

PERSONAL GUARANTEE AND SURETY BOND  
PROCEDURES

I. PERSONAL GUARANTEES

1. The spouse of each guarantor must also be a guarantor.
2. Net Worth - The financial statement must either show a net worth at least ten times greater than the required surety bond amount, or "hard assets" (interests in real property; cash or cash equivalents, such as CD's or Treasury bills; and publicly traded securities) worth at least five times the required surety bond amount. The worth of the Employer, or any ownership interest in the Employer, is not included in the calculation of net worth. Retirement plan interests are also not included.
3. Documentation (for assets up to the required net worth amount): (a) Where the surety bond amount is less than \$25,000, the guarantor must provide a copy of the deed or equivalent title documents for interests in real property; the most recent account statement for bank accounts, pooled investments, treasury notes, etc., and copies of limited partnership agreements and their most recent financial statements for partnership interest assets, and sign an affidavit verifying the financial statement and supporting documents; (b) Where the surety bond amount is equal to or greater than \$25,000, the guarantor must also provide a

current title/lien search for real property; and (c) Where the surety bond amount is greater than \$50,000, the guarantor must also provide a current appraisal (by a licensed appraiser) for real property.

4. All guarantees will be reviewed by the designated Fund employee, with the assistance of the Funds' accountants or counsel, as needed; guarantees for more than \$25,000 must also be approved by the Fund Office Manager, and guarantees for \$50,000 or more must also be approved by the Trustees. In his discretion, the Fund Office Manager may present a guarantee in any amount to the Trustees for their review prior to approving the guarantee.

5. The financial statement and affidavit must be submitted on an annual basis. If these are not submitted within 20 days after a written reminder is sent, the matter will be referred to Fund counsel to compel provision of a surety bond unless the appropriate documentation is supplied.

## II. TIMING OF NOTIFICATION DEMANDS

1. The prior procedure was to send a thirty day notice to companies which have newly signed collective bargaining agreements, and a reminder notice to companies whose bonds are about to expire. If a bond was not supplied within that thirty

day period, or before expiration, a second thirty day letter is sent which included a warning that the matter will be referred to counsel if the bond is not supplied within that period.

2. The new procedure is to shorten each of these periods to twenty days and then permit the Fund office to authorize one thirty day extension, at the request of an employer, if the employer supplies a letter from an insurance broker that the employer has applied for the bond before the expiration of that period, or if the reason for non-compliance is that the employer has supplied an incomplete or improperly filled out bond.

3. After the second twenty day notice has expired, and the Fund office accumulates approximately ten employers in those circumstances, it will then refer that group to Fund counsel to commence legal action. An immediate referral will be made for employers with bond requirements of \$25,000 or more.

4. There is a special procedure for employers with surety bond obligations of \$50,000 or more. The reminder for renewing the bond prior to expiration will include a warning about referral to Fund counsel, and the matter will immediately be referred to Fund counsel if a current bond is not supplied by the expiration date.

### III. CESSATION OF BOND OBLIGATION

1. The surety bond requirement will not be enforced where the employer:

a. has not reported any employees in covered employment for twelve months, or is otherwise categorized as inactive by the Fund office;

b. has written, in response to a surety bond lawsuit, that it has permanently ceased operations in the jurisdiction of the Local 282 Pension Fund, and thus has withdrawn for withdrawal liability purposes.

2. The Funds will not seek attorneys' fees against surety bond defendants where the defendant provides documentary evidence that it was in the process of obtaining the surety bond prior to the commencement of the lawsuit.

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT dated as of \_\_\_\_\_  
\_\_\_\_\_, (the "Guaranty") among \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ and  
\_\_\_\_\_, individuals (each a "Guarantor" and,  
collectively, the "Guarantors"); \_\_\_\_\_  
(the "Employer"); Local 282, International Brotherhood of  
Teamsters, Chauffeurs, Warehousemen and Helpers of America (the  
"Union"); and the trustees (the "Trustees") of the Local 282  
Welfare Trust Fund, Local 282 Pension Trust Fund, Local 282  
Annuity Trust Fund and Local 282 Job Training Trust Fund  
(collectively the "Funds");

WITNESSETH THAT:

WHEREAS, the Employer has entered into a Collective  
Bargaining Agreement, dated \_\_\_\_\_, (the "Collective  
Bargaining Agreement"), with the Union pursuant to which the  
Employer is obligated to contribute to the Funds in respect of  
its employees whose employment is covered by the terms of the  
Collective Bargaining Agreement; and

WHEREAS, in order to guarantee its payment of contributions  
to the Funds, the Employer is obligated to provide a surety bond  
in accordance with the terms of the Collective Bargaining

Agreement; and

WHEREAS, each of the Guarantors is a duly appointed officer of the Employer, or a spouse of a duly appointed officer;

WHEREAS, the Funds are maintained pursuant to the terms of a Trust Agreement (the "Trust Agreement") entered into between the Employer and the Trustees, which Trust Agreement is a part of the Collective Bargaining Agreement and is hereby made a part of this Guaranty; and

WHEREAS, the Collective Bargaining Agreement reserves to the Trustees the right to authorize the Employer, in lieu of providing a surety bond, to secure payment of its contributions to the Funds by, inter alia, delivering to said Trustees the personal guaranty, with such terms and conditions as may be required by the Trustees in their sole discretion, of one or more of the duly appointed officers of the Employer pursuant to which each such officer will promise to pay and to hold himself personally liable to pay to the Trustees upon demand any contributions which the Employer does not timely pay to the Funds, limited only as provided herein;

NOW THEREFORE, in consideration of the agreement of the Trustees to waive the surety bond required of the Employer under the Collective Bargaining Agreement, the Guarantors, jointly and

severally, hereby agree, covenant, represent and warrant for the benefit of the Funds, as follows:

1. The Guarantors hereby jointly and severally, unconditionally and irrevocably guarantee to the Funds (i) the due and punctual payment by the Employer of all amounts payable to the Funds pursuant to the Collective Bargaining Agreement and the Trust Agreement, and (ii) the performance and discharge by the Employer of all its obligations and liabilities to the Funds under the Collective Bargaining Agreement and the Trust Agreement; and the Guarantors hereby jointly and severally agree that if the Employer shall fail to pay any such amount when and as the same shall be due and payable or to perform and discharge each such obligation or liability in accordance with the terms of the Collective Bargaining Agreement and the Trust Agreement, the Guarantors will forthwith pay, and each of them shall be so liable to pay, an amount equal to such amount or perform and discharge any such obligation or liability, as the case may be; provided, however, that the liability of the Guarantors shall not exceed the following amounts, as determined according to the average number of employees of the Employer covered by the Collective Bargaining Agreement during the 12 months preceding the date any obligation or liability hereunder shall become due (hereinafter "average number of employees").

an Employer employing 1 to 5 Employees	\$ 10,000
an Employer employing 6 to 10 Employees	\$ 15,000

an Employer employing 11 to 15 Employees	\$ 20,000
an Employer employing 16 to 20 Employees	\$ 25,000
an Employer employing 21 to 25 Employees	\$ 50,000
an Employer employing 26 to 50 Employees	\$100,000
an Employer employing 51 and over Employees	\$150,000

In the event that the Employer, or any successor to the Employer, executes a successor collective bargaining agreement to the current agreement which provides for increased surety bond obligations, the maximum liability of the Guarantors will increase to that higher amount applicable to the average number of employees.

The Guarantors will furthermore, and in addition to the above referenced amounts, pay all costs, charges and reasonable expenses, including pre-judgment interest, liquidated damages, any other amounts assessed in accordance with the Trust Agreement or 29 U.S.C. §1132(g) (2), and attorney's fees and costs of collection that may be incurred by the Trustees on behalf of the Funds in enforcing such obligations and liabilities of the Guarantors and in enforcing the covenants and agreements of the Guarantors herein.

2. The Guarantors, and each of them, hereby represent, warrant and agree that:

(a) At the time of the execution of this Guaranty, the Guarantors have full legal right, power and authority to perform



their obligations hereunder. The Guaranty has been duly executed and delivered by the Guarantors and is a legal, valid and binding obligation of the Guarantors, enforceable against the Guarantors in accordance with its terms;

(b) There are no actions, suits or proceedings pending, or, to the knowledge of the Guarantors, threatened against or affecting the Guarantors in any court or before any governmental commission, board or authority which, if determined adversely, could have a material adverse effect on the ability of the Guarantors to perform their obligations under this Guaranty; and

(c) Each Guarantor, prior to the time of the execution of this Guaranty, has provided the attached financial statement to the Trustees, and within a reasonable time after any subsequent request therefor by the Trustees, each Guarantor shall provide, and each of them shall so provide, to the Trustees a true complete and accurate compilation of his or their personal financial condition satisfactory and acceptable to the Trustees in the sole judgment of the Trustees, and the following documentation related to that compilation:

(1) For all guarantees: a copy of the deed or equivalent title documents for interests in real property; a copy of partnership agreements and financial statements for

partnership assets; and the most recent account statement for bank accounts, pooled investments, mutual funds and similar investments;

(2) In addition, for guarantees of \$25,000.00 or more: a current lien/title search for real property (for assets up to the required net worth amount);

(3) In addition, for guarantees greater than \$50,000.00: a current appraisal of real property (for assets up to the required net worth amount).

(d) Each Guarantor covenants that the financial statement lists all liabilities, including contingent, alleged or disputed liabilities, known to the Guarantor, and further covenants that the financial statement is a complete, true and accurate statement of all liabilities and assets of the Guarantor. Each Guarantor acknowledges that the Trustees have relied on these representations and covenants in approving the guaranty in lieu of a surety bond.

3. Without limiting the generality of the preceding paragraphs of this Guaranty, the obligations of each Guarantor hereunder, and the rights of the Trustees to enforce the same on behalf of the Funds by proceedings, whether by action at law, suit in equity or otherwise, shall not be in any way affected by

(i) any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, winding up or other proceeding involving or affecting the Employer, any other Guarantor or others, or (ii) any change in the ownership of any of the capital stock or assets of the Employer.

4. The Guarantors agree that in the event that any obligation of the Employer is paid by the Employer, the liability of the Guarantors with respect thereto shall continue and remain in full force and effect in the event that all or any part of such payment is recovered from the Funds as a preferential or fraudulent transfer under the Federal Bankruptcy Code, any applicable state insolvency law, or any other similar Federal or state law now or hereafter in effect.

5. The Guarantors agree that the provisions of this Guaranty shall remain in full force and effect notwithstanding that any of the Guarantors may cease to be a duly appointed officer of the Employer, or the spouse of a Guarantor, unless and until (i) the Trustees shall in their sole discretion release any or all of the Guarantors from his or their obligations under this Guaranty, or (ii) the obligations and liabilities of any Guarantor under this Guaranty shall have been assumed by a successor to such Guarantor and such assumption shall have been accepted by the Trustees, or (iii) the Employer shall have provided a surety bond or placed an amount in escrow satisfactory

to the Trustees in accordance with the terms of the Collective Bargaining Agreement in effect at that time.

6. The Trustees may in their sole discretion upon 30 days prior written notice to the Guarantors and the Employer cancel this Guaranty and require the Employer to provide a surety bond or to place an amount in escrow satisfactory to the Trustees in accordance with the terms of the Collective Bargaining Agreement in effect at that time.

7. The terms of this Guaranty may not be waived, altered, modified, amended, supplemented, terminated or assigned in any manner whatsoever except by written instrument signed by all of the parties hereto.

8. This Guaranty shall be governed by, and construed in accordance with, the laws of the United States and the State of New York.

IN WITNESS WHEREOF, the Guarantors have duly executed this Guaranty as of the date set forth below.

BY EXECUTING THIS AGREEMENT, EACH GUARANTOR AGREES TO BE BOUND BY ITS TERMS AND VERIFIES THAT HIS OR HER ATTACHED FINANCIAL STATEMENT IS A COMPLETE, TRUE AND ACCURATE STATEMENT OF HIS OR HER ASSETS AND LIABILITIES, INCLUDING CONTINGENT OR

ALLEGED LIABILITIES, AS OF THE DATE OF THE STATEMENT, AND THAT THERE HAVE BEEN NO MATERIAL, ADVERSE CHANGES IN HIS OR HER FINANCIAL CONDITION BETWEEN THAT DATE AND THE DATE THIS GUARANTY IS EXECUTED.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Guarantors

By \_\_\_\_\_  
(Name)

Date \_\_\_\_\_

By \_\_\_\_\_  
(Name)

Date \_\_\_\_\_

By \_\_\_\_\_  
(Name)

Date \_\_\_\_\_

\_\_\_\_\_  
(Employer)

By \_\_\_\_\_  
(Title)

Date \_\_\_\_\_

ATTENTION: ALL GUARANTORS THAT SIGN THIS AGREEMENT MUST SUBMIT A PERSONAL FINANCIAL STATEMENT, PREPARED BY THEIR ACCOUNTANT, ANNUALLY ON THE ANNIVERSARY DATE OF THE GUARANTY.

STATE OF NEW YORK

COUNTY OF \_\_\_\_\_

The following Guarantors that executed the Personal Guarantee personally appeared before me.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
Notary Public