

**PERSONAL GUARANTY IN LIEU OF SURETY BOND**

**THIS PERSONAL GUARANTY IN LIEU OF SURETY BOND** (this “**Guaranty**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_\_, by \_\_\_\_\_, an individual, (the “**Guarantor**”), having a principal place of residence at \_\_\_\_\_, in favor of the International Union of Operating Engineers Local 825 Employee Benefit Funds (the “**Funds**”), having a principal place of business at 65 Springfield Avenue, 2<sup>nd</sup> Floor, Springfield, New Jersey 07081.

**RECITALS:**

**WHEREAS, [EMPLOYER]** (“**Employer**”) is a party to a collective bargaining agreement (“**CBA**”) with the International Union of Operating Engineers Local 825, which CBA requires the Employer to make contributions to the International Union of Operating Engineers Local 825 Employee Benefit Funds (“**Funds**”); and

**WHEREAS,** pursuant to the CBA, the Funds’ Trust Agreements, and Funds’ Employer Contribution Collection Policy and Procedures, contributing employers are required to obtain and post with the Funds a surety bond to guarantee employee contribution payments; and

**WHEREAS,** the Employer, by and through **[GUARANTOR]**, who is the \_\_\_\_\_ of Employer, represents that at the present time it is unable to secure a surety bond and requests an alternative method of securing employee contribution payments; and

**WHEREAS,** the Funds, in recognition of the particular circumstances of the Employer, has agreed to accept this Personal Guarantee in lieu of a surety bond for benefits;

**NOW, THEREFORE,** in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Guarantor hereby represents, warrants and covenants to the Funds as follows:

1. **Employee Contribution Payments.** **[GUARANTOR]**, by and on behalf of the Employer, covenants and agrees that the Employer shall remain current in submitting its contribution monies in the manner articulated in the CBA. Should the Employer not utilize the services of any Operating Engineers in any given month, such that no contribution payment obligations accrue, the Employer shall nevertheless be obligated to submit a contribution report for such month indicating that no work was conducted during that month.

2. **Obligations Guaranteed.** Guarantor unconditionally and personally guarantees to the Funds all of the following (collectively, the “**Guaranteed Obligations**”):

a. The prompt and unconditional payment and performance of all contribution obligations owed to the Funds as provided for under the CBA for the duration of the CBA until the termination of the CBA and/or any successor agreement;

b. The prompt and unconditional payment and performance of all amounts, obligations, indebtedness and liability of any type of the Employer, whether now existing or hereafter incurred, whether direct, indirect, absolute or contingent, whether otherwise guaranteed or secured, and howsoever evidenced or acquired, which may become due and payable or may be incurred, that relate in any way to either the Employer’s contribution obligations or the Employer’s default in fulfilling its contribution obligations, including, without limitation, interest, liquidated damages, attorneys’ fees, arbitrator fees, and audit fees, and any and all arbitration awards and/or judgments of any kind entered against the Employer as a result of the Employer’s default in fulfilling its contribution obligations.

c. The prompt and unconditional payment and performance of any and all expenses that may be paid or incurred by the Funds arising out of or with respect to the validity, enforceability, collection, defense or preservation of this Guaranty or all or any portion of the Guarantor’s obligations hereunder or the exercise or enforcement of any one or more of the other rights, powers, privileges, remedies and interests of the Funds under the CBA, including, without limitation, reasonable attorneys’ fees, irrespective of the manner or success of any such exercise, enforcement, collection, defense, or preservation.

3. **Absolute and Unconditional Guaranty.** This Guaranty is an absolute, unconditional, present and continuing guaranty of payment and performance and not of collection and is in no way conditioned or contingent upon any attempt to enforce any of the Funds’ rights against the Employer or to collect from the Employer or upon any other condition or contingency, nor is the Guarantor’s liability hereunder in any way affected by the insolvency of, or voluntary or involuntary bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceedings affecting, the Employer or any of its assets. Additionally, this Guaranty shall continue in full force and effect irrespective of the validity, legality or enforceability of the CBA pursuant to which any of the Guaranteed Obligations arise, or the existence, value or condition of any collateral for any of the Guaranteed Obligations, or of any other guaranty of the Guaranteed Obligations or any other circumstance which might otherwise constitute a legal or equitable discharge

of a surety or guarantor, or which might otherwise constitute a defense available to the Guarantor in respect of this Guaranty. This Guaranty specifically applies to any and all contribution obligations earned from the date of execution of the CBA to the termination date of the executed CBA or any successor CBA. The Funds shall have the right to proceed against the Guarantor immediately upon: (a) the Employer's default in its contribution obligations, which includes, without limitation, the failure to pay contributions, interest, liquidated damages, attorneys' fees, arbitrator fees, and audit fees, or (b) the occurrence of any "**Alternate Event of Default.**"

4. **Alternate Event Of Default.** For purposes of this Guaranty, each of the following events constitutes an "Alternate Event of Default": (a) the Guarantor fails to abide by or perform any term or condition of this Guaranty; (b) any representation or warranty made by the Guarantor herein is false or untrue as of the date such representation or warranty is made; (c) the Guarantor or the Employer commences any case, proceeding, or other action under any law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief of debtors or seeks to have an order for relief entered with respect to such Guarantor or the Employer, or the Guarantor or the Employer seeks to be adjudicated as bankrupt or insolvent, or seeks reorganization, arrangement, adjustment, liquidation, dissolution, composition or other relief with respect to the Guarantor or the Employer or such debts of the Guarantor or the Employer, or seeks the appointment of a receiver, trustee, custodian, or other similar official for such Guarantor or the Employer or for all or any substantial part of the Guarantor's or the Employer's property; (d) the Guarantor or the Employer makes a general assignment for the benefit of creditors; (e) there is commenced against the Guarantor or the Employer any case, proceeding or other action of the type referred to in clause (c) above or seeking the issuance of a warrant of attachment, execution, distraint, or similar process against all or any substantial part of the Guarantor's or the Employer's property, which case, proceeding or other action results in an entry of an order for relief or is not dismissed, discharged or bonded within fifteen (15) days of the commencement thereof; (f) the Guarantor takes any action indicating the Guarantor's consent to, approval of, or acquiescence in or in furtherance of, any of the acts set forth in clause (c) and (e) above; (g) the death or incapacity of the Guarantor; (h) the Guarantor admits in writing his/her inability to pay his/her debts as they mature; (i) the Employer terminates or dissolves or suspends its usual business activities or conveys, sells, leases, transfers or otherwise disposes of all or a substantial part of the Employer's property, business or assets other than in the ordinary course of business; or (j) the existence or occurrence at any time of one or more conditions or events that, in the sole opinion of the Funds, has resulted or is reasonably likely to result in a material adverse change in the business, properties or financial condition of the Guarantor or the Employer; then, in any such case, and irrespective of whether the Employer has defaulted in its contribution obligations as set forth in Paragraph 3 above, any or all of the obligations of the Guarantor shall, at the Funds' option become (for the purpose of this Guaranty) immediately due and payable by the Guarantor, without demand or notice.

5. **Guarantor's Representations and Warranties.** The Guarantor hereby represents and warrants that: (a) the Guarantor is not insolvent; (b) the execution, delivery and performance of this Guaranty will not (i) make Guarantor insolvent, or (ii) violate any provision of any requirement of law or contractual obligation of Guarantor and will not result in or require the creation or imposition of any lien on any of the properties or revenues of the Guarantor pursuant to any requirement of law or contractual obligation of Guarantor; (c) the Guarantor has all requisite power and authority to execute, deliver and perform his/her Guaranteed Obligations under this Guaranty; (d) the execution and delivery of this Guaranty and the performance by the Guarantor of his/her obligations hereunder does not and will not contravene, violate or conflict with any requirement of law, and does not require or result in the creation or imposition of any lien in favor of any Person other than the Funds; (e) no consent of any other person or entity is required for the execution of the Guaranty by the Guarantor; (f) this Guaranty has been duly executed and delivered by Guarantor and is the legal, valid and binding obligation of the Guarantor, enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, moratorium, insolvency, reorganization or similar laws affecting creditors' rights generally; (g) there are no outstanding judgments, actions, suits or proceedings at law or in equity or by or before any governmental instrumentality or other agency now pending or, to the knowledge of the Guarantor, threatened or affecting the Guarantor which, if adversely determined, would have a material adverse effect on the business, operations, properties, assets or condition, financial or otherwise, of the Guarantor; (h) the Guarantor is not party to any agreement or instrument or subject to any restriction adversely affecting the Guarantor's business, properties or assets, operations or conditions, financial or otherwise; (i) the Guarantor is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which the Guarantor is a party; (j) the Guarantor has filed all tax returns which are required to be filed, and has paid all taxes which have become due pursuant to such returns or pursuant to any assessment received by him/her; (k) the Guarantor has provided the Funds with a true copy of his/her social security number and with a copy of his/her driver's license; (l) the Guarantor has provided the Funds with voided check(s) issued from his/her personal bank account(s); (l) the Guarantor's principal place of residence is \_\_\_\_\_, and his/her telephone numbers are: (        ) \_\_\_\_\_ and (        ) \_\_\_\_\_.

6. **Guarantor's Additional Covenants.** In addition to any other covenants and agreements set forth in this Guaranty, the Guarantor covenants and agrees that: (a) the Guarantor shall furnish to the Funds after January 1, and in no event later than April 30 of each year, but if on extension, no later than the last day of the month in which the return is due, complete copies of all of the Guarantor's federal and state tax returns and supporting schedules; (b) the Guarantor shall, within (10) days after a written request therefor, furnish, or cause to be furnished, to the Funds other financial and business information pertaining to the Guarantor as the Funds may reasonably request from time

to time; (c) the Guarantor shall, upon written request by the Funds, give any representative of the Funds access during normal business hours and permit such representative to examine, copy or make excerpts from any and all books, records and documents in the possession of the Guarantor relating to the business affairs of the Guarantor, and to inspect any of the properties of the Guarantor; (d) the Guarantor shall pay and discharge, as they become due, all taxes, assessments, debts, claims and other governmental or non-governmental charges lawfully imposed upon, or incurred by him or his properties and assets, except taxes, assessments, debts, claims and charges contested in good faith in appropriate proceedings; (e) the Guarantor shall promptly notify the Funds of any litigation, actions, proceedings, claims or investigations pending or threatened against him/her; (f) the Guarantor shall promptly notify the Funds of any material and adverse change in the financial condition of the Guarantor; (g) the Guarantor shall keep his properties in good repair, working order and condition and from time to time make all needful and proper repairs, renewals, replacements, additions and improvements thereto; and (h) the Guarantor shall observe, perform and comply with all of the covenants, terms and conditions of this Guaranty until the Guaranteed Obligations are fully paid and satisfied.

7. **Guarantor's Waivers/Subordination.** In addition to any other waivers set forth in this Guaranty, the Guarantor knowingly, voluntarily, intentionally and expressly waives: (a) notice of the incurring of Guaranteed Obligations by the Employer; (b) the acceptance of this Guaranty by the Funds; (c) presentment and demand for payment, protest, notice of protest, notice of dishonor or non-payment of any instrument evidencing any Guaranteed Obligations of the Employer, acceleration, and intent to accelerate; (d) any right to require suit against the Employer or any other party before enforcing this Guaranty; (e) any right to have security applied before enforcing this Guaranty in any manner; (f) any right to marshaling of assets; (d) the defense of impairment of collateral; and (e) all other suretyship defenses. The Guarantor consents and agrees that renewals and extensions of time of payment, surrender, release, exchange, substitution, dealing with or taking of additional collateral security, taking or release of any guaranties, abstaining from taking advantage of or realizing upon any collateral security or other guaranties and any and all other forbearances or indulgences granted by the Funds to the Employer or any other party may be made, granted and effected by the Funds without notice to the Guarantor and without in any manner affecting the Guarantor's liability hereunder. Any notice to the Guarantor by the Funds at any time shall not imply that such notice or any further or similar notice was or is required. The Guarantor also hereby subordinates any claim, right or remedy which the Guarantor may now have or hereafter acquire against the Employer that arises hereunder and/or from the performance by the Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of the Funds against the Employer or any security which the Funds now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

8. **No Waiver by Funds; Modification; Remedies Cumulative.** No delay or failure on the part of the Funds in exercising any of their rights, powers or privileges shall operate as a waiver of any such rights, powers or privileges, or be deemed to constitute the Funds' acquiescence in any default by the Employer or Guarantor. No waiver of any of their rights hereunder, and no modification or amendment of this Guaranty, shall be deemed to be made by the Funds unless the same shall be in writing, duly signed on behalf of the Funds by a duly authorized representative, and each such waiver, if any, shall apply only with respect to the specific instance involved, and shall in no way impair the rights of the Funds or the obligations of Guarantor to the Funds in any other respect at any other time. The rights and remedies provided to the Funds in this Guaranty are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

9. **Arbitration.** The Guarantor acknowledges that pursuant to the Funds' Employer Contribution Collection Policy and Procedures (the "**Collection Policy**"), the Trustees of the Funds have appointed Permanent Arbitrators to hear any controversy, dispute, or disagreement that may arise between employers, Trustees and/or the Funds including, but not limited to, the payment or non-payment of fringe benefit contributions, interest, liquidated damages, attorneys' fees, audit fees or other costs required to be paid to the Funds. The Guarantor further acknowledges that pursuant to the Collection Policy, the Funds (by and through the Fund Administrator) may issue a notice of arbitration to each delinquent employer, accompanied by a letter advising the employer that, if the delinquency is not resolved before the scheduled date of arbitration, the Funds will seek an award from a Permanent Arbitrator designated by the Trustees for the amount of the unpaid contributions, interest, liquidated damages, attorney's fees, arbitrator's fees and costs (collectively, the "**Notice of Arbitration**").

The Guarantor agrees that if a Notice of Arbitration is sent to the Employer, then the Funds may, in their sole and absolute discretion, simultaneously send a Notice of Arbitration to the Guarantor and the Guarantor hereby submits to the jurisdiction of the Permanent Arbitrator and the Guarantor will participate in binding arbitration before the Permanent Arbitrator appointed pursuant to Section 3 of the Collection Policy. This arbitration shall be conducted in accordance with the Arbitration Rules and Regulations established by the New Jersey State Board of Mediation. The Permanent Arbitrator shall have the full and complete authority and power to decide any and all issues presented to him and to award appropriate damages against both the Employer and the Guarantor, including but not limited to, the amount of unpaid contributions, interest, liquidated damages, attorneys' fees, audit costs, costs of the arbitration, per diem monetary penalties, required use of the Funds' online remittance report and payment system, the fees to be paid to the Permanent Arbitrator as provided by the Collection Policy, and injunctive relief enjoining ongoing and further violations of the Collection Policy by compelling the Employer and/or the Guarantor to perform some affirmative act or acts or refrain from engaging in the same. The arbitration award shall be in writing and shall

be issued no later than 30 days after the arbitration hearing. The Guarantor further agrees that if it receives a Notice of Arbitration but fails to appear at the binding arbitration, then the Permanent Arbitrator may enter a default arbitration award against the Guarantor. The Guarantor acknowledges and agrees that his/her submission to the jurisdiction of the Permanent Arbitrator and the ability of the Funds to obtain an arbitration award against the Guarantor constitutes a material inducement for the Funds to accept this Guaranty.

The award of the Permanent Arbitrator shall be final, binding, and conclusive upon the parties and judgment upon any award rendered by the Permanent Arbitrator may be entered in any Court having jurisdiction thereof.

10. **Restrictions on Asset Transfers.** The Guarantor additionally covenants and agrees that during such time as this Guaranty is in effect, the Guarantor will not make or permit any substantial diminution in the Guarantor's net worth and will not sell, mortgage or pledge any material portion of the Guarantor's real or personal property (except for guarantees and other transactions in the ordinary course of the Guarantor's business and of a type and magnitude similar to those of past transactions in the ordinary course of business) without having first obtained the Funds' written consent therefor.

11. **Preferences/Reinstatement.** The Guarantor covenants and agrees that this Guaranty shall continue to be effective or be reinstated automatically, as the case may be, if at any time payment, or any part thereof, of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by the Funds upon insolvency, bankruptcy or reorganization of the Employer or the Guarantor, or otherwise, all as though such payment had not been made.

12. **Notices.** Any notices, demands and other communications provided hereunder shall be in writing and shall either be personally delivered, or sent by overnight delivery, or mailed (postage prepaid) via certified mail/return receipt requested and ordinary mail. Any such notices, demands and other communications shall be delivered or mailed to the Funds to IUOE Local 825 Benefit Funds, Contributions & Collections Department, 65 Springfield Avenue, 2<sup>nd</sup> Floor, Springfield, New Jersey 07081. Any such notices, demands and other communications shall be delivered or mailed to the Guarantor at \_\_\_\_\_ . All notices hereunder shall be deemed given and effective upon the earliest to occur of: (a) the passage of three (3) days after such notice is mailed via ordinary mail. In calculating the passage of the three (3) days, the day the notice was deposited in the mail shall not be included; (b) acceptance of the certified mail, as demonstrated by the return receipt; (c) upon delivery by hand to the Guarantor's or Funds' respective address set forth in this Paragraph, or (d) upon delivery by overnight courier to the Guarantor's or Funds' respective address set forth in this Paragraph, such delivery to be evidenced by the courier's records. The Guarantor further covenants and agrees that if his/her delivery address changes, then the Guarantor will notify the Funds of the address change in the manner set forth in the Paragraph. Notwithstanding anything contained herein to the

contrary, notice of a change of address as provided in this Paragraph shall be deemed to have been given and effective only when actually received by the Funds.

13. **Counterpart Originals.** This Guaranty may be executed in its original version or in copies, counterparts, or other such duplicate versions. All signatures need not appear on the same copy, and the parties may execute different copies, so long as they contain identical provisions and all such executed copies shall constitute the complete agreement. Signatures made by facsimile copy, .PDF copy or electronic transmission copy shall have the same force and effect as original signatures.

14. **Negotiated Agreement Not to Be Construed Against Anyone.** The Guarantor and Funds agree and acknowledge that they have all participated, or had the opportunity to participate in the preparation of this Guaranty and that neither the Funds nor the Guarantor shall be given any advantage over the other under the laws of construction of instruments based upon the authorship of this Guaranty. This Guaranty shall be construed as if the Funds and the Guarantor jointly prepared it. Any uncertainty or ambiguity shall not be interpreted or construed against either the Funds or the Guarantor.

15. **Applicable Law.** Except as otherwise provided herein, this Guaranty shall be governed by, and construed in accordance with, the laws of the State of New Jersey, without regard to conflict of laws principles.

16. **Headings.** The headings are inserted solely for convenience of reference and shall not constitute a part of this Guaranty nor shall they affect its meaning, construction or effect.

17. **Severability.** Should any provision of this Guaranty be declared or determined by any arbitrator or court in a particular jurisdiction to be illegal or invalid or incapable of being enforced by law or public policy, the validity of the remaining parts, terms or provisions shall not be affected thereby and shall remain in full force and effect in that jurisdiction. Any such determination of illegality, invalidity, or unenforceability in that jurisdiction shall not invalidate or render illegal or unenforceable such provision (or portion thereof) or the application thereof to any person or circumstance in any other jurisdiction.

18. **Benefit and Binding Nature.** This Guaranty shall be binding upon the Guarantor, their personal representatives, executors, administrators, heirs, distributees and successors and assigns, and inure to the benefit of and be enforceable by the Funds and their respective successors and assigns.

**[SIGNATURE ON NEXT PAGE]**



