

# MASTER LABOR AGREEMENT

Between

**Western Washington Independent  
Floor Covering Employers**

And

**PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO. 5  
OF THE INTERNATIONAL UNION OF PAINTERS AND ALLIED  
TRADES AFL-CIO-CLC  
ON BEHALF OF  
CARPET, LINOLEUM AND SOFT TILE LAYERS  
LOCAL UNION NO. 1238**

**July 1, 2004 – June 30, 2007**

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## PREAMBLE

The purposes of this Agreement are to establish harmonious relations and uniform conditions of employment, a Pension Plan, and Apprenticeship Plan, and a Health & Welfare Plan, between the parties hereto, to promote the settlement of labor disagreements, by consultations and arbitration, to prevent where possible strikes and lockouts, to utilize more fully the facilities of the Apprenticeship Training Program, to promote efficiency and economy in the performance of all work covered by this Agreement, generally to promote the professional installation of resilient floor covering and encourage a spirit of helpful cooperation between the Employer and employee groups to their mutual advantage, and the protection of the investing public.

The Employer and the Union agree to observe the federal and state laws prohibiting discrimination in employment on account of race, color, creed or national origin.

The parties to this Agreement are: \_\_\_\_\_(Name of Company): hereinafter referred to as the "Employer": and the Carpet, Linoleum & Soft Tile Layers Union, Local #1238, fully affiliated with the District Council #5 of the International Union of Painters and Allied Trades, AFL-CIO, hereinafter referred to as the "Union". Any independent floor covering employers who sign this Agreement shall also be party to this Agreement. Any such independent employers are hereinafter referred to as the "Employer".

Each Western Washington Floorcovering Employer bound by this Agreement is required to notify the Carpet, Linoleum & Soft Tile Layers' Union Local 1238 in writing of any change in ownership and to notify the Union in advance, of the name of the buyer and a statement as to whether the buyer or the seller will be responsible for any accrued benefits to the date of the sale.

## ARTICLE I- RECOGNITION

(does not apply)

## ARTICLE II – SCOPE OF AGREEMENT

- 2.1 The term "floor covering", (bargaining unit work), as used in this Agreement refers to working with, installing, applying, cutting, sewing, taping, or laying of new and old carpet, synthetic turfs, linoleum, plastic materials, plastic laminates, non-slip or abrasive materials, rubber, cork, carpet, cork tile, oil cloth, mastipave, matting, linen and crash, mastic tile, linoleum tile, and asphalt tile, resilient, decorative seamless surface coatings, (except terrazzo, magnesite and latex built up floors) and all resilient floor coverings (except terrazzo, magnesite and latex built up floors) and all resilient floor coverings, etc. whether in sheets, squares, rolls or interlocked; drilling holes for sockets and pins, linoleum, rubber and cork carpet on walls and ceilings; fitting devices for the attachment of carpets, linoleum, rubber and all other resilient floor coverings, and fitting of metal edgings, metal corners and caps used in the installation of linoleum, rubber and all resilient floor coverings on floors, walls, sinks, counter, table tops or ceilings or any other place where such materials are used.

- 2.2 It is the mechanic's responsibility to furnish the following tools and bring the listed tools appropriate to the work scheduled for that day: knee kicker, Jr. stretcher, 4" carpet seam iron, carpet seam roller, straight edge, square, loop pile cutter, cushion back cutter, knives, napping shears, wall trimmer, stair tool, awl, hammer tacker, carpet drive bar, hammer, strip cutter, chalk line, 4" scraper, base shoe lifter, fox-tail brush, topset base gouge, small caulking gun, metal miter, carpet layer's miter box, hacksaw, tin snips, trowels, Model "A" tile cutter, dividers, scribes, resilient seam roller (hand), propane gas torch, screwdrivers, tape measure.
- 2.3 The mechanic agrees to care for all shop tools as if they were his own. Where a reasonable charge-out system is employed, the mechanic is to be responsible for lost equipment.
- 2.4 All other tools and any future specialty tools to be furnished by Employer. Maintenance of these items will not be accomplished on the Employer's time except when unavoidable.
- 2.5 The employer agrees to be bound to this Agreement while working in the following counties of Western Washington: (King, Snohomish, Whatcom, Skagit, Kitsap and Island.) and to be bound by the Floor Covering Collective Bargaining Agreement in effect in any other part of the states of Washington, Oregon and Idaho when working in those areas.
- 2.6 When working outside the counties covered by this Agreement, an employee shall receive the wages, benefits, and conditions most favorable to the employee. All fringe benefits shall be paid into the employees' "home" funds.
- 2.7 The Employer party hereto shall, when engaged in work outside the geographic jurisdiction of the Union party to the agreement, comply with all of the lawful clauses of the Collective Bargaining Agreement in effect in said other geographic jurisdiction and executed by the employers of the industry and the affiliated Local Unions in that jurisdiction, including but not limited to, the wages, hours, working conditions, fringe benefits, and procedure for settlement of grievances set forth therein; provided however, that as to employees employed by such employer from within the geographic jurisdiction of the Union party to this agreement and who are brought into an outside jurisdiction, such employee shall be entitled to receive the wages and conditions effective in either the home or outside jurisdiction whichever are more favorable to such employees, and fringe benefit contributions on behalf of such employees shall be made solely to their home funds in accordance with their governing documents. This provision is enforceable by the Local Union or District Council in whose jurisdiction the work is being performed, both through the procedure for settlement of grievances set forth in its applicable Collective Bargaining Agreement and through the courts and is also enforceable by the Union party to this agreement, both through the procedure for settlement of grievances set forth in this agreement and through the courts.
- 2.8 The Contractor or the Employer party to this Agreement, when engaged in work outside the geographical jurisdiction of the Union party to this Agreement, shall employ not less than fifty percent (50%) of the workers employed on such work from among the residents of the area where the work is performed, or from among persons who are employed the greater percentage of this time in such area; any others shall be employed only from the Employer's home area.

- 2.9 It is the mechanics responsibility to attend and maintain current 1<sup>st</sup> Aid/CPR Training, attend a Lead, Asbestos, Silica Awareness course and future state requirements for the scope of work performed by the mechanics as listed in 2.1.
- 2.10 There is an expectation by Management and Labor that the mechanic will maintain and advance their skills through approved supplemental training. Individual goals should be at least 8 hours a year of supplemental training.
- 2.11 Training differential: A Journeyman who takes a JATC approved training course to gain skills they were deficient in, may, if mutually consented to by both the employee and the employer, work at a rate between 75% and 100% of the journey level wage rate for up to two weeks total within a 6 month period while performing the type of work learned. All other work performed will be at the regular journeyman rate. The Union will be notified in writing before implementing this section.

### ARTICLE III- PROTECTION OF RIGHTS

- 3.1 **SUBCONTRACTING**  
The Employer shall perform all or part of the floor coverer's work to be done at each job site. If any floor coverer's work is contracted or subcontracted, it shall be done by floor coverers who are members of Carpet & Linoleum Layers Local No. 1238 and receive wages, hours and other conditions of employment equal to those set forth in this contract.
- 3.2 Subcontracting (16.2) applies to floor covering (bargaining unit) work to be done at the site of the construction, alteration, or repair of a building. These terms are to be interpreted and applied in accordance with the National Labor Relations Act, as amended.
- 3.3 It is the intent of the Employer and the Union to protect all job site work which as been traditionally performed by bargaining unit employees or which is fairly claimable as bargaining unit work. This Article may be reopened for negotiation after one year and any mutually agreed upon changes shall be incorporated into this Article.
- 3.4 If any employer, subcontractor, independent contractor, owner-operator, sole proprietor, or any other type of business entity enters into a written or oral agreement with the Union and said agreement contains any economic terms more favorable than those set forth herein for performing any floor covering work in King or Snohomish Counties, (see Article 6.01), the Employer may unilaterally implement any or all of the more favorable economic terms. This shall not apply to "Residential Work" as determined by the Union.
- 3.5 The Union retains all rights except as those rights are limited by the express and specific language of this written Agreement. Nothing anywhere in this Agreement shall be construed to impair the right of the Union to conduct its affairs in all particulars except as expressly and specifically modified by the express and specific language of this written Agreement. It is further agreed that nothing contained in this Agreement shall be construed as limiting the Union's right to control its internal affairs and discipline its members who have violated the Union's constitution and by-laws, or who have violated the terms of this Agreement, or who have crossed or worked behind a primary picket line including but not limited to such a picket line at the Employer's premises or

job site where the Employer is engaged in floor covering work. This Article is not intended and shall not be construed to authorize any conduct which is proscribed by the National Labor Relations Act.

- 3.6 Except as specifically limited herein, the Employer shall have the exclusive right to manage its business, to control and supervise all operations and direct all working forces, including but not limited to the right to select and hire, discipline, discharge or lay off, for justifiable cause, promote, transfer or schedule employees, to control and regulate the use of all equipment, materials, tools and other property of the Employer, and to maintain discipline and efficiency among its employees.

#### ARTICLE IV – EMPLOYMENT

- 4.1 All employees of any Employer covered by this Agreement who are members of the Union on the date of execution of this Agreement shall maintain their membership as a condition of employment. All employees who are not members of the Union on the date of the execution of this Agreement and all employees employed after the execution date of this Agreement shall, on and after the eighth (8<sup>th</sup>) day following the date of execution of this Agreement or their initial date of, employment, whichever is later, become and remain members of the Union as a condition of employment. In computing the eight (8) day grace period provided in the Article, all employment during the term of this Agreement with an Employer shall be totaled and only one such grace period with that Employer shall be allowed during the term of this Agreement. In the event the Employer is not primarily engaged in the building and construction industry, the applicable time periods set forth in this Article shall be thirty-one (31) rather than eight (8) days.
- 4.2 Any person (other than a bona fide employee of a floorcovering firm which is bound by this Agreement) who does any work with the tools of the floorcovering trade must maintain good standing Union membership and shall make the payments required by SECTION 3 of this Article (based on 170 hours per month). Any Employer working with the tools of the trade must have one or more journeymen with him on the job site.
- 4.3 The Employer agrees to deduct from the wages of the employees covered by this Agreement such sums as the Union membership shall direct, but in no event more than three percent (3%) of the hourly wage as administrative dues and remit such sums to the Union. The Employer's obligation under this section is conditioned upon the receipt of a written authorization from each employee who desires the Employer to so deduct, which authorization shall be irrevocable for a period of one year from the date of this Agreement, and said authorization shall automatically renew itself for annual periods unless the employee gives written notice to the Employer of his intent to revoke such authorization. Such notice must be given sixty (60) days prior to the expiration of the annual date. It is understood that the Union will collect directly the basic dues. It is understood the Employer will be under no obligation to deduct monies from employees who refuse, fail or neglect to give the Employer the above referred to written authorization. A copy of the authorization form will be forwarded to each Employer for his permanent records upon his request.

## ARTICLE V – QUALIFICATIONS & RIGHTS OF PARTIES

- 5.1 Every Employer shall provide Washington State Industrial Insurance, Unemployment Compensation Insurance, shall be a registered Contractor with the State of Washington and comply with all other Washington State Laws and regulations covering specialty contractors. The Union shall have the right to cancel this Agreement if that Employer does not at all times remain in compliance with the terms of this ARTICLE.
- 5.2 Each Employer, upon request, shall provide the Union with a copy of his application for contractor registration with the State of Washington, a copy of his State of Washington contractor's bond, a copy of his bond required under the terms of this Agreement and shall advise the Union in writing of his Unemployment Insurance account number and his Industrial Insurance account number.
- 5.3 The Business Agent shall be permitted on all jobs and in shops where employees covered by this Agreement are employed; however, there will be no avoidable delays in production. The Union shall have the authority to appoint a shop steward in any shop or on any job. No steward shall be discharged for the performance of duties pertaining to Union affairs. Stewards shall not have the authority to cause or threaten to cause a work stoppage or slow down. Nor do stewards have authority to request that an employee be terminated. Any job with more than five (5) employees may have a steward.

## ARTICLE VI –BONDING

- 6.1 Each Employer who has been under contract with Local #1238, for less than five (5) years, agrees to maintain in full force and effect during the life of this Agreement, a bond to be issued by a reputable and established company which contains the terms and conditions set forth in APPENDIX A to this contract. A copy of this bond must be on file at the Union office.
- 6.2 The Employer, if he wishes to do so, may obtain a cash bond which shall satisfy the requirements of this Agreement. In such event the Employer shall deposit a cash bond with a mutually agreed upon bank in the amount of \$25,000.00 and such cash bond shall be subject to the same terms and conditions as are set for in APPENDIX A of this Agreement.

## ARTICLE VII – WORKING HOURS AND CONDITIONS

- 7.1 The regular work week for each employee shall be forty (40) hours, Monday through Friday. A regular work day shall consist of any eight (8) consecutive hours between 6:00 am and 6:00 pm. It is understood that no more than ten (10) minutes shall be considered appropriate for clean-up time.
- 7.2 By mutual agreement of Employer and employee, a ten (10) consecutive hour day, forty (40) hour week may be instituted between Monday-Friday, between the hours of 6:00 a.m. and 6:00 p.m.
- 7.3 All work performed beyond forty (40) hours per week, and Saturday shall be paid at time and one-half (1.5) Sundays and Holidays shall be paid at double time (2X) All work performed beyond eight hours or beyond ten hours in any work day shall be paid at time and one-half. (1.5)
- 7.4 Special shift work (premium pay) Premium pay rate at 10% over and above hourly journeyman wage will be paid on commercial occupied buildings where floorcovering work must be performed on other than regular time. Employees may work at 10% premium pay over hourly wage scale between hours of 6:00 p.m. to 6:00 a.m., Monday through Saturday. It is further agreed that no employee can be discriminated against on any job or in any shop due to his unwillingness to work for a premium pay scale.
- 7.5 Employees shall not be required to work more than two hours overtime inside the agreed upon area without being permitted to go to meals. No employee shall be paid any expenses for meals while working overtime. Time out for meals or rest shall not be paid for by the Employer.

## **VACATIONS AND HOLIDAYS**

- 7.6 All employees will receive seven (7) legal holidays as follows: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day after Thanksgiving and Christmas Day. If a holiday falls on Saturday, the previous Friday shall be observed. If a holiday falls on Sunday, the following Monday shall be observed. No work is to be allowed on Labor Day. Holiday pay will be combined with vacation pay and paid as follows:
- 7.7 A mutually agreed upon bank or credit union has been established as the depository into which a sum of six percent (6%) of all wages will be placed to the credit of employees. (Deductions have been computed on both vacation and holidays in ARITICLE VIII).
- 7.8 Employees may withdraw vacation/holiday funds directly from the designated bank or credit union. A signature card is to be kept at the designated bank or credit union and employees may withdraw funds by going directly to the bank or credit union

## ARTICLE VIII – WAGES

- 8.1 All employees, both Journey and Apprentice level, covered by this Agreement shall be paid an hourly wage established by this contract.
- 8.2 For the purpose of computing trust fund contributions for signatory Employers and vacation payment, the auditor shall compute hours worked on the basis of the higher of the following sums:
- (a) The hourly contribution rate set forth in this Agreement multiplied by the hours of work as reflected by the employee's time cards for the period in question.
  - (b) The gross compensation paid to a sub contractor will be divided by the contract hourly rate set forth in ARTICLE VIII, 8.3 which sum in turn, shall be multiplied by the contribution rate set forth in this Agreement.
- 8.3 The basic hourly wages including vacation and holiday pay for journeymen under the Agreement effective on the dates shown will be as follows: July 1, 2004 through June 30, 2007 the wage shall be as scheduled below:

JOURNEYMAN WAGE	Hourly*	Deduct for Vacation and Holiday - 6%	MRP**	Dues Check-Off 3% of Hourly Wage	TOTAL PACKAGE
Effective:					
July 1, 2004	\$23.02	\$1.38	\$.44	3%	\$32.47
July 1, 2005	\$23.70	\$1.42	\$.44	3%	\$33.27
July 1, 2006	\$24.30	\$1.46	\$.44	3%	\$33.97

\*The hourly Journeyman wage rate may be reduced by \$.25 if a First Aid/CPR and Lead, Asbestos, Silica Awareness courses have not been completed. Apprentice wages will be based on the full, unreduced Journeyman wage.

\*\* Market Recovery Program

- 8.4 The common practice shall be to pay employees, weekly. All wages shall be available at the place of work (jobsite) or shop of employment, together with receipt of check stub, showing:
1. All hours worked in that pay period.
  2. All deductions for that pay period.
- 8.5 All employees when ordered and reporting for work must be guaranteed a minimum of two (2) hours' pay in each day. It shall be the duty of the Employer in the event he has no work for a particular employee or employees the following day, to make reasonable attempt to notify his employees of this the night previous, or to order the employee to call in during working hours to determine work availability for the following day.
- 8.6 If an employee is terminated or is laid off more than one (1) week, the Employer shall pay all monies owing at the next regularly scheduled pay period, such wages as are due and owing at that time. In cases of N.S.F. checks, the Employer shall be liable for any out-of-pocket expenses sustained by the employee.

8.7 Employees' time cards from which the payroll is computed will be preserved by the Employer for a period of three (3) years. Within ten (10) days of the date this Agreement is signed, the Employer may establish a two (2) week pay period if the Employer requests permission of the Union by certified mail of his intent to do so. If the Employer does not give such request, and if the Local Union does not approve this request, a one week pay period shall be observed. There shall be no change in pay periods during the life of this Agreement.

## ARTICLE IX – TRAVEL REIMBURSEMENT

9.1 The parties recognized that it is sometimes inconvenient to get to the job location because of varying distances. The Employers are accordingly agreeable to pay transportation allowances as an adjustment for out-of-pocket expenses, so long as such allowances are not construed as any form of compensation for employment. It is agreed and understood that while traveling to and from work, the employees are not within the course and scope of their employment and the relationship of Employer/employee does not commence until the hourly wage commence.

9.2 Employees reporting to shop shall be paid travel time to and or from the job. Travel time is straight time.

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9.4 Employees reporting to shop shall be paid travel time to and or from the job. Travel time is straight time.

9.5 Employees reporting directly to the job site, shall receive daily travel remuneration computed from INTERSTATE 5 mile marker 166 (Convention Center) for the following radius zones:

36 - 45 miles	\$2.25
46 - 55 miles	\$4.50
56 - 65 miles	\$6.75
66 - 75 miles	\$8.00
76 - 100 miles	\$10.25
over 100 miles	\$13.00

9.6 If overnight, all reasonable expenses will be paid by the Employer, e.g., hotel and meals. Receipts will be provided by the employee.

- 9.7 No employee shall be required to haul any materials or tools other than his own in his personal vehicle as a condition of employment.
- 9.8 The Employer shall be required to pay for each employee all reasonable parking fees, ferry fares, tolls and any other expenses related to transportation.
- 9.9 Employees shall not be permitted to make any unauthorized stops on Employer's time. A maximum of ten (10) minutes clean-up time on any shift shall be allowed.

## ARTICLE X – SAFETY

- 10.1 The Employer, the Employee and the Union mutually agree to cooperate in complying with the applicable safety standards.
- 10.2 Any employee shall have the right to refuse to perform any work assignment involving actual danger to person or property, after proper notification of the Union by the employee and the Unions notifying the Employer, and confirming it in writing.
- 10.3 The Employer, the Employee and the Union mutually agree that failure to observe requirements under OSHA and WISHA will be cause for discharge.
- 10.4 Employer agrees to furnish all safety equipment as required by the Washington State Division of Safety.
- 10.5 Substance awareness and testing to be determined by LM Committee and inserted as Addendum B.

## ARTICLE XI – APPRENTICESHIP AND TRAINING

- 11.1 No apprentice shall be hired by any Employer, signatory to this agreement, until both the shop and the Apprentice have been approved by the Joint Apprenticeship Committee. Any Employer employing a journeyman and approved for training by the Joint Apprenticeship Committee shall be entitled to secure Apprentices through the J.A.C. in conformity with the apprentice ratio, as approved by the Washington State Apprenticeship and Training Council. If an employer approved credit for previous experience or training, he must submit his credit level in writing to the Apprenticeship office within (7) seven days of enrolling the apprentice into the Apprenticeship school.
- 11.2 The Employer and the Union agree that all Apprentices working in the trade shall attend Vocation School established for the training of Apprentices. The Employer and the Union shall be bound by all standards, rules and regulations now in effect or hereinafter adopted by the Joint Apprenticeship Committee.
- 11.3 All Apprentices failing to attend classes where schools are established on nights designated without legitimate excuses (legitimate excuse should be obtained from the J.A.C. Coordinator's

office, (206) 762-8332 prior the time of the class) shall be immediately removed from their work by the Joint apprenticeship Committee Coordinator or an authorized representative of the Local Union and shall not be permitted to return to said work until a hearing has been held before the Joint Apprenticeship Committee on Apprenticeship Training and the matter settled to satisfaction of said Committee.

11.4 All Apprentices sent to jobs shall be accompanied by a journeyman until said Apprentice has had two and one-half (2 ½) years experience at the trade, or an equivalent as set forth in the Western Washington Floorcovering Joint Apprenticeship Committee Standards. An Apprentice in his last six (6) months of training sent on a job alone will be paid at the highest journeyman rate when working alone.

11.5 Apprentices shall be paid the following percentages of the highest journeyman’s rate, provided the apprentice works a minimum of seven hundred and fifty (750) hours plus related classroom training within each six (6) month period.

1 <sup>st</sup> 6 months - 45%	4 <sup>th</sup> 6 months - 70%
2 <sup>nd</sup> 6 months - 50%	5 <sup>th</sup> 6 months - 80%
3 <sup>rd</sup> 6 months - 60%	6 <sup>th</sup> 6 months - 90%

Thereafter - Journeyman’s rate

Pension contribution for new apprentices shall be as follows:

1 <sup>st</sup> 6 months - zero	4 <sup>th</sup> 6 months - 70%
2 <sup>nd</sup> 6 months - \$1.00	5 <sup>th</sup> 6 months - 80%
3 <sup>rd</sup> 6 months - 60%	6 <sup>th</sup> 6 months - 90%
	Thereafter – 100%

Pension contributions for apprentices registered before June 1, 2003 shall be as follows:

1 <sup>st</sup> 6 months - 45%	4 <sup>th</sup> 6 months - 70%
2 <sup>nd</sup> 6 months - 50%	5 <sup>th</sup> 6 months - 80%
3 <sup>rd</sup> 6 months - 60%	6 <sup>th</sup> 6 months - 90%

11.5.1 If a 4 year apprenticeship program is approved by the JATC and the Apprenticeship Council of the State of Washington, the following shall apply to those apprentices entering apprenticeship after the four year program begins. Apprentices who wish to convert from the 3 year to the 4 year program may do so if allowed.

1 <sup>st</sup> 6 months – 45%	5 <sup>th</sup> 6 months - 80%
2 <sup>nd</sup> 6 months – 50%	6 <sup>th</sup> 6 months – 85%
3 <sup>rd</sup> 6 months - 60%	7 <sup>th</sup> 6 months - 90%
4 <sup>th</sup> 6 months – 70%	8 <sup>th</sup> 6 months – 95%
	Thereafter Journeyman rate:

11.6 Apprenticeship deductions:

Holiday and Vacation Pay 6% of hourly rate  
Dues Check off Deduction 3% of hourly rate

- 11.7 Apprentices shall enter into a written agreement with their Employer's, an organization of employees or other responsible agency for a period of not less than three (3) years; all in conformity with the regulations established by the Apprenticeship Council of the State of Washington and adopted by the Joint Apprenticeship Committee.
- 11.8 The Employer and the Union agree that in order to maintain excellent craftsmanship in the industry, all employees represented by the Union must continue to upgrade their skills through educational training. The Joint Apprenticeship Committee shall be charged with the responsibility of providing the availability of opportunities for receiving such training of employees.
- 11.9 If an apprentice has been released from the apprenticeship school due to disciplinary action, the employer is required to release him from employment after receiving proper notification from the Apprenticeship office. If the employer does not release the apprentice from active employment, his status is changed to Journey level and his rate of pay will be as outlined for Journey level, see Article X of this agreement.

## ARTICLE XII – RESPONSIBILITY OF WORKERS

- 12.1 For the purpose of this Agreement, "Faulty Workmanship" means the actual installation of the materials covered under the Agreement in an inferior manner. All complaints of Faulty Workmanship must be instituted within thirty (30) days of the installation date, on occupied premises and sixty (60) days on new unoccupied premises.
- 12.2 When there is a question as to whether an installation is faulty a committee from the Union and Management will inspect as soon as possible the installation. If the committee is unable to resolve the question an impartial judge, who shall be an apprenticeship instructor will resolve the question. His decision shall be final and binding. The impartial judge shall be reimbursed for his expenses and paid a reasonable fee. Such expenses and fee shall be guaranteed by the Industry Fund.
- 12.3 When faulty workmanship has been established or acknowledged, the mechanic will be responsible for the labor cost of repairing or replacement only. On all multiple mechanic installations, the blame for faulty workmanship must be proven, or the responsibility for repair must be agreed by all parties involved.

## ARTICLE XIII – TRUST FUNDS AND ADMINISTRATION

13.1 In addition to wages, each Employer shall make, on behalf of each bargaining unit employee (regardless of Union membership) covered by this Agreement, the following contributions:

<u>NAME OF FUND</u>	<u>RATE OF CONTRIBUTION</u>
Resilient Floor Covering Pension Trust Fund	7/1/2004 \$3.88 each hour worked, 7/1/2005 \$4.00 each hour worked 7/1/2006 \$4.10 each hour worked paid on all employees, (see 11.5 apprentices)
The Painters Trust Health & Welfare Plan	\$5.00 for each hour worked
DC5 Painters & Allied Trades Apprenticeship & Training Trust *Includes \$.05 per hour to be paid to:	*1.5% of Journeyman wages IUPAT Joint Apprenticeship and Training Fund
Allied Trades Training Center	\$.10 per hour worked
Western Washington Floor Covering Industry Fund	\$.08 per hour worked
L.M.C.I (Labor Management Cooperation Initiative	\$.05 per hour worked

13.2 Such contributions with the required report shall be forwarded to the administrator or a bank, as may be mutually agreed upon. The report and payment must be postmarked by the post office not later than the 15<sup>th</sup> day of the month (or the first working day following, if the 15<sup>th</sup> is a Saturday, Sunday or holiday) following the month in which the hours were worked. If, in the opinion of a CPA employed by the Union, or any of the Trust Funds, the Employer has failed to maintain accurate time records, it shall be conclusively presumed that each employee who performed any service in a given week worked the number of hours produced by applying the computation as provided in ARTICLE VII.

13.3 It is recognized and acknowledged by all parties, including the participating Employers, that the prompt and accurate payment of contributions is essential to the maintenance of an employee benefit trust fund and the benefit plans, and that it would be extremely difficult, if not impossible, to fix the actual expense and damage to the Trust Fund that would result from the failure of a participating Employer to pay the required contributions within the time provided. Therefore, if any participating Employer shall be delinquent in the payment of contributions, such Employer shall be liable, in addition, for liquidated damages of ten percent (10%) of the amount of the contributions which are owed or twenty-five dollars (\$25.00), whichever is greater. In addition, the delinquent contributions shall bear interest at the rate of eight percent (8%) per annum from the due date until they are paid. The Trustees shall have the authority, however, to waive all or part of the liquidated damages or interest for good cause shown. Further, in the event the Trustees place

in the hands of legal counsel for collection, the delinquent Employer shall be liable for reasonable attorney fees (with a minimum of \$25.00) and for all reasonable costs incurred in the collection process, including court fees, audit fees, etc. The Trustees shall have the authority, however, to waive all or part of the attorney fees or collection costs for good cause shown.

In any event suit is initiated, it is agreed that such suit shall be filed in a court of competent jurisdiction (either state or federal) located in King County, Washington. In addition to the remedies set forth herein, the Union shall be free (notwithstanding any express or implied “no strike” clause in this Agreement) to strike and picket any Employer failing to make any payment of money required by this ARTICLE, ARTICLE VII or ARTICLE VIII, provided, however, that such rights shall not be exercised within the ten (10) day period following the due date of such payments.

- 13.4 By entering into this Agreement, the Employer adopts and agrees to be bound by the terms of the Trust Agreements establishing the funds referred to in this ARTICLE. Further, the Employer designated the Employer Trustees of each Trust as his representative and approves the lawful acts of such Trustees.
- 13.5 The Union, at its option, shall be permitted to divert from wages such sums as may be required to maintain existing fringe benefit levels, in any existing program providing they are approved by the membership of Local #1238, at a “special called” meeting.
- 13.6 Trust fund payments are due on the 15<sup>th</sup> day of the month following the month in which the hours were worked. Payments must be made on all compensable hours whether worked by floor coverers hired by the Employer, or by floor coverers working for persons to whom the Employer has contracted or subcontracted work. All such contributions are for the benefit of floor coverers working under this Agreement. It is the Employer’s responsibility to maintain an accurate record of compensable hours, to obtain and timely remit, reporting forms. The Employer-Contractor is not obligated to make payments on floor coverer’s hours worked for a sub-contractor party to this Agreement.
- 13.7 The Trustees of each of the trusts shall have the power to require each Employer to furnish such information and reports as they may require in the performance of their duties as Trustees. The Trustees of the trusts have the right to employ a CPA who shall have the right at reasonable times during business hours, to enter upon the premises of the Employer and to examine and copy such of the books, records, and papers and reports of the Employer relating to the hours and wages of employees as may be required to permit the Trustees to determine whether the Employer is making full payment to the trusts. A current list of records which the trust’s auditor is authorized to examine in the course of his audit appears as APPENDIX B of this Agreement.
- 13.8 The CPA employed by the Trustees shall provide the Employer with a copy of his instructions at the time he requests an appointment with the Employer. The CPA’s report shall be in accordance with the policies of the Trustees.
- 13.9 It shall be the Employer’s responsibility to obtain appropriate forms for reporting Trust fund payments.

- 13.10 If an audit conducted pursuant to the terms of the Agreement reveals that the Employer has under paid either, wages (including vacation pay and holiday pay) or Trust Fund payments by five percent (5%) or more in any period audited, the Employer shall be required to pay the entire cost of the audit.
- 13.11 Any retiree who is receiving retirement benefits from the Resilient Floor Covering Pension Trust Fund and is working under the 499 Hour Rule, shall not have contributions made to the Pension Fund on his behalf. Instead the Employer shall pay the amount to the employee as wages.

#### ARTICLE XIV – DISPUTE RESOLUTION

- 14.1 Except as otherwise provided in this Agreement, all disputes which arise during the term of this Agreement shall be handled under the terms of this Article. If a dispute arises, the Union and the Employer shall attempt to resolve the dispute. Any dispute must be brought to the attention of the other party in writing not more that ten (10) days after the occurrence of the facts leading to the dispute. After a dispute has been considered by the Employer and/or the Union, but a resolution is not achieved, either party may submit the dispute to arbitration by providing written notice to the other side within twenty (20) days after having been notified by the other party that the dispute cannot be resolved. In the event a dispute is referred to arbitration, the decision of the arbitrator shall be final and binding. The arbitrator shall be selected and the arbitration conducted in accordance with the rules and regulations of the Federal Mediation and Conciliation Service, except no post hearing briefs will be filed or considered. The parties shall split the cost of the arbitrator.
- 14.2 It is understood that the arbitrator shall have the right, if requested by the Union to do so, to order an audit by a CPA hired by the Union, of such Employer records as he deems necessary for the Union to adequately process a grievance under this Agreement.
- 14.3 LABOR MANAGEMENT COMMITTEE. A committee comprised of no less than two (2) representatives of the Union and two (2) Employer representatives appointed by the Western Washington Floor Covering Signatory Employers is hereby established to meet monthly for the purpose of considering complaints or suggestions from either party in connection with contract interpretations and/or enforcement, pre-grievance reviews, industry charges requiring changes in the labor agreement and any other matters which should appropriately be considered by Employer or Union representatives.

## ARTICLE XV – NO STRIKE NO LOCKOUT

- 15.1 Employees covered by this agreement shall have the right to respect any legal primary picket line validly established by any bona fide labor organization, and the Union party to this agreement has the right to withdraw employees covered by this agreement whenever the employer party to the agreement is involved in a legitimate primary labor dispute with any bona fide labor organization.
- 15.2 Except as otherwise provided in this Agreement, there shall be no strikes or lockouts during the life of this Agreement, provided that the Union reserves the right to call a strike against any Employer if the Union claims that the Employer has failed to pay his employees on the regularly established pay day, wages and fringe benefits which are due them under this Agreement, or to pay his Health and Welfare, Apprenticeship or Pension Plan premiums by the due dates for such premiums established by this Agreement, provided further that this right to strike shall not be applicable where an Employer has a bonafide doubt as to the amount of wages, fringe benefits, or premiums actually due and where he deposits a certified check for the full amount of wages fringe benefits, or premiums claimed to be due by the Union with an escrow agent designated by the Union and Management.
- 15.3 The Employer agrees not to accept any contract for the performance of work covered by this Agreement at any job site which is funded in whole or in part by monies derived from funds created pursuant to Section 302 (c) (5) of the Labor Management Relations Act from any entity that is not signatory to a current agreement with the Union. This provision shall not prohibit the Employer from entering into an agreement for the performance of such work with the general contractor.
- 15.4 This section applies only to work performed under a project labor agreement, a project funded with Taft-Hartley Trust money, or any other project where jobsite contractors are required to be signatory to a labor agreement with the Union, and further applied only to work to be performed at the site of the construction, alteration, painting or repair of a building structure, or other work as applied under Section 8(e) of the National Labor Relations Act. On such projects and for work covered by this agreement, an employer who is party to or is bound by the terms of this Agreement shall not accept a contract from, or subcontract work to, a firm, person or other business entity that is not a party of or bound by this Agreement. In the event any employer who is party to or bound by the terms of this Agreement challenges the lawfulness of this section, that employer and the principle owners and officers of the employer on a personal liability basis, shall be responsible for all attorney fees and costs of the Union, and any other signatory employer, incurred in defending the challenge. In the event any other entity challenges the lawfulness of this section, the employer's party to this Agreement shall share among themselves on a pro rata basis 50% of the fees and costs of litigation and judgments, if any. (The other 50% of the fees and costs to be paid by the Union.) The employers' share of the fees and costs will be divided equally among all signatory employers.

- 15.5 Section 15.4 shall not apply to jobs bid by the employer prior to July 1, 2004. This shall be confirmed by the employer presenting a copy of the signed project bid to the Union no later than July 15, 2004
- 15.6 All signatory labor shops are to be considered first to provide labor on projects covered under Section 15.4.

#### ARTICLE XVI – VALIDITY OF AGREEMENT (SAVINGS CLAUSE)

- 16.1 If any provision or part of this Agreement is held to be invalid by a court of competent jurisdiction the remaining provisions and parts shall remain unaffected and such remaining provisions and parts shall be in full force and effect.
- 16.2 Should any provision or part of this Agreement be declared invalid by a court of competent jurisdiction the Union and the Employer shall promptly meet and negotiate a substitute clause. If such negotiations do not result in an agreed substitute clause, the matter shall be referred to the Labor Management Committee for final decision.
- 16.3 This Agreement is not intended to and shall not be construed to permit acts which violate any valid federal or state law. This Agreement is not intended to nor shall it be construed as creating, recognizing or imposing, on the Union or the Employer, any common law duties.

#### ARTICLE XVII – MODIFICATION, TERMINATION OR RENEWAL

- 17.1 This Agreement shall be in full force and effect from July 1, 2004 until June 30, 2007 and shall automatically renew itself from year to year thereafter unless the Employer or the Union gives written notice of intention to modify the terms of this Agreement or to terminate this Agreement at least sixty (60) days prior to June 30, 2007 or as the case may be, of any subsequent anniversary date. Either the Union or Employer, if such party has given notice of intent to modify this Agreement, may terminate this Agreement by written notice at any time after June 30, 2007.
- 17.2 There shall be renegotiations of Hospital, Medical, Surgical and Dental Plan in the event of enactment of a National Health Care Plan by Congress, with the then current contributions to be used to defray the cost of the then existing benefits.

**SIGNATURE PAGE**

SIGNED AND AGREED TO THIS \_\_\_\_\_ DAY

OF \_\_\_\_\_, 20\_\_\_\_\_

ON BEHALF OF:

COMPANY NAME:

\_\_\_\_\_

BY \_\_\_\_\_

Signature of Employer or Employer Rep

FOR THE UNION

Carpet, Linoleum & Soft Tile Layers

Local Union #1238

***IUPAT DISTRICT COUNCIL #5***

Print Name \_\_\_\_\_

BY \_\_\_\_\_

BUSINESS MANAGER or

***BUSINESS REPRESENTATIVE FOR***

***LOCAL UNION #1238***

***Section 1.01 IUPAT District Council #5***

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone # \_\_\_\_\_

Fax #: \_\_\_\_\_

Cell#: \_\_\_\_\_

\_\_\_\_\_

**Industrial Insurance Acct No.**

\_\_\_\_\_

**Unemployment Insurance Acct No.**

\_\_\_\_\_

**Washington State Contractors Registration No.**

\_\_\_\_\_

**UBI Number**

APPENDIX A

**CONTRACTORS BOND**

**Bond No.** \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That (I) (We) \_\_\_\_\_  
(name of Employer)

as principal, and \_\_\_\_\_  
(name of Bonding Company)

a corporation organized and existing under the laws of the State of \_\_\_\_\_,  
and authorized to transact surety business in the State of Washington as surety, are held and firmly bound  
unto Carpet, Linoleum and Soft Tile Layers Local Union No. 1238 and the trust funds (other than  
the Industry Promotion Fund) established by the Western Washington Floor Covering Agreement.  
(hereinafter referred to as the contract) in the sum of **\$25,000.00** lawful money of the United  
States to be paid to said Local 1238, and said trust funds, for which payment well and truly to be  
made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and  
severally by these presents.

Sealed with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT WHEREAS, the said principal  
has entered into a contract with said Local 1238 relating to wages, hours, terms and other  
conditions of employment which requires said principal to furnish a bond in the penal sum of  
**\$25,000.00** with good and sufficient surety.

Now, therefore, if the said principal shall comply with the provisions of ARTICLE III, V AND XII of  
said contract then the above obligation shall be null and void; otherwise, to remain in full force  
and effect; otherwise, to remain in effect. The surety may cancel this bond upon ten (10) days  
written notice to said Local 1238.

One copy must be furnished to Local 1238  
by the bonding company

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
(SIGNATURE OF PRINCIPALS)

Countersigned by:

\_\_\_\_\_  
(Bonding Company)

\_\_\_\_\_  
(Authorized Resident Agent)

By \_\_\_\_\_ (Attorney-in-fact)

\_\_\_\_\_  
Address

## APPENDIX B

### APPENDIX B

- A. Job work tickets or job orders:
- B. time cards:
- C. Payroll journals and related worksheets, and recap sheets:
- D. Checkbooks or registers and canceled checks pertaining to payroll items.
- E. Copies of Pension Fund, Health and Welfare Fund and Apprenticeship Fund reports and related worksheets:
- F. Payroll tax records including:
  - 1. Federal Tax Form W-3, Reconciliation of Income Tax Withheld from Wages and the related W-2 Forms.
  - 2. Washington State Employment Department Reports - Form SF 5200 Employer Registration Form (Status Report); Form SF 5208, Employer's Tax Report; Form SF 5208 (a) Employer's Quarterly Report of Employees' Wages; Form SF 5208 (a) (1), Employer's Quarterly Wage Detail Report.
  - 3. Washington State Department of Labor and Industries Reports Form SF 7442, Employer's Application to Open or Reopen an Industrial Insurance Account; Form SF 7578 (rev), State of Washington Employer's Quarterly Report of Payroll.
  - 4. Any payroll delinquency or penalty statements related to the above forms.

## APPENDIX C

All employers and self-employed contractors (a/k/a “owner-operators” or “independent contractors”) will conform to all sections of this Agreement with at least one (1) journeyman working on the job with them at all times. Joint Ventures between two subcontractors signatory to this Agreement will not be allowed unless an equal number of hourly employees are maintained on the job site. The purpose of this section is to protect the hourly worker in the floor covering industry.

All employers and self-employed contractors (a/k/a “owner-operators” or “independent contractors”) who perform floor covering work (see Article 6.1) or otherwise work with the tools of the trade and are signatory to this Agreement will pay on behalf of themselves into the funds listed as follows:

Dues Check Off Market Recovery	170 hours of the current hourly journeyman rate @ 3% + .44 cents
Apprenticeship Fund	On an hourly basis for actual hours worked at the contractual rate for hourly journeymen.
Allied Trades Training Center	\$.10 per hour worked
The Painters Trust Health & Welfare	will pay rate of \$_____ and any subsequent increases or decreases as determined by the Trust.
Resilient Floor Covering Pension Trust	On an hourly basis for actual hours worked or an amount matching the contractual pension contribution rate for hourly journeymen into the Pension Trust Fund.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

FOR THE EMPLOYER:

FOR CARPET, LINOLEUM & SOFT TILE

LAYERS LOCAL UNION #1238: IUPAT DISTRICT COUNCIL #5

\_\_\_\_\_  
Signature By \_\_\_\_\_

\_\_\_\_\_  
Firm Name (Please print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

## APPENDIX D Use of Third Party Installers

The Employer and the Union agree to the following provision which supercedes any provisions to the contrary contained in the Agreement for a period on one (1) year (from July 1, 2004 to June 30, 2007). After three (3) years this Appendix may be continued by mutual consent of the Employer and the Union.

Notwithstanding Article III, if the Union is unable to provide a qualified floor covering employee to an Employer within twenty four (24) hours after having been so requested by an Employer, and the Employer has used reasonable efforts to secure the services of Union signatory labor shops, the Employer may obtain the floor covering services of a qualified third party, for no longer than 30 working days or the duration of the job, whichever is shortest, to perform the work. The Union will grant reasonable extensions of the 30 working day period if circumstances dictate. The third party need not be covered by any of the provisions of this Agreement. The Employer shall not use the services of a nonunion independent contractor who does not have at least one employee. For the purposes of this Appendix, "qualified" shall be interpreted reasonably by the Employer. If the Employer utilizes a third party under this Appendix, the Employer shall provide the Union with the name(s) and address (es) and the Unified Business Identifier Number (UBI) of the third party, and name and address of job site. Disputes over qualification will be submitted to the Labor Management Committee which must include the Employer in question.

APPENDIX E  
CHANGES IN APPRENTICE AND JOURNEY LEVEL TRAINING

The Union will, working with Management, aggressively pursue the creation and implementation of changes in apprentice and journey level training.

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