees shall be appointed by the BCCA on the nomination of the VRCA for initial terms of 1, 2 and 3 years, respectively.

2.2. Nomination of Trustees by Regional Associations

Pursuant to subsections 2.1(b) through (e), each Regional Association shall nominate individuals to serve as Trustees hereunder. If the BCCA, acting reasonably, determines that any such individual so nominated is suitable to be a Trustee hereunder, it shall appoint such individual as a Trustee. If the BCCA, acting reasonably, determines that an individual so nominated is not suitable to be a Trustee hereunder, it shall so advise the relevant Regional Association, and shall consult with such Regional Association on identifying another individual acceptable to the BCCA and the Regional Association, each acting reasonably, to appoint as Trustee. Upon the conclusion of such consultation the BCCA shall appoint as Trustee the individual who is so determined to be mutually acceptable to the BCCA and the Regional Association.

2.3. Three Year Term

Trustees shall serve for Terms ending on December 31. The initial one, two and three year terms described in Section 2.1 shall be for the periods ending December 31, 2005, December 31, 2006 and December 31, 2007, respectively. Upon the expiration of the respective initial terms of the Trustees, the respective subsequent Terms of all of the Trustees shall be three years. A person appointed as a Trustee shall, subject to such person's death, resignation or removal as hereinafter provided, serve until the expiration of his or her initial term or any subsequent term. On the expiration of any such term the Trustee shall cease to be a Trustee unless reappointed in accordance with this Agreement. A Trustee may be re-appointed for an unlimited number of terms. If an individual is appointed Trustee pursuant to Section 2.7, his or her initial term shall be for the balance of what would have been the remainder of the term of the Trustee whose death, resignation or removal from office necessitated the appointment of that Trustee

2.4. Initial Trustees

This Agreement constitutes the individuals who have signed this Agreement as the initial Trustees for their respective initial terms set forth below, and such individuals are deemed to have been validly appointed. For convenience of future reference, it is confirmed that the following individuals are the first Trustees appointed for the Terms specified:

Name (in alphabetical order)	Appointing/Nominating Party	Initial Term
Ken DeRooy	SICA	2 years
Tim Doucette	VRCA	3 years
Debra Hicks	SICA	1 year
Blaine Lewis	VICA	3 years
Bob Liew	VICA	1 year
Manley McLachlan	BCCA	3 years
Keith Sashaw	VRCA	2 years
Rosalind Thorn	NRCA	3 years
Rick Wautier	VRCA	3 years
Winton Williams	NRCA	2 years

2.5. Initial Trustees Bound by Agreement

Each individual who has signed this Agreement has by his or her signature consented to act as a Trustee, and agrees that:

- (a) he or she shall hold the Fund in trust in accordance with the trusts created and established in this Agreement; and
- (b) he or she is bound by this Agreement for the purposes set forth herein and in the Plan Text.

2.6. Appointment of Trustees on Expiration of Term

No later than three months prior to the expiry date of a Trustee's term, the Board shall give written notice to the Appointing Party who appointed or nominated the Trustee, and that Appointing Party shall renew the appointment or nomination of the Trustee or appoint or nominate a successor Trustee. The nomination or renewal of nomination as Trustee by a Regional Association must be endorsed by the BCCA in accordance with Section 2.2. If the reappointment of an incumbent Trustee or the appointment of a successor Trustee is not made within 60 days after the commencement of what would have been the next three-year term of such Trustee, the Trustees then in office shall meet, a majority of the Trustees in office on the date the meeting is held constituting a quorum despite anything in this Agreement to the contrary, and appoint by resolution passed by a majority of the Trustees present at the meeting, a successor to fill the vacant position.

The successor, when appointed, shall have the same power, authority and right to hold offices if that person had been appointed by the BCCA and the relevant Regional Association, if any, in accordance with this Part 2, except that such person shall not be removed pursuant to Section 2.11 unless such a removal is first agreed to by the Board.

2.7. Appointment of Trustees on Death, Resignation or Retirement

If a Trustee dies, resigns, or is removed from office as provided for herein, the BCCA and the Regional Association, if any, who appointed the Trustee must forthwith appoint a successor Trustee in accordance with this Part 2. If a successor Trustee is not so appointed within one month of the Trustee's death, resignation or removal from office, the Board shall give written notice to the BCCA and the Regional Association, if any, who appointed the Trustee. The party or parties to whom such notice is given shall have a further two months from the date upon which the notification is received to appoint a successor Trustee in accordance with this Part 2, failing which the remaining Trustees shall thereupon meet, a majority of the Trustees in office on the date the meeting is held constituting a quorum, despite anything in this Agreement to the contrary, and appoint, by resolution passed by a majority of the Trustees present at the meeting, a successor to fill the vacant position. The successor, when appointed, shall have the same power, authority and right to hold offices if that person had been appointed by the BCCA and the relevant Regional Association, if any, in accordance with this Part 2, except that such person shall not be removed pursuant to Section 2.11 unless such a removal is first agreed to by the Board.

2.8. Successor Trustees

Each successor Trustee, upon signing an Acceptance of Trust in the form set forth in Schedule 2 attached hereto, is deemed to accept the trusts created and established by this Agreement and to consent to act as a Trustee. Any successor Trustee appointed pursuant to the provisions hereof shall, upon signing an Acceptance of Trust, become vested with all the rights, powers and duties of a Trustee under this Agreement, with the like effect as if such person had been an initial Trustee, and without the necessity of the execution of any conveyance, assignment, transfer, or other documentation.

2.9. Resignation of a Trustee

A Trustee may resign by giving written notice thereof to the Administrative Agent who shall promptly notify all the other Trustees. The effective date of such resignation shall be stated in the notice of resignation (which date may be no earlier than the date the Trustee signs the resignation), failing which it shall be the date when the Administrative Agent receives such notice of resignation.

2.10. Death of a Trustee

If a Trustee dies, his or her heirs, administrators, executors and assigns shall be fully discharged from all future duties and responsibilities in respect of this Agreement as of the date of such Trustee's death. A deceased Trustee's estate shall not be discharged from, and shall remain liable for, any of the deceased's duties and responsibilities arising hereunder prior to the date of death.

2.11. Removal of a Trustee

The BCCA may remove any Trustee appointed by it pursuant to subsection 2.1(a) by giving written notice to the Trustee being removed and the Administrative Agent. The BCCA and the relevant Regional Association may jointly remove any Trustee appointed by them pursuant to subsection 2.1(b), (c), (d) or (e), as the case may be, by giving joint written notice to the Trustee being removed and the Administrative Agent.

2.12. Discharge of Trustees

If a Trustee resigns, is removed or the Trustee's term has expired, as the case may be, he or she shall be fully discharged from any future duties and responsibilities in respect of this Agreement as of the date of such resignation, removal or the expiry of his or her Term, as the case may be. Further, a Trustee who resigns, is removed or whose Term has expired shall not be discharged from, and shall remain liable for, any of such Trustee's duties and responsibilities arising hereunder prior to the effective date of his or her resignation, removal or the expiry of his or her term, as the case may be.

2.13. Termination of Trusteeship

Any Trustee that resigns, is removed or whose Term expires without being reappointed and the personal representatives of any deceased Trustee, all as the case may be, shall forthwith turn over to the Administrative Agent any and all records, books, documents, money and other property and assets in his or her possession, forming part of the Fund or incidental to his or her duties as Trustee under this Agreement or relating to the administration of the Plan. In addition, any such individual shall be deemed to have conveyed, assigned or transferred to the then remaining Trustees any or all rights or property of that individual in the Fund and shall, if necessary, convey, assign or transfer to the then remaining Trustees any or all rights or property of that individual in the Fund as the remaining Trustees may direct. Each Trustee, by signing this Agreement, or an Acceptance of Trust, constitutes and appoints the remaining Trustees as attorneys, to sign all documents and deeds in such Trustee's name, if such person ceases to be a Trustee, and the remaining Trustees will take the place of the person who ceased to be a Trustee, until such time as a successor Trustee is appointed.

2.14. Former Trustee Purporting to Act

If a Trustee resigns, is removed or is not reappointed upon the expiration of his or her Term but purports to continue to act as a Trustee, any of the remaining Trustees may do such things and take such action at law or equity as such Trustee(s) determine to cause such person to cease to purport to act as a Trustee including, without limitation, making application to a court of competent jurisdiction for such relief (including injunctive relief) as may be appropriate in the circumstances.

PART 3 - Board Operation

3.1. Chair and Vice-Chair

- (a) Subject to subsections (b), (c) and (d), the Trustees shall, by majority vote, elect a Chair and Vice-Chair from among their number for one year terms ending on December 31st of each calendar year, provided that the initial term for the initial Chair and Vice-Chair shall be for the period ending December 31, 2005. The Board may establish such other offices of the Board and elect such persons (whether Trustees or not) to occupy such offices for such respective terms as determined by the Board from time to time subject to the death, resignation or removal by the Board of such persons as the case may be. Any person occupying any of these offices may be removed by the Board at any time. Any person occupying the office of Chair, Vice-Chair or any other office which the Board has determined must be assumed by a Trustee shall automatically cease to hold such office upon ceasing to be a Trustee in accordance with this Agreement.
- (b) The respective Terms of such Chair, Vice-Chair or other officer shall commence on the later of the date of their election and the Termination of the then incumbent's Term and, subject to such person's death, resignation, or removal as herein provided, shall continue until the expiry of their respective Terms. Upon the expiration of a Chair's Term he or she shall cease to be the Chair, unless prior to the expiration of such term the Board, by majority vote, elects to extend such individual's term as Chair for a further one-year period. If the Board so elects to extend the Term of the Chair, the Term of the then Vice-Chair shall also be automatically extended by one year. The Board may elect to extend the term of the Chair and Vice-Chair in such manner for an unlimited number of terms.
- (c) If on the expiration of the term of the Chair the Board has not elected to extend it for another year, the then Chair shall cease to be the Chair, and the then Vice-Chair shall automatically become Chair for the ensuing calendar year. Whenever the office of Vice-Chair is or is about to become so vacant, the Board shall, by majority vote, elect a new Vice-Chair who shall assume office on the later of the date of such election and the termination of the then incumbent's term as Vice Chair.
- (d) If prior to the expiration of a Trustee's term as Chair or Vice-Chair he or she ceases for any reason to be a Trustee, is removed by the Board pursuant to subsection (a) or resigns from such office without ceasing to be a Trustee, the Board shall, by majority vote, elect a replacement Chair or Vice-Chair to serve out the balance of the departing officer's term. On the conclusion of such term any individual so elected as Chair or Vice-Chair shall be replaced or become the Chair in accordance with subsections (a) through (c).

3.2. Functions of Chair and Vice-Chair

The function of the Chair is to act as chair of all meetings of the Board, to advise, from time to time, the BCCA concerning the status of the Fund and the Plan, to liaise with the BCCA as and when necessary, and generally to perform such other duties as required by this Agreement. The function of the Vice-Chair is to substitute for the Chair when the Chair is unable to perform the functions of the Chair or is not present at any meeting of the Board.

3.3. Appointment and Duties of Secretary

From time to time the Board will appoint a Trustee or other person to act as Secretary. If the Secretary is not present at any meeting of the Board, the Trustees present shall select another individual to act as Secretary for the purpose of such meeting. The Secretary will cause minutes or records of all meetings, proceedings and acts of the Board to be taken or kept. Such minutes need not be verbatim.

3.4. Meetings of Trustees

- (a) **Regular Meetings.** The Chair will determine the date, time, and place for regular meetings of the Board, which will be held at least three times a year.
- (b) **Annual Meetings.** One of the meetings each year will be designated as the annual meeting of the Trustees. The annual meeting must be held within eight months after the end of the fiscal year of the Fund. At each annual meeting of Trustees:
 - (i) audited financial statements for the Plan for the previous fiscal year will be presented to the Trustees; and
 - (ii) a report from the Plan's actuary, including an actuarial valuation of the liabilities of the Fund and the financial condition of the Fund, will be presented to the Trustees.
- (c) **Special Meetings.** Either the Chair, the Vice-Chair or any group of Trustees constituting a majority of the Trustees then in office may call a special meeting of the Board by giving written notice to all other Trustees of the time, place and purpose of such meeting at least 7 days before the date set for such meeting. Any meeting for which no such notice has been given but at which all Trustees are present, or concerning which all Trustees have waived notice in writing, will be a valid meeting of the Board.

3.5. Notice of Meeting

The Chair, any other officer of the Board or other person delegated to do so by the Chair, or the parties convening a special meeting pursuant to subsection 3.4(c), as the case may be, shall cause written notice of each meeting of the Board to be served upon the Trustees no less than seven days prior to the date of such meeting. The notice of a meeting shall specify the date, time and location of the meeting, and shall include an agenda of matters to be addressed at such meeting. The agenda for each meeting shall be distributed with the notice of meeting. Whenever possible, any reports or other documentation to be considered at such meeting shall be provided to the Trustees with the notice of meeting.

3.6. Waiver of Notice

A Trustee may waive notice of a meeting of the Board in writing. Further, a Trustee shall be deemed to have waived notice of a meeting of the Board by attending at such meeting without objection.

3.7. Quorum

- (a) A quorum for the transaction of business at any meeting of the Board shall consist of not less than six Trustees, one of whom must be the then Chair or Vice-Chair, present in person or participating by means of a telephone conference call or other means of communication whereby all persons taking part in the meeting can hear and speak to one another. No proxies shall be permitted at any time.
- (b) If a quorum is not present within one-half hour of the time specified for a meeting of the Board, the Trustees present may adjourn the meeting to a fixed time and place but may not transact any other business.
- (c) If during a meeting a quorum is lost, no further business shall be transacted at that meeting by the remaining Trustees other than adjourning the meeting to a fixed time and place.
- (d) If the Trustees meet when a Trustee position is vacant, the meeting is validly constituted as long as a quorum is present.
- (e) Notwithstanding any other provision of this Trust Agreement, but subject to Section 8.5, if a Trustee declares, or the remaining Trustees determine, that he or she has or may have a conflict of interest relating to a matter being discussed by the Board, he or she shall be excused from those portions of the meeting during which such matter is discussed. However, for the purposes of determining whether a quorum exists or is being maintained while the Trustee is so excused, the excused Trustee shall be deemed to be present at the meeting.

3.8. Chair of Meeting

The Chair, or in his or her absence, the Vice-Chair, shall act as chair of a meeting of the Board. If the secretary selected by the Board pursuant to Section 3.3 is not present at a meeting, the chair of such meeting shall select a recording secretary for such meeting. Minutes will be prepared and provided to the Trustees for verification at the next meeting of the Board where it is practical to approve of such minutes.

3.9. Procedure at Meetings

Except as otherwise set forth herein, the Board may from time to time make such rules as to conduct and procedures for its meetings and may, as well, amend such rules and procedures. Where the Board has not adopted a specific procedure, then the current edition of Roberts's Rules of Order Newly Revised (currently the 10th edition (2000)) shall prevail and govern. Such rules are subject to the provisions of this Agreement. If there is an inconsistency between this Agreement and the rules, this Agreement prevails.

3.10. Voting

At any duly called and constituted meeting of the Board, each Trustee present shall be entitled to one vote. All decisions shall be made by resolution passed by a majority of the Trustees present at the meeting. The Chair shall vote on all resolutions but shall not be entitled to a second vote in the event of deadlock. Every Trustee present at a duly called and constituted meeting of the Board shall be required to cast a vote in favour of or against any proposal, motion or resolution properly made at such a meeting, and any purported abstention by a Trustee shall be deemed a vote against the proposal, motion or resolution. For greater certainty, a Trustee who is excused from a Trustee meeting pursuant to paragraph 3.7(e) shall not be considered to have voted for or against any proposal, motion or resolution voted upon while he or she is so excused.

3.11. Resolution of Deadlock

- (a) Subject to subsection (b) below, a deadlock shall be deemed to exist whenever a proposal, motion or resolution made by a Trustee and seconded by another Trustee is neither adopted nor rejected by a majority vote, or where a proposal, motion or resolution is unable to be made at a meeting due to lack of a quorum at two consecutively called meetings.
- (b) A deadlock shall not be deemed to exist where such proposal, motion or resolution is a proposal, motion or resolution to amend this Agreement.
- (c) In the event of a deadlock, a further meeting of the Board shall be held no later than 14 days after the deadlock has arisen for the purpose of resolving the matter in dispute. If the matter is not resolved at such meeting, any two Trustees may require at the meeting the naming of an adjudicator for the purpose of casting a tie-breaking vote on the matter in dispute at the next meeting of the Trustees. If two Trustees make such a request at a meeting and the Board fails at that meeting (or any adjournment thereafter) to appoint an adjudicator, the Chair or the two Trustees who made such a request may apply to the Supreme Court of British Columbia to appoint a person to act as the adjudicator.
- (d) The adjudicator shall attend a meeting at which he or she shall review all relevant documentation and entertain submissions from the remaining Trustees or any group of Trustees with respect to the matter in dispute. The adjudicator shall cast a tie-breaking vote on the matter in dispute and shall make his or her determination within seven days of the meeting at which submissions are made. The decision of the adjudicator shall be final and binding on all other Trustees, Participating Employers, Participating Employees and their beneficiaries. Upon casting the tie-breaking vote, the function of the adjudicator shall be completed.
- (e) The reasonable expenses and fees of the adjudicator shall be paid out of the Fund.

3.12. Resolutions inWriting

Despite Sections 3.10 and 3.11, if all of the Trustees then in office could form a quorum if they met, any decision of the Board may be made by unanimous consent in writing signed by all Trustees then in office without a meeting of the Trustees.

3.13. Compensation of Trustees

A Trustee shall not be compensated for attendance at a Board meeting, or for otherwise attending to his or her duties under this Agreement. However, nothing herein shall prevent the BCCA or a Regional Association from compensating any Trustee for attendance at a Board meeting, or for otherwise attending to his or her duties under this Agreement.

3.14. Reimbursement of Trustees

Each Trustee shall be reimbursed from the Fund for all expenses which have been reasonably incurred by the Trustee in the performance of his or her duties. Such expenses may include reasonable expenses of attendance at any educational conferences by a Trustee to assist such Trustee in carrying out his or her duties. In the event of any dispute as to whether an expense incurred by a Trustee should be reimbursed as herein set forth, the Board shall determine such dispute, which determination shall be final and binding on all persons. In determining which expenses may be reimbursed, the Trustees shall use the current expense reimbursement policy for the board of directors of the BCCA as a guideline.

3.15. Formal Name of Board

The Board shall enter into agreements and act in all matters in the name of "The Board of Trustees of the British Columbia Construction Association Employee Benefit Trust".

3.16. Validity of Action of Trustees

Notwithstanding that it is subsequently discovered or determined that there existed some defect in the appointment, removal or qualifications of any Trustee, or, that at the time an action of the Board was taken, the minimum number of Trustees was not appointed, all acts and proceedings of the Board done and carried on in good faith at any time while any such defect existed will be valid and effective.

PART 4 - Creation, Purpose and Application of the Fund

4.1. Creation of Fund

The British Columbia Construction Association Employee Benefit Trust Fund (the "**Fund**") is hereby established pursuant to the terms of this Agreement. The initial assets of the Fund shall consist of the Insurance Policies and Other Assets conveyed to the Trustees pursuant to the Conveyance and Sponsorship Agreement.

4.2. Purpose of the Fund

The Fund is established and is to be maintained, and the Trustees agree to receive the Fund and to hold it in trust, for the purpose of providing, to the extent the Fund permits, Health and Welfare Benefits for Participating Employees and their dependents or beneficiaries who are eligible for benefit coverage under the ELHT Rules in accordance with the Plan Text and the Agreement, and for no purposes other than those set forth in this Agreement.

4.3. Adoption of Plan Text

The Board shall adopt a Plan text (the "**Plan Text**") which sets out the Health and Welfare Benefits to be provided under the Plan, the eligibility requirements for such benefits, and such other Terms as the Board deems necessary to include, provided that all such Terms must be consistent with the terms of this Agreement and the ELHT Rules. Should any provision of the Plan Text be found to be not compliant with the ELHT Rules the Plan Text shall be deemed to be amended so as to remedy any such noncompliance.

4.4. Amendments to Plan Text

The Board may at any time change or modify the Plan Text, provided that such changes or modifications are consistent with this Agreement and the ELHT Rules. Any such change or modification may take effect retroactively or otherwise, as the Board decides.

4.5. Contracts, Arrangements, etc.

For the purpose of implementing the Plan and providing the Benefits specified in the Plan Text to Members, the Board may enter into such contracts or arrangements and obtain such insurance policies and other undertakings as the Board thinks advisable, and may renew, modify or terminate any such contract, arrangement, policy or undertaking as and when it considers it expedient to so do. Any such contract, an-arrangement, policy or undertaking may be executed or made in the name of the Board.

4.6. Application of the Fund

For the purposes set forth in this Agreement, the Board has power to use and apply the Fund as follows:

- (a) to pay the Health and Welfare Benefits required to be paid in accordance with the Plan Text and this Agreement, to the extent the Fund permits provided substantially all of the cost of benefits is applicable to Designated Employee Benefits;
- (b) to pay to the BCCA the sponsorship fee contemplated by the Conveyance and Sponsorship Agreement, as that Agreement may be amended from time to time;
- (c) to pay or provide for the payment of all reasonable and necessary expenses, costs and fees incurred in connection with the maintenance, operation and administration of the Fund and the Plan, including the leasing or purchasing of such premises, materials, supplies and equipment and the employment of such officers, actuarial, legal, accounting, administrative and other assistants and staff as the Trustees in their discretion deem necessary or appropriate for the proper performance of their duties as well as to reimburse the Trustees as provided in Section 3.14 and to pay or provide for the payment of expenses incurred by officers and staff of the Board in the performance of their duties in connection with the Plan in accordance with policies established from time to time by the BCCA;
- (d) to acquire, to keep in good standing, and to replace, from time to time, such insurance, including fiduciary liability insurance and fidelity bonds, in such amounts as the Trustees deem advisable;
- (e) to pay all necessary expenses incurred by the BCCA in connection with the establishment of the Fund and the Plan, including any fees, charges and disbursements of any employee benefit consultants or any actuarial, legal, accounting or other professional advisors retained by the BCCA in connection with the establishment of the Fund and the Plan;
- (f) to pay or provide for the payment of all real and personal property taxes, income and other taxes, or assessments of any and all kinds levied or assessed under existing or future laws upon or with respect to the Fund, or any money or property forming a part thereof;
- (g) to establish and accumulate such reserve funds within the Fund, based on actuarial advice, as may be necessary to provide for payment of Health and Welfare Benefits, administrative expenses and other obligations of the Fund;
- (h) to register any investments held in the Fund in:
 - (i) the name of the Board;
 - (ii) the name of a financial institution acting as custodian of the Fund for the Board (or the nominee, sub custodian or other person acting directly for such financial institution);
 - (iii) the name of a domestic or foreign depository or clearing agency that is authorized to operate a book-based system, or its nominee; or

- (iv) bearer form, if the investment is not capable of being registered or registration of it would not be in the best interests of the Plan;
- (i) to deal with any properties forming part of the Fund and execute and deliver any documents in connection therewith, including, without limitation, securities lending arrangements with respect to securities of the Fund, and to enter into any contracts or agreements considered advisable in connection with the establishment, administration and operation of the Fund and the Plan, and do all other acts considered necessary or proper for the protection of the Fund and the Plan;
- (j) to retain monies and other properties of the Fund on deposit or for safekeeping at any one or more chartered banks or licensed trust companies or credit unions and to enter into arrangements and contracts with such banks, trust companies or credit unions for the purposes of the trusts set forth in this Agreement, (including, without limitation, entering into credit card arrangements for the purpose of paying administrative expenses of the Trust) and, from time to time, to hold such part of the Fund un-invested when in the opinion of the Trustees it is necessary or advisable, in the best interests of the Fund, or for the proper administration thereof, so to do;
- (k) to sell for cash or on credit, convert, redeem, exchange for other securities or other properties or otherwise dispose of and deal with any securities or other properties at any time held by the Trustees for the purposes of the Fund and generally to act as owner and exercise all rights incidental to ownership thereof;
- (l) to invest and re-invest the principal and income of the Fund, without distinction between principal and income, in investments which a prudent investor might invest, including a security issued by a mutual fund as defined in the *Securities Act*, and which are not prohibited investments as defined by section 201.9 (1) of the Income Tax Act, Canada and conform to the investment policies and guidelines adopted by the Trustees from time to time. In determining investment policies and guidelines, the Trustees shall make reasonable assessments of risks and returns that a prudent investor would adopt under comparable circumstances. In particular, the Board will have primary regard to the nature of the liabilities of the Fund, investment risk, and rate of return and will not require the rejection of an investment, or the preference of one investment over another, based on factors unrelated to the nature of the liabilities of the Fund, investment risk and rate of return; and
- (m) subject to subsection (l), to commingle all or part of the Fund with the assets of other trust funds for the purpose of making joint, collective or participating investments with respect to such commingled assets, if separate accounts reflecting the share of the Fund are maintained.

4.7. Limitation of Right to the Fund

The following limitations apply to the rights or interests in, or use of, the Fund:

- (a) none of the BCCA, the Regional Associations, or any Participating Employer, Participating Employee, or any other person, firm, association, or corporation will have any right, title or interest in or to the Fund, except as expressly provided by this Agreement or as provided by law; and
- (b) except as otherwise provided in this Agreement no part of the corpus or income of the Fund will be used for or diverted to purposes other than those set forth in Section 4.02 of this Agreement.

4.8. Prohibition on Payments to Participating Employers

Under no circumstance shall any portion of the Fund, either on Termination of the Fund, or at any other time, revert to or accrue to the benefit of any Participating Employer. However, nothing in this Section 4.8 (or any other provision of this Agreement) in any way precludes the Board from applying surplus assets within the Fund to the reduction (in whole or in part) of Contributions otherwise payable by the Participating Employers or the Participating Employees (or both), or in considering the amount of surplus assets within the Fund when determining the rates of Contributions which the Participating Employers or the Participating Employees (or both) must make.

4.9. Restriction on Investments

No property of the Fund, whether such property is acquired from the capital or income of the Fund, shall be invested in the shares, notes, bonds, debentures or similar indebtedness issued by:

- (a) a Participating Employer,
- (b) a person who does not deal at arm's length with a Participating Employer, or
- (c) a person who is a member of a group of persons not dealing at arm's length with a Participating Employer,

nor shall any such property of the Fund be invested in property which is or will be used directly or indirectly, solely or otherwise, by a Participating Employer or any person who does not deal at arm's length with a Participating Employer or who is a member of a group of persons not dealing at arm's length with a Participating Employer. For the purposes of this Section 4.9, a group of persons is deemed not to be dealing at arm's length with a Participating Employer if the group is related (within the meaning of the *Income Tax Act* (Canada)) and collectively, they control a Participating Employer.

PART 5 - Powers and Duties of the Trustees

5.1. General

The Trustees have all power and authority necessary to administer the Plan and the Fund. Without limiting the generality of the foregoing, the Trustees are hereby authorized and empowered:

- (a) to make such arrangements and agreements, including insurance arrangements, on behalf of the Fund with corporations, firms or persons to provide the Health and Welfare Benefits required to be provided pursuant to the Plan Text and this Agreement from time to time;
- (b) to engage and dismiss, from time to time, such officers, employees, agents, advisors, administrators, professionals (including auditors, solicitors, and actuaries), and others, as the Trustees deem necessary as staff or as consultants to assist them in their administration of the Fund and Plan and the Trustees may delegate any of their administrative powers or duties to any such person or persons;
- (c) to make, revise from time to time, and enforce such policies, rules and regulations consistent with the provisions of this Agreement as the Trustees consider advisable for the effective administration of the Trust; including, without restricting the generality of the foregoing, policies with respect to compensation of officers and staff of the Board;
- (d) to determine and decide upon the right of any person to receive Health and Welfare Benefits provided by this Agreement and the Plan text, the type, extent or amount thereof, and whether or not any hearing will be granted to any individual who may be affected by any such determination or decision, and any such determination s and decisions will be final and binding upon all patties and persons whomsoever;
- (e) to develop and establish procedures to be followed by Participating Employers for reporting Contributions made by them;
- (f) to obtain and evaluate all statistical, actuarial and other data which may reasonably be required for the proper administration of the Plan and the Fund;
- (g) to appoint one or more trust companies, chartered banks, insurance companies, credit unions or other corporations, partnerships or individuals to act as agent for any purpose of the Fund, including that of custodian of the assets of the Fund and including that of investment manager of all or part of the Fund and to delegate to such agents any of the powers and duties of the Trustees in connection with the administration of the Plan and the investment of the Fund or any part thereof;
- (h) to make reciprocal agreements with any person, firm or corporation, charged with the duties of maintaining, operating and administering any other health and welfare plan for the reciprocal transfer of benefit entitlements between such plan and the Plan, and for the payment or receipt, as the case may require, of such funds as are required to be paid by the Terms and provisions of such reciprocal agreements;

- (i) to compromise, settle, arbitrate, and release all claims or demands in favour of or against the Fund or the Trustees on such Terms and conditions as the Trustees deem advisable;
- (j) to make appropriate allocations of common administrative expenses and disbursements shared or to be shared with another health and welfare plan or trust fund;
- (k) to develop and establish budgets of both a capital and operating nature for the Plan; and
- (l) to develop strategic planning for the Plan and the Fund.

5.2. Administrative Agent

The Board may appoint, hire or retain an Administrative Agent (who may be given a different title by the Board) and may at any time, but subject to any agreement reached between the Board and the Administrative Agent, remove the Administrative Agent and appoint, hire or retain a successor. The Administrative Agent shall assume the responsibility of accounting for Contributions, other payments, Health and Welfare Benefits, and expenses, and such other duties and responsibilities as may be delegated to him or her pursuant to this Agreement or from time to time by the Board.

5.3. Action by Trustees

The Trustees may seek judicial protection by any action or proceedings they may deem necessary to settle their accounts, or may obtain a judicial determination or declaratory judgment as to any question of construction of this Agreement or instruction as to any action hereunder. Any such determination will be binding upon all person who are parties to, or claiming under, this Agreement.

5.4. Borrowing

The Board may, from time to time, borrow money on a short-term basis on such terms and conditions as may be necessary and appropriate in the circumstances, provided that such borrowing shall only be for the purposes of:

- (a) the payment of Health and Welfare Benefits; or

permitting the orderly disposition of investments of the Fund during the planned conversion of any investments; in order to avoid a distress sale of investments of the Fund that would otherwise be necessary to pay such Health and Welfare Benefits or acquire new investments.

5.5. Delegation to Committees

The Board may from time to time by resolution constitute, dissolve or reconstitute standing committees and other committees consisting of such persons as the Board may determine. Every committee constituted by the Board will have the powers and duties delegated to it by the Board (subject always to the supervision by the Board) and will conform to the policies imposed upon it by the Board.

5.6. Finance and Audit Committee

The Board may constitute, as a standing committee, a Finance and Audit Committee composed of two or more Trustees to carry out the following duties and responsibilities:

- (a) review the financial statements of the Plan and the annual audit report, report to the Board and make recommendations where required;
- (b) monitor and review the financial experience of the Plan, report to the Board and make recommendations where required;
- (c) make recommendations to the Board on the appointment of an auditor, supervise and evaluate the performance of the auditor and liaise with the auditor when necessary;
- (d) review the Plan's budget, including expenses to be paid from the Fund, report to the Board and make recommendations where required; and
- (e) such other duties and responsibilities as may be determined from time to time by the Board, including advising, reporting or making recommendations to the Board with respect to the financial aspects of the Plan and the Fund.

5.7. Execution of Documents

All cheques, drafts, vouchers or other withdrawals of money from the Fund and documents effecting the transfer of any property or security of the Fund, will be executed in accordance with policies set by the Trustees. In the absence of any such policies, such transactions will require the signature of at least two Trustees who will first have been duly authorized by the Board to sign such documents. In addition, the Trustees may authorize a Trustee or Trustees or any other persons they may designate to execute any notice or other instrument, and all person, partnerships, corporations or associations may rely thereupon that such notice or instrument has been duly authorized and is binding on the Fund and the Trustees.

5.8. Audit

The Trustees will cause an audit to be made of the Fund at least once in each calendar year. Whenever the Trustees consider it necessary or advisable for the proper administration of the Fund, the Trustees may authorize additional audits. Each auditors' report, including the results of each audit, will be available for inspection by any Trustee, the BCCA, the Regional Associations and any Participating Employer.

5.9. Trustees' Discretion

The resolution of any questions arising in connection with the carrying out of the Terms and provisions of this Agreement not specifically provided for herein will be left to the discretion of the Trustees.

5.10. Information for Participating Employees

The Board will make available to each Participating Employer for appropriate distribution brochures or pamphlets setting out the essential features of the Plan.

PART 6 - Obligation of Participating Employers to Make Prompt Payment of Contributions

6.1. Obligation

In consideration of being accepted by the Trustees for participation in the Plan, each Participating Employer agrees with the Trustees and promises to promptly pay to the Trustees, or to such person, firm or corporation as the Trustees may, from time to time direct, all Contributions which the Participating Employer is required by the Trustees to pay.

6.2. Amount of Contributions

The Trustee will from time to time determine the Contributions to be paid to the Plan by Participating Employers. The amount of the Contributions required to be paid by Participating Employers will be those amounts necessary to fund the obligations required under this Agreement as determined, from time to time, by the Trustees. Nothing in this Section 6.2 restricts the right of the Trustees to reduce or eliminate Contributions for such period of time as the Trustees consider appropriate. Any determination under this Section will only be made after receipt and consideration of actuarial advice and the ELHT Rules.

6.3. Interest

Whenever and so often as a Participating Employer fails to pay Contributions within 30 days of the date upon which they were due to be paid, such Participating employer will also pay interest at 2 percentage points above the Prime Rate from the date the Contributions were due to be paid until the actual date of payment thereof both before and after judgment.

6.4. Enforcement

Whenever and so often as a Participating Employer fails to pay Contributions, the Trustees have the right to commence and prosecute legal action in the names of the Trustees against the defaulting Participating Employer for the recovery and payment of the amount of such Contributions accrued due and payable at the date of the commencement of such action, including any interest owing under Section 6.3. The amount of such Contributions and interest will, for all purposes, be deemed to be a debt then due and payable by such Participating Employer to the Trustees. The Trustees may also claim such further and other relief whether with respect to future payment of Contributions or otherwise, as may be available to the Trustees. Participating Employers who fail to pay Contributions are also liable for, and will pay to the Fund, all legal fees and disbursements incurred in the collection of such Contributions, and interest, reasonably incurred on a full indemnity basis.

6.5. Nature of Right of Action

The right of action hereby conferred upon the Trustees will be in addition to and independent of any other procedure or remedy which may be available to the Trustees, or to any other person whomsoever.

6.6. Right of Entry

If the Trustees determine it is necessary for purposes connected with establishing, reviewing, revising or collecting Contributions then, upon written demand of the Trustees to a Participating Employer, the Trustees, or any person or corporation acting on their behalf, will be permitted to:

- (a) enter upon a Participating Employer's premises at any reasonable time for the purpose of carrying out any inspection, audit or examination;
- (b) examine and make copies of all books of accounts, documents, vouchers, payroll records, time sheets or any other material which may be relevant to the said inspection, audit or examination; and
- (c) make inquiries of the Participating Employer or any persons employed or otherwise engaged by the Participating Employer.

If the Trustees make such a written demand, then access to premises and documentation in accordance with subparagraphs (a) and (b) above will be granted by the Participating Employer, and the Participating Employer of whom the demand was made will produce all books of account, documents, vouchers, payroll records, time sheets and any other material which may be relevant to the inspection, audit or examination, in order to ensure that the Participating Employer has been complying with the Terms and conditions of this Agreement.

6.7. Security

The Trustees may require any Participating Employer to provide a cash deposit, in such amounts and at such times as is reasonably determined by the Trustees, provided the Participating Employer has been given reasonable notice of such cash deposit. The Trustees may also require a Participating Employer to provide a bond or letter of credit acceptable to the Trustees for an amount equivalent to a maximum of 6 months of reasonably anticipated Contributions. Such bond or letter of credit, at the expiry of 6 months, will be renewed at the request of the Trustees. If such bond or letter of credit is not renewed upon the request of the Trustees, and received at least 10 days prior to the expiry of the current bond or letter of credit in force, then the Trustees have the right to convert the said current bond or letter of credit to a cash deposit.

6.8. Obligation of Participating Employers, the BCCA and the Regional Associations to Provide Information

Each Participating Employer, the BCCA and the Regional Associations hereby agree to promptly provide the Trustees with such reports, payroll records, time-sheets, accounting information and other data or records as the Trustees may reasonably require and request from them for the proper administration of the Fund and the Plan.

PART 7 - Limitation of Liability

7.1. Liability and Indemnity

No Trustee shall be liable for the act or omission of any other Trustee. The Fund shall indemnify and save harmless the Trustees and each of them, of, from and against any loss, expense, claim, demand, action or thing of any nature whatsoever, arising out of the performance or purported performance of their duties or responsibilities hereunder except that this indemnity shall not, in any way, extend so as to protect any Trustee with respect to any matter or thing arising out of his or her breach of the duty of care specified in Section 8.1.

7.2. Indemnity from Fund in Respect of Legal Proceedings

The Board may commence such legal proceedings as it deems necessary or appropriate in connection with the enforcement of this Agreement and the administration of the Fund or the operation of the Plan, as well as defend any legal proceedings which may be brought against the Board or any of the Trustees, and the reasonable expenses the Board or any Trustee incurs doing so shall be paid out of the Fund, except with respect to any proceedings brought against the Board or any Trustee in relation to any matter or thing arising out of the breach of the duty of care specified in Section 8.1 by a Trustee or the Board.

7.3. Liability for Losses in Fund

The Trustees, individually or collectively, shall not be liable for the making, retention or sale of any investment or reinvestment made by them in accordance with this Agreement or in accordance with any other legal duties nor for any loss to or diminution of the Fund, except a loss or diminution that resulted from a breach of the duty of care specified in Section 8.1 by the Trustee and no individual Trustee shall incur any liability for such loss or diminution unless he or she is a party to such breach of the duty of care specified in Section 8.1.

7.4. Liability for Other Matters

Despite Sections 7.1 through 7.3, the Trustees, individually or collectively, shall not be responsible or liable for:

- (a) any matter, cause or thing arising due to the invalidity of all or any part of this Agreement or the Plan Text;
- (b) any delay occasioned by any restriction or provision in this Agreement, the Plan Text, any contract procured in the course of the administration of the Plan or Fund, or by any other proper procedure in such administration; or
- (c) any Contributions required to be paid to the Fund.

7.5. Reliance on Documents, etc.

Despite Sections 7.1 through 7.3, the Trustees shall incur no liability, either collectively or individually, in acting in accordance with this Agreement, or upon any documents, data or information reasonably believed by them to be genuine and accurate and to have been made, executed, delivered or assembled by the proper parties. Without limitation, the Trustees will be under no obligation to determine the validity of any notice, advice, instructions or information reasonably believe by them to be genuine and given to them by or on behalf of the BCCA, a Participating Employer, a Participating Employee, or any other person in connection with the administration of the Fund and Plan, before accepting or acting upon same.

7.6. Reliance on Advisors

Despite Sections 7.1 through 7.3, so long as the Trustees exercise reasonable care in the selection, instruction and supervision of a professional advisor, the Trustees shall incur no liability, either collectively or individually, in acting and relying upon the opinions or advice of the professional advisor.

7.7. Further Assurances

The Trustees shall do such things and execute and deliver such documents in order that any and all funds required to be paid out of the Fund by way of indemnity as herein set forth are paid as required from time to time.

7.8. Recourse Solely Against Fund

A Participating Employee or person claiming through a Participating Employee shall have recourse solely to the Fund for any benefit or other payment under the Plan.

7.9. Acting as a Director or Trustee of Other Body

- (a) The Board may pay from the Fund an amount it considers appropriate in the circumstances to indemnify, fully or partly, a Trustee against costs, loss or damages incurred or awarded against him or her as a result of any act or omission done, or omitted to be done, in good faith as trustee of another trust or as director of a body corporate, to which the Trustee was appointed by the Board as Trustee or director for the purpose of representing the Board in the operation of that other trust or body corporate.
- (b) Despite subsection (a), where a loss suffered by the Trustee in serving as trustee of another trust, or as director of a body corporate, as described in subsection (a) results from liability to pay the deductible amount under an insurance policy that insured the other trust or body corporate, or its trustees and directors, against the loss except for the deductible amount, then the Board shall pay from the Fund the amount necessary to indemnify the Trustee for liability to pay that part of the deductible amount that the Trustees consider was a reasonable deductible amount.

7.10. Extended Meaning of Trustee, etc.

Any reference in this Agreement to the indemnification or other protection of a Trustee shall, unless the context clearly indicates otherwise, be deemed to also refer to individuals who formerly held a Trustee position.

7.11. Liability of Appointing Parties

No Appointing Party shall be responsible or liable for:

- (a) any matter, cause or thing arising due to the validity of all or any part of this Agreement or the Plan Text;
- (b) any delay occasioned by any restriction or provision in this Agreement, the Plan Text, the rules and regulations of the Trustees issued hereunder, or any contract to which the Trustees are party;
- (c) any act or omission of the Trustees, either collectively or individually;
- (d) any investment of the Fund, including the making or retention of any deposit or investment of the Fund, or any portion thereof, or the disposition of any such investment, or the failure to make any investment of the Fund, or any portion thereof, or any loss or diminution of the Fund;
- (e) any of the obligations or acts of the Trustees notwithstanding that such Trustees may be associated with an Appointing Party;
- (f) any Contributions required to be paid to the Fund, other than its own Contributions as may be required to pay as a Participating Employer in the Plan;
- (g) any losses, expenses, claims, demands or actions in connection with the establishment, administration or operation of the Fund; or
- (h) the provision of, or failure to provide, any Health and Welfare Benefit.

7.12. Indemnification of Administrative Agent, Employees and Agents

Without limiting the powers otherwise given to the Board by this Agreement, the Board may agree to indemnify out of the Fund the Administrative Agent and any other agent or employee it retains or hires on Terms no more favourable than those upon which the Board is itself indemnified pursuant to this Part 7.

PART 8 - Fiduciary Responsibilities

8.1. Duty of Care

In administering the Plan and Fund, each Trustee must:

- (a) act honestly, in good faith and in the best interests of the Participating Employees and any other persons entitled to benefits from the Plan;
- (b) deal at arms' length from each Participating Employer; and
- (c) in investing the Fund exercise the care, skill, diligence and judgement that a prudent investor would exercise in making investments.

8.2. No Conflict of Interest

No Trustee shall knowingly permit his or her other interests to conflict with his or her powers, duties and responsibilities in respect of the Plan and Fund. The Board may adopt a conflict of interest policy whereby conflicts must be disclosed and addressed in accordance with the procedures specified in such policy. A Trustee shall not be considered to be in a conflict of interest merely because he or she is a Participating Employer, Participating Employee, or an employee or director of the BCCA or a Regional Association, but nothing in this Section 8.2 derogates from or diminishes the Trustees' fiduciary responsibilities hereunder.

8.3. Restrictions on use of Agents

Where it is reasonable and prudent in the circumstances to do so, the Board may employ or appoint one or more agents to carry out any act required to be done in the administration of the Plan or in the administration and investment of the Fund. If the Board employs or appoints such an agent, the Board shall personally select the agent and be satisfied of the agent's qualifications and suitability to perform the duties for which the agent is employed or appointed, and the Board shall carry out such supervision of its agents as is prudent and reasonable. Any agent so appointed or employed is not entitled to any payment from the Fund other than the usual and reasonable fees and expenses for the services provided by the agent in respect of the Plan and Fund.

8.4. Restrictions on Benefits Payable to Trustees

No Trustee is entitled to any benefit from the Plan or Fund other than the Health and Welfare Benefits provided for in the Plan Text, and any reimbursement of expenses related to the administration of the Plan or the administration and investment of the Fund permitted by the common law or provided for in this Agreement or the Plan Text.

8.5. Fiduciary Duties Relating to Sponsorship Fee

It is recognized that the BCCA and the Regional Associations who appoint and nominate the Trustees have a material interest in the level of the sponsorship fee the Board pays to the BCCA pursuant to the Conveyance and Sponsorship Agreement. Despite such material interests, nothing herein shall restrict or prohibit any Trustee from Participating in discussions on such topic at a meeting of the Board, or from voting on any resolution relating to such topic at such a meeting, provided that in all such discussions and voting the Trustees must act in a manner consistent with their fiduciary responsibilities hereunder.

PART 9 - Amendment

9.1. Amendments by BCCA and Trustees

The BCCA and the Board may at any time, by written agreement, modify or amend this Agreement, except that no amendment or modification may be made which:

- (a) permits the Fund to be used other than:
 - (i) to provide for Health and Welfare Benefits as set forth in Section 4.2;
 - (ii) to pay the costs of administration and operation of the Fund and the Plan;
 - (iii) to pay such other costs and expenses as are now authorized or may hereafter be authorized by this Agreement; or
 - (iv) for a purpose set out in this Agreement.
- (b) eliminates the requirement of an audit; or
- (c) causes the trust created under this agreement and the Plan to no longer comply with the ELHT Rules.

9.2. Amendments by Trustees

Despite Section 9.1, the Board may amend this Agreement without the approval of the BCCA in such a manner as is necessary to maintain the Plan's status as an ELHT, or to comply with applicable legislation.

9.3. Retroactive Amendment

Any amendment to this Agreement adopted pursuant to Section 9.1 or 9.2 may take effect retroactively, provided that no amendment shall be made which retroactively increases the duty of care required of a present or former Trustee or retroactively diminishes their right to indemnity under this Agreement.

PART 10 - Termination of Participation in the Plan

10.1. Participating Employer's Right to Withdraw

Subject to Sections 10.4 and 10.5, a Participating Employer may withdraw in whole or in part from participation in the Plan upon providing the Trustees with 30 days' advance written notice. The effective date of the withdrawal must be specified in the notice, and may not be earlier than 30 days after the date of the notice, unless the Trustees agree to an earlier date. A Participating Employer who withdraws from the Plan will continue to be liable to pay all Contributions due and accrued due up to the effective date of withdrawal.

10.2. Termination by the Trustees

If a Participating Employer fails to pay Contributions as required by the Trustees or fails to comply with any of its obligations hereunder, then the Trustees may terminate such Participating Employer's right to participate in the Plan by providing the Participating Employer with written notice. The effective date of the termination must be specified in the notice, and must be no earlier than the date the notice is given by the Trustees. Termination by the Trustees of a Participating Employer's right to participate in the Plan will not affect any of the rights of the Trustees against the Participating Employers hereunder, including their rights under Sections 6.4, 6.5, 10.4 or 10.5.

10.3. Termination of Participating Employee's Right to Participate

Except as provided in subsection (b) of the definition of Participating Employee, a Participating Employee will cease to be such and will cease to be entitled to Health and Welfare Benefits immediately upon the termination of his or her Participating Employer's right to participate in the Plan as provided in Sections 10.1 and 10.2.

10.4. Payment Upon Termination or Withdrawal

Should a Participating Employer, for whatever reason, cease to participate in the Plan with respect to all or some of its employees or former employees, and should there be any unfunded actuarial liability at that time in respect of the benefits provided through the Plan to those employees or former employees, then such Participating Employer shall pay to the Trustees such portion of that unfunded actuarial liability as the Trustees, based on actuarial advice, reasonably determine the Participating Employer is liable for, in such manner and upon such terms and conditions as may be determined by the Trustees.

10.5. Liability of Participating Employers for Unfunded Actuarial Liability

The Participating Employers are collectively liable to pay to the Trustees the amount of any unfunded actuarial liability which may exist from time to time with respect to the Health and Welfare Benefits the Trustees provide through the Plan and this Agreement. The Trustees may therefore from time to time in their discretion:

- (a) calculate, based on actuarial advice, the amount, if any, of the unfunded actuarial liability attributable to each Participating Employer;
- (b) give notice in writing to each Participating Employer of the amount of its unfunded actuarial liability as at the date upon which each such notice is given; and
- (c) include in such notice a direction to the Participating Employer to pay the amount referred to in subsections (a) and (b) to the Trustees in such manner and upon such terms and conditions as may be determined by the Trustees, and each Participating Employer must comply with such direction and the Terms and conditions specified by the Trustees.

PART 11 - Transfer of Assets

11.1. Trustees' Power and Authority to Transfer and Pay Over Trust Assets and the Liabilities for Accrued Benefits

Subject to Section 5.3 of the Conveyance and Sponsorship Agreement, if, at any time hereafter:

- (a) persons entitled to benefits under the Plan become or are about to become covered by and entitled to benefits under another ELHT (the "**Successor Trust Fund**") which provide benefits either identical, or substantially similar, to the benefits provided under the Plan; and
- (b) the Trustees, in their discretion, decide it would be advantageous to transfer and pay assets of the Fund into the Successor Trust Fund (on behalf of such persons who at the time of such payment and transfer are entitled to receive a benefit or benefits under the Plan) for the purpose of providing for such persons a benefit or benefits under the Successor Trust Fund; and
- (c) the trustees of the Successor Trust Fund undertake and agree, in a form satisfactory to the Trustees, to accept and to discharge all liabilities of the Trustees with respect to the provision of such benefits to such persons; and
- (d) the trustees of the Successor Trust Fund agree that the benefits to be provided to such persons under the Successor Trust Fund will be identical, or substantially similar, to benefits provided under the Plan at the date of such payment and transfer; and
- (e) the BCCA first approves in writing such action by the Trustees;

the Trustees may pay such assets into the Successor Trust Fund for such purpose.

11.2. Release of Trustees if Assets Transferred

If all assets of the Fund are to be paid to a Successor Trust Fund in accordance with Section 11.1, then as soon as the Trustees decide to make payment into a Successor Trust Fund as contemplated and authorized therein, the provision of Section 14. 2 (other than subsections 14.2(b) and (c)) apply to and govern their actions. Upon such payment into the Successor Trust Fund being effected, all of the Trusts contained herein will cease and terminate, and the Trustees are relieved and released of and from all future obligations, responsibilities and liabilities imposed upon them by and pursuant to this Agreement and otherwise. If not all assets of the Fund are to be paid to a Successor Trust Fund in accordance with Section 11.1, then upon payment into the Successor Trust Fund of the assets which are to be so paid, all of the Trusts contained herein with respect to such assets cease and terminate. With respect to such assets and the persons in respect of whom such assets were transferred the Trustees are relieved and released of and from all future obligations, responsibilities and liabilities imposed upon them pursuant to this Agreement, and otherwise.

PART 12 - Receipt of Assets of Other Health and Welfare Trust Funds

12.1. Trustees' Powers

If, at any time, the Trustees of any other ELHT (the "**Transferor Trust Fund**") and the Trustees agree that it would be advantageous for some or all of the assets of any Transferor Trust Fund to be transferred and paid into the Fund for the purpose of providing benefits under the Plan to persons entitled to benefits from the Transferor Trust Fund then, if the Trustees first obtain the approval in writing of the BCCA, the Trustees are authorized to:

- (a) accept and receive such assets as part of the Fund;
- (b) provide benefits for such persons under the Plan and out of the Fund;
- (c) accept and discharge the liabilities of the Trustees of the Transferor Trust Fund with respect to the provision of such benefits to such persons; and
- (d) undertake and agree with the Trustees of the Transferor Trust Fund as a condition of such transfer and payment that the benefits to be provided to such persons under the Trust will be at least as great as those provided under the Transferor Trust Fund to such persons at the date of such transfer and payment.

PART 13 - Mergers and Amalgamation

13.1. Trustees' Powers

The Trustees may with the consent of the BCCA merge or amalgamate the trust created by this Agreement and the Fund with one or more similar trusts and funds (herein call the "**Amalgamated Fund**"), provided that the Trustees are satisfied that the merger or amalgamation will not have the effect of depriving any person of any right to Health and Welfare Benefits to which such person had become entitled or which had accrued to their credit, and that the rights of such persons under the Amalgamated Fund will, at the effective date of the merger or amalgamation, be the substantial equivalent of their rights under the Plan, or better. Without limitation, such merger and amalgamation can be implemented without regard to whether the Plan and the other plans have an actuarial surplus or deficit as of the effective date of the merger or amalgamation, and the Amalgamated Fund shall be responsible for all the liabilities of the Plan and the plans with which is it merged or amalgamated. In connection with such merger or amalgamation, the Trustees may enter into a merger or amalgamation agreement with trustees of one or more other trusts, amend or terminate this Agreement, transfer or cause the custodian or custodians (if any) of the Fund to transfer and deliver the assets of the Fund to trustees or custodians of the Amalgamated Fund, and execute and deliver all such other documents and instruments and do or cause to be done such other acts as may be required to carry out and such merger or amalgamation.

PART 14 - Termination of Trust

14.1. Termination of Trust and Plan

This Agreement and Plan will be Terminated by the Trustees:

- (a) on receipt by the Trustees of written instructions to so do from the BCCA, which written instructions must indicate the effective date of the Termination; or
- (b) upon payment and transfer of all of the assets of the Fund to a Successor Trust Fund pursuant to Section 11.1.

14.2. Duties of the Trustees Upon Termination of the Trust and the Plan

If this Agreement and the Plan are terminated:

- (a) the Trustees shall make provision out of the Fund for the payment of all expenses including up to the date of termination, as well as all expenses incidental to such termination;
- (b) if the Trustees determine that the Fund (net of any provision made pursuant to subsection (a) is insufficient to discharge all accrued obligations to provide Health and Welfare Benefits under the Plan, the Trustees shall take such steps as are necessary under Section 10.5 to direct such payments from the Participating Employers as are necessary to discharge such accrued obligations;
- (c) if the Trustees determine that the Fund (net of any provision made pursuant to subsection (a) is more than sufficient to discharge all accrued obligations to provide Health and Welfare Benefits under the Plan, such excess amounts shall be used to provide additional Health and Welfare Benefits to the individuals who as of the date of such Termination are Participating Employees (or their eligible dependents or beneficiaries) in such manner and on such terms as the Trustees determine appropriate;
- (d) after discharging their responsibilities under subsections (a) through (c), as applicable, the Trustees shall pay the residue of the Fund as follows:
 - (i) make a final determination of the Health and Welfare Benefits then available to the Participating Employees, their eligible dependents and eligible beneficiaries in accordance with the provisions of the Plan and pursuant to subsection (c), if applicable, and provide, or make arrangements to provide, such benefits to such persons; or
 - (ii) pay the same to a Successor Trust Fund in accordance with Section 11.1; and

- (e) after discharging their responsibilities under subsections (a) through (d), as applicable, the Trustees shall arrange for a final audit and report of their transactions and accounts for the purpose of terminating their trusteeship.

14.3. Board's Powers Continue

Upon the termination of the Plan and the trust created under this Agreement as aforesaid, the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Plan and the trusts created under this Agreement.

14.4. No Further Contributions

Except as provided in subsection 14.2(b), in no event are Contributions required to be made after the Plan and the trust created under this Agreement are terminated except for amounts due, or that have accrued up to the effective date of the termination and have not been paid into the Fund, as required by this Agreement or the Plan Text.

14.5. Completion of Termination

Once all assets of the Fund have been properly disbursed and all the obligations of the Plan and the trust created under this Agreement have otherwise been satisfied, the Plan, this Agreement, and the Fund shall be considered terminated.

PART 15 - Miscellaneous Provisions

15.1. Conclusiveness of Instruments -No Duty to Inquire

No person, partnership, corporation or association dealing with the Trustees is obligated to see that the Terms of this Agreement have been complied with, nor is any of them obliged to inquire into the necessity for or the expediency of any act of the Trustees and every instrument executed by or under the authority of the Trustees will be conclusive evidence that:

- (a) at the time of the delivery of the instrument the trust hereby created were in full force and effect; and
- (b) the instrument was executed in accordance with the Terms and conditions contained in this Agreement.

15.2. Further Assurances

Each Trustee shall from time to time and at any time hereafter, upon each reasonable written request to do so, make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances, things and written instruments as may be necessary in the opinion of any party, for more effectively implementing and carrying out the intent of this Agreement.

15.3. Communications

Any communication required to be given or delivered to any Trustee, the BCCA, a Regional Association, any Participating Employer, or any Participating Employee will be in writing and delivered by hand, sent by facsimile, or sent by prepaid first class mail, addressed to the intended recipient, at the last address or facsimile number shown for the intended recipient in the records of the Board.

15.4. Receipt of Communication

Any communication given under Section 15.3 will be given and received if delivered by hand or sent by facsimile (confirmed by facsimile transmission records) upon receipt. Any communication that is mailed will be deemed given and received on the second Business Day after it has been mailed at any postal station in Canada. Should there be at the time of mailing (or between the time of mailing the actual receipt of a communication) a mail strike or other such dispute which might affect the delivery of such communication, then such communication will only be effective when actually delivered.

15.5. Illegality

If any provision of this Agreement or the Plan Text is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of this Agreement or the Plan Text, unless such illegality or invalidity materially prevents accomplishment of the objectives and purposes of this Agreement and the Plan Text, as determined by the Board.

15.6. Fiscal Year

The fiscal year of the Trust Fund shall end on the 31st day of August in each year.

15.7. Governing Law

The Province of British Columbia shall be deemed to be the situs of the Fund and all questions pertaining to the validity, construction and administration of this Agreement, the Plan Text, the Plan or the Fund shall be determined in accordance with the laws of the Province of British Columbia.

15.8. Binding Effect - Successors

This Agreement, the Plan Text and all amendments thereto and all of the Board's decisions, rules, regulations, policies and procedures made or established in accordance with this Agreement or the Plan Text, shall be binding upon the Trustees, the Participating Employers, the Participating Employees and their respective beneficiaries, dependents, estates, heirs, executors, administrators, successors and assigns.

15.9. Counterpart Execution

This Agreement may be signed in counterparts.

15.10. Survival of Provisions

The provisions of this Agreement which, by their context are meant to survive the Termination of this Agreement, shall so survive the Termination of this Agreement.

15.11. Time of Essence

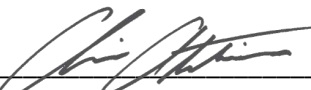
Time shall be of the essence of this Agreement and of every part hereof. All time limits shall be strictly observed.

15.12. December 31st, 2021 Effective Date

Despite the actual date of execution of this Agreement by each of the parties, this amended and restated Agreement is effective as of and from December 31st, 2021.


IN WITNESS WHEREOF the parties hereto have executed this Agreement on the dates appearing below.

BRITISH COLUMBIA CONSTRUCTION ASSOCIATION

By:  December 13, 2021
Title: President Date:

By: _____
Title: Date:

THE BOARD OF TRUSTEES OF THE BRITISH COLUMBIA CONSTRUCTION ASSOCIATION EMPLOYEE BENEFIT TRUST:

By:  December 13, 2021
Chair: Date:

By: _____
Vice Chair: Date:

Schedule 1

Application for Participation in the British Columbia Construction Association Employee Benefit Trust (the "Plan")

TO: **The Board of Trustees of the British Columbia Construction Association Employee Benefit Trust (the "Board")**

AND TO: **The British Columbia Construction Association**

FROM: _____ **(the "Applicant")**

The Applicant acknowledges receipt of a copy of the Trust Agreement relating to the Plan (the "**Trust Agreement**"). Capitalized terms used in this application that are not defined have the meanings given to them in the Trust Agreement.

- (1) To pay Contributions promptly in such amounts and at such times as the Board from time to time determines;
- (2) To be bound by all the terms and provisions of the Trust Agreement, as it is amended from time to time;
- (3) To duly perform all of the obligations and duties, and accept all the liabilities, imposed upon Participating Employers by the Trust Agreement;
- (4) That the health and welfare benefits to be provided under the Plan are limited to those which the Board approves;
- (5) That if it fails to pay Contributions as required by the Trustees or if it fails to comply with its duties and obligations under the Plan, its right to participate in the Plan may be terminated by the BCCA and the Trustees; and
- (6) That if it withdraws from participation in the Plan, it continues to be liable to pay all Contributions due and accrued due up to the effective date of the withdrawal.

The coverage for which the Applicant is now applying is:

Group or Class of Employee Coverage	Group Life Insurance	AD&D	Disability	Extended Health Care	Dental

Requested Effective Date: _____

Name of Employer

Authorized Signature

(Please Print Name and Title)

Date

FOR TRUST OFFICE USE DO NOT WRITE IN THIS SPACE
<p data-bbox="201 1270 594 1407">APPROVED BY THE BOARD OF TRUSTEES OF THE BRITISH COLUMBIA CONSTRUCTION ASSOCIATION EMPLOYEE BENEFIT TRUST</p> <p data-bbox="201 1434 565 1465">ON _____</p> <p data-bbox="201 1497 565 1528">EFFECTIVE _____</p>

Schedule 2

Acceptance of Trust

TO: The Board of Trustees of the British Columbia Construction Association Employee Benefit Trust

AND TO: The British Columbia Construction Association

RE: The Trust Agreement dated September 1st, 2004 as amended and restated (the "Agreement")

Name of Trustee: _____

Nominated By: _____

[name of Regional Association]

Term: _____

(The term is subject to removal or resignation of the Trustee in accordance with the Terms of the Agreement.)

As a Trustee of the British Columbia Construction Association Employee Benefit Trust and Fund appointed in accordance with the Agreement, I hereby:

1. accept the trusts created and established by the Agreement;
2. consent to act as a Trustee of the Plan and the Fund established under the Agreement;
3. agree to administer the Plan and the Fund strictly in accordance with the provisions of the Agreement; and
4. acknowledge and agree that notwithstanding the term for which I was appointed, I may be removed as Trustee in accordance with the Agreement.

DATED at _____, British Columbia, this _____ day of, _____ 2021

Trustee

Witness

Receipt is hereby acknowledged and accepted this _____ day of _____ 2021

Secretary of the Board of Trustees

Witness