

Buffalo Laborers' Pension, Welfare, Training and Security Funds Collections Policy

WHEREAS, the Board of Trustees of the Buffalo Laborers' Pension Fund, the Board of Trustees of the Buffalo Laborers' Welfare Fund, the Board of Trustees of the Buffalo Laborers' Training Fund, and the Board of Trustees of the Buffalo Laborers' Security Fund (the "Trustees") have a duty under the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") to make all reasonable efforts to collect all Employer contributions, including interest and liquidated damages thereon, owed to the Buffalo Laborers' Pension, Welfare, Training and Security Funds (the "Funds"); and

WHEREAS, pursuant to collective bargaining agreements between Laborers International Union North America (AFL-CIO) Local No. 210 (the "Union"), and various multiemployer bargaining associations (the "Association"), or various Employers ("Employers"), acting for and on behalf of present and future participants of the Funds or pursuant to participation agreements between other entities and the Funds, Employers are required to make prompt payments of the contributions owed to the Funds and are bound by the Restated Agreements and Declarations of Trust of the Funds (the "Trust Agreements"); and

WHEREAS, the Funds' Trust Agreements empower the Trustees to demand, collect and receive Employer payments and all other money and property to which the Trustees may be entitled, and to take such steps as may be necessary or desirable, in their sole discretion, to effectuate the collection of such Employer contributions, including the institution and prosecution of, or the intervention in any proceeding at law, or in equity, or in bankruptcy; and

WHEREAS, Section 515 of ERISA requires every employer who is obligated to make contributions to the Funds to make such contributions in accordance with the terms and conditions of the Buffalo Laborers' Pension Plan, Buffalo Laborers' Welfare Plan, the Buffalo Laborers' Training Plan and the Buffalo Laborers' Security Plan (the "Plans"); and

WHEREAS, it is deemed desirable by the Trustees to formulate a written policy to be applied uniformly to the collection of Employer contributions, containing certain terms and conditions governing the payment of Employer contributions to the Funds;

WHEREAS, the Trustees desire to restate their Collection Policy;

NOW, THEREFORE, it is resolved that the Trustees adopt this Collection Policy as follows;

Section 1. Payment of Contributions; Late Payments.

- (a) All payments to the Funds must be received on or before the fifteenth (15th) day of the month following the month during which the hours, for which contributions are required, are worked. Employers failing to make such contributions by that date are delinquent.
- (b) If all payments have not been received by the Funds on or before the thirtieth (30th) day of the month following the month during which hours are worked and for which contributions

are required, the Employer shall be assessed interest at the rate established by the relevant Collective Bargaining Agreement from the date the monies were due (i.e. the 15th day of the month). In the event the relevant Collective Bargaining Agreement does not specify an interest rate or specifies a rate below the rate provided for by Section 502(g)(2) of ERISA (29 U.S.C. 1132(g)(2)), interest shall accrue at the rate set by Section 502(g)(2) of ERISA.

- (c) If full payment including the amounts assessed pursuant to subparagraph (b) above has not been received by the Funds on or before the thirtieth (30th) day of the month following the month during which the hours are worked and for which contributions are required, the delinquency shall be referred to Funds' Counsel for collection.

Section 2. Audit of Payroll Records.

- (a) The Trustees may, at any reasonable time, examine the books and records of any Employer. In the discretion of the Funds' Administrator in consultation with the Co-Chairs of the Trustees, Employers with a significant deficiency or a history of deficiencies may be referred for examination at a greater frequency than other Employers. An Employer's books and records include, but are not limited to all payroll sheets ledgers, vouchers, 1099 forms, evidence of unemployment insurance contributions, payroll tax deductions, W-2 forms, New York State Employment Reports, Insurance Company reports and supporting checks, ledgers, general ledger, cash disbursement records, disability insurance premiums, certification of workers compensation coverage and any other items concerning payroll.
- (b) The Trustees may refer to the Funds' Counsel the cases of Employers who have refused to permit access to their books and records. If it is necessary for the Funds' Counsel to perform legal services, including the commencement of a lawsuit or other proceedings, to obtain the audit and to compel the Employer's production of its books and records, then the Employer shall be liable for all auditing fees, attorneys' and paralegals' fees, court costs, disbursements and expenses incurred by the Funds in enforcing the Funds' right to audit and/or examine the Employer's books, regardless of whether the Employer is delinquent in payment of contributions or is in violation of any of its other obligations under the rules, regulations and/or Trust Agreements of the Funds.
- (c) If the Employer fails to cooperate with the audit, including by failing to provide any of the documents described in part (a) of this section, the Employer shall pay the Funds a penalty in the amount set by the relevant Collective Bargaining Agreement.
- (d) In addition to and apart from any penalty for failing to cooperate with an audit, the Employer shall pay the cost of an audit of the Employer's books and records when the audit reveals a deficiency of more than ten percent (10%) of the prior year's contributions to the Funds or \$2,000, whichever is greater.

Section 3. Legal Action and Settlement.

- (a) Upon the referral of a new delinquency case from the Funds, the Funds' Counsel shall send a final demand letter to the Employer before initiating litigation or agency proceedings

unless otherwise instructed by the Trustees or the Fund Administrator or unless circumstances dictate otherwise as determined by Funds' Counsel.

- (b) If an Employer fails to pay all of the amounts demanded, or fails to schedule a demanded audit, within ten (10) business days of the date of the demand letter, Funds' Counsel shall discuss with the Trustees whether the matter should proceed to litigation.
- (c) If the Funds' Counsel performs legal services, which may include (but is not limited to) the commencement of legal or agency proceedings against the Employer, to recover the principal amounts owed to the Funds, the Employer shall reimburse the Funds for interest and liquidated damages at the rate established by the relevant Collective Bargaining Agreement and all attorneys' fees and paralegals' fees, court costs, disbursements, and expenses incurred by the Funds in the collection and attempted collection of the Funds' monies. In the event the relevant Collective Bargaining Agreement does not specify a rate at which liquidated damages accrue or specifies a rate that is less than the interest on the unpaid contributions, liquidated damages shall be assessed in an amount equal to the interest on the unpaid contributions as provided for by Section 502(g)(2)(C) of ERISA (29 U.S.C. 1132(g)(2)(C)). Payment of the delinquency after the commencement of litigation does not end the Employer's obligation to pay the liquidated damages, attorneys' fees and other fees.
- (d) The Funds' Counsel is authorized to enter into settlement negotiations with delinquent Employers before or after litigation has begun. Fund counsel's authority to make, accept or decline settlement offers or proposals shall be limited, as follows:
 - i. Payment of 100% of Contributions, Interest, Audit Costs, Liquidated Damages, Attorneys' Fees and Costs: Without further approval of the Trustees, Funds' Counsel is authorized to settle claims against delinquent Employers in instances where the Employer agrees to make immediate payment of all delinquent contributions owed, accrued interest, audit costs, liquidated damages and reasonable attorneys' fees and costs (which shall be determined in the manner set forth in this Policy).
 - ii. Payment Plans: In instances where an Employer requests a payment plan, Funds' Counsel are authorized, without further approval of the Trustees, to approve payment plans of up to six (6) months or less in duration.
 - iii. Other Settlement Offers or Proposals: Any settlement offer or proposal that contemplates (i) payment of less than 100% of all contributions owed, (ii) a payment plan in excess of six (6) months, and/or (iii) a reduction of the total amount of interest, liquidated damages, audit costs, and attorneys' fees and costs owed, must be approved by the Trustees.
- (e) Trustee Authority: The Trustees, in the exercise of their prudent discretion and in the course of the Funds' diligent and systematic collection efforts, reserve the right to: (x) accept or reject an Employer's proposal to pay delinquent contributions, interest, liquidated

damages, audit costs, and reasonable attorneys' fees and costs over a period of time in excess of six (6) months; (y) enter into an agreement with any Employer whereby time is extended for making contributions to the Funds, or less than the full amount of the contributions plus accrued interest and penalties is accepted; and (z) to compromise any claim or delinquent account, in whole or in part, as recommended by Funds' Counsel; provided, however, that any such decision to extend the time for payment, or to compromise the amounts owing, complies with the requirements of ERISA Prohibited Transaction Class Exemption 76-1. Factors to be considered by the Funds' Counsel and Trustees in making such recommendations and decisions may include but need not be limited to:

- i. Whether the Funds have made reasonable, diligent and systematic efforts to collect the contributions due;
 - ii. The financial condition of the Employer and the probability of collecting the monies due;
 - iii. The estimated litigation and other collection expenses and whether such expenses will exceed the amount sought, such that commencing or continuing litigation is not prudent under the circumstances;
 - iv. Litigation risks, the likelihood of obtaining a judgment for the Funds' claims, and the likelihood of collecting sufficient Employer assets to satisfy the Funds' judgment; and
 - v. Any other factors that may have a material bearing on the ultimate collection of the delinquent contributions or the policies or objectives of the Funds.
- (f) Written Agreements: All settlements that provide for payment over time or which compromise the total amounts due to the Funds (including interest, liquidated damages, audit costs, attorneys' fees and costs), must be in writing and signed by the Funds' Administrator, on behalf of the Funds, and by the Employer.

Section 4. Bonding.

- (a) Employers who have not had two (2) years of covered employment requiring payment of contributions to the Funds, as described in the collective bargaining agreement shall be required to post a surety bond. Additionally, those employers, who in the discretion of the Funds' Administrator in consultation with the Co-Chairs of the Trustees, are significantly deficient or have a history of deficiencies may be required to post a surety bond.
- (b) The surety bond must be executed by the Employer and a corporation surety company licensed to do business in the State of New York. Such a bond shall name the Funds as obligee. Every Employer who is required to post a bond shall deliver to the Fund Office such surety bond in a form approved by the Funds. A copy of the bond shall be furnished to the Union.

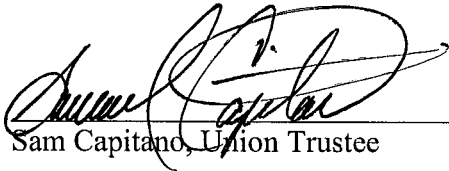
- (c) In lieu of the bond, the Funds, in the discretion of the Trustees or the Union, may require such Employer to pay a cash deposit to be held in escrow by the Funds (“Escrow Deposit”).
- (d) The bond or the Escrow Deposit shall be in the amount required by the relevant collective bargaining agreement.
- (e) Upon proof satisfactory to the Trustees that the Employer has not been delinquent in remitting fringe benefit contributions for two (2) years, the requirements for furnishing the bond or making an Escrow Deposit shall be waived. In the event of any subsequent delinquency, however, the Funds' Trustees or the Union may require such bond or escrow account from an Employer.
- (f) Any Employer from another jurisdiction, upon proof satisfactory to the Trustees that it has not been delinquent in remitting contribution for two (2) years in that jurisdiction, shall not be required to post a bond or deposit monies in escrow. Upon any subsequent delinquency, however, that employer is subject to the same conditions set forth above while working in the jurisdiction of the Laborers International Union of North America (AFL-CIO) Local No. 210.

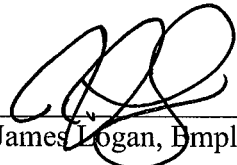
Section 5. Effect of This Collections Policy.

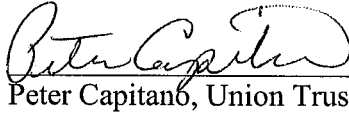
- (a) This Collection Policy constitutes a rule of the Funds. If the relevant Collective Bargaining Agreement incorporates this Collections Policy, then in the event of a conflict between this Collections Policy and the Collective Bargaining Agreement, this Collections Policy shall govern. If the relevant Collective Bargaining Agreement does not incorporate this Collections Policy, this Collections Policy shall govern unless it directly contradicts an express term of the Collective Bargaining Agreement.
- (b) In the event a court of competent jurisdiction or a relevant law or regulation invalidates any provision in this Collections Policy, the remaining provisions shall remain in effect.

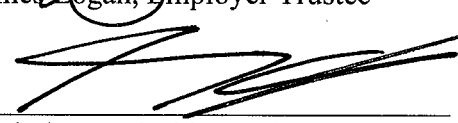
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Board of Trustees of the Buffalo Laborers' Pension Fund, the Buffalo Laborers' Welfare Fund, the Buffalo Laborers' Training Fund and the Buffalo Laborers' Security Fund have executed this Collections Policy effective the 10th day of **August, 2023**.

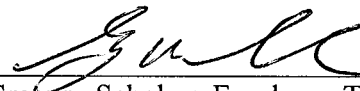

Sam Capitano, Union Trustee

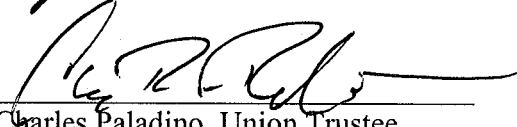

James Logan, Employer Trustee

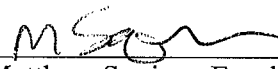

Peter Capitano, Union Trustee


Nickolaus Osinski, Employer Trustee


John Massaro, Union Trustee


Gregory Schober, Employer Trustee


Charles Paladino, Union Trustee


Matthew Squires, Employer Trustee

*Signature Page to the
Buffalo Laborers' Pension, Welfare, Training and Security Funds Collections Policy*