Carpenters Local No. 491
Training Fund

Board of Trustees Meeting

December 16, 2020

CARPENTERS LOCAL NO. 491 TRAINING FUND
AGENDA
DECEMBER 16, 2020

A. ROLL CALL

B. MINUTES OF THE SEPTEMBER 16, 2020 BOARD MEETING

C. ADMINISTRATIVE REPORTS

1. Statement of Changes In Fund Balance (Jul - Sep, 2020)
2. Bills to be Approved and Paid (December 16, 2020)

D. UNFINISHED BUSINESS

1. Delinquent Employer Listing
2. Payroll Audits

E. NEW BUSINESS

1. Annual Audit - December 31, 2019
2. Cyber Liability Insurance Renewal
3. Amendment to the Trust Agreement and Deliquency Policy
4. Questions
5. Date of Next Meeting - March 17, 2021

CARPENTERS LOCAL NO. 491
TRAINING FUND

REGULAR MEETING OF THE BOARD OF TRUSTEES

September 16, 2020

MINUTES

A regular meeting of the Trustees of the Carpenters Local No. 491 Training Fund was held at 9:00 a.m. on September 16, 2020, via telephone conference call. Present on the call were the following Trustees:

UNION TRUSTEES	EMPLOYER TRUSTEES
Sandy Forstner	Mike Goodwin
Bill Sproule	Scott Staub
Robert Tarby	Todd Weitzman

Also present on the call were Albert Kroll, Esq., Counsel for the Union; David J. Jensen, Dawn Welch, and Kathy Phillips, Administrative Manager; Ira Marc Miller, CPA; Pete Tonia; and Steven I. Batoff, Attorney. Mr. Sproule welcomed Scott Staub as a new employer trustee to take the place of Ken Bisch. Mr. Batoff informed the Trustees that Mr. Staub had executed the acceptance of trusteeship as prepared by Mr. Batoff's firm. Mr. Batoff noted that his firm had emailed to Mr. Staub all relevant documents and forms related to the Fund.

The following matters were discussed with the indicated action taken:

1. The minutes of the meeting of June 19, 2020, were approved as read after a motion was made by Ms. Forstner and seconded by Mr. Tarby.

2. The Administrative Manager reviewed with the Trustees the Administrative Manager's report for the six months ending June 30, 2020. The Fund balance as of June 30, 2020,

was $23,061.26. Upon motion duly made by Mr. Goodwin and seconded by Ms. Forstner, the Administrative Manager's report was unanimously approved by the Trustees.

3. The Administrative Manager then reviewed with the Trustees the bills to be paid, as listed in an attachment to these minutes. Upon motion duly made by Mr. Goodwin and seconded by Ms. Forstner, the Trustees unanimously approved payment of the aforementioned checks.

4. The following Delinquent Contractor Listing was reviewed by the Trustees and the Administrative Manager:

   NONE

5. Mr. Tonia then reviewed with the Trustees an update as to the payroll audits. Mr. Staub noted that Brede Expositions Services is closing up shop. The Trustees requested that Mr. Tonia's staff perform an "exit audit" of Brede Expositions Services.

6. Mr. Batoff reported that he had not yet received an executed copy of the first amendment to the settlement agreement with Buildtask, apparently because Buildtask has been making contributions to the Fund as required under the settlement agreement.

7. Mr. Batoff reviewed with the Trustees a letter of September 4, 2020, to Dave Jensen regarding a Federal court's determination to confirm an arbitration award in a case brought by plan trustees against an employer for failing to comply with an audit request. Mr. Goodwin noted his concern with the amount of time on the bill related to this update letter and requested that Mr. Batoff explain the importance of this letter. First, Mr. Batoff explained the importance of update letters. He stated that when the IRS audits a plan, it asks in its questionnaire provided to a plan how the plan is updated and by whom. Mr.

Batoff also noted that if there is an error in the administration of a plan, the plan can correct the error by way of a voluntary compliance program with the IRS. In part of this voluntary compliance program, the IRS inquires as to whether the plan trustees have been updated as to changes in the law. Mr. Batoff also noted that both the IRS and the Department of Labor request to see payroll audits and will not accept a plan's response that an employer refused to permit a payroll audit to take place.

Mr. Batoff then reviewed at length this important case. Mr. Batoff stated that the subject case of this recent update letter was not only extremely important for the Trustees to know about, but it also involved a complex set of circumstances. Consequently, it took a great amount of time to conduct all the research that went into the update letter. In this case, a leading Federal district court confirmed an arbitrator's immense award without engaging in any "reasonableness" analysis whatsoever. Mr. Batoff stated that he was not aware of any case in which an arbitrator's award, apparently based solely on his or her interpretation of the agreements between the group of related multiemployer funds and a potentially delinquent employer, was rubber-stamped, so to speak, by a Federal district court. Arbitrators have mostly been limited to ordering employers to comply with payroll audit requests. This arbitrator went much further, issuing a monetary award that included estimated contribution deficiency, interest, liquidated damages (of 20% of the estimated contribution deficiency), court cost, attorney's fees, and arbitrator's fees. Mr. Batoff noted that it was surprising that the Federal court permitted the arbitrator to even calculate an award as opposed to only ordering the employer to submit to a payroll audit, and even more surprising that the court did not ask whether the arbitrator's award was reasonable under the circumstances. Until this case, the Carpenters Funds would pursue a lawsuit in Federal court rather than arbitration, which is less costly and time consuming, when employers have refused to submit to a payroll audit. The process of filing a lawsuit in Federal court takes time, and it was always the possibility that a company could go out of business before the matter could be decided. Arbitration is much quicker and easier than filing a lawsuit. This court decision shows that now arbitrators can issue monetary awards instead of just injunctions. With this knowledge, the Trustees can save the Fund money in the future by requiring arbitration in its delinquency policy and by making appropriate changes to the trust agreement. Mr. Batoff stated that he wanted the Trustees to know of this important case by way of an update letter so that it could be discussed during the September 16, 2020 Trustees meeting. This is the primary reason why his firm thoroughly researched and explained the importance of the case. As part of this process, Mr. Batoff noted that he had to research other jurisdictions to make sure there were no contrary decisions. He also needed to review the underlying arbitration documents and the documents filed in the Federal court in addition to reviewing both the arbitrator's decision and the Federal court judge's ruling upholding the arbitrator's decision. This decision will be a critical tool in enforcing payroll audits by both the Philadelphia Funds and Ira Miller in performing payroll audits. At the same time, using this Federal decision does not adversely impact any of the employer's right to question the payroll audit procedures or results. In fact, it may be beneficial to the employer in that arbitration is less expensive and usual confidential as compared to a court proceeding.

Mr. Batoff recommended that the Trustees amend the delinquency policy and the trust agreement to take advantage of this Federal case approving the arbitrator's decision.

Upon motion duly made by Mr. Goodwin and seconded by Ms. Forstner, the Trustees unanimously agreed to amend the trust agreement and the delinquency policy per Mr. Batoff's recommendation. Nevertheless, Mr. Goodwin requested on behalf of the Trustees that, going forward, before Mr. Batoff prepares an update letter, that he informs the Trustees as to the subject matter of the letter and obtain their approval before preparing the update letter.

There being no further business, the meeting was thereupon adjourned at 9:42 a.m. with the next meeting scheduled for December 16, 2020, at 9:00 a.m.

Respectfully submitted,

Steven I. Batoff
Secretary of the Meeting

CARPENTERS LOCAL NO. 491 TRAINING FUND
STATEMENT OF CHANGE IN FUND BALANCE - CASH BASIS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2020

	July	August	September	Year To Date
Additions				
Employer Contributions - Baltimore	$ 134.92	$ 174.67	$ 347.67	$ 24,478.37
Employer Contributions - Washington	677.43	1,178.50	953.50	66,503.85
Interest Income - Checking	-	-	-	-
Total Additions	812.35	1,353.17	1,301.17	90,982.22
Deductions				
Administration	1,750.00	-	-	4,028.00
Advertising	-	-	-	-
Audit Fees	-	1,000.00	500.00	1,500.00
Payroll Audit	-	-	-	7,265.68
Committee Meeting Expenses	-	-	-	-
Conference	-	-	-	-
Drug Testing	-	-	-	-
Fidelity Bond	-	-	-	500.00
Fiduciary Liability Insurance	-	-	-	336.06
Cyber Liability Insurance	-	-	-	-
Legal Fees	1,828.50	2,035.50	1,208.70	16,815.85
Settlement	-	-	-	-
Office Expenses	-	-	-	-
Dues	-	-	-	-
Petty Cash	-	-	-	-
Postage	-	-	-	-
Printing	2.29	-	-	5.42
School Supplies	-	-	-	-
Training Class Expense	-	-	-	-
Trainee Committee Fees	-	-	-	-
Transfer to JCAE	-	-	-	65,686.39
Transfer to BCJAC	-	-	-	-
Bank Service Charges	-	-	-	-
Total Deductions	3,580.79	3,035.50	1,708.70	96,137.40
Net Increase (Decrease)	$ (2,768.44)	$ (1,682.33)	$ (407.53)	$ (5,155.18)
Fund Balance - December 31, 2019				23,358.14
Fund Balance - September 30, 2020				$ 18,202.96
Statement of Fund Balance - Cost Basis				
Cash - Bank of America - Operating				$ 18,202.96
Due to Benefit Fund				-
Due To JCAC				-
				$ 18,202.96

CARPENTERS LOCAL NO. 491 TRAINING FUND
BILLS TO BE APPROVED AND PAID
OPERATING ACCOUNT
December 16, 2020

	Payee/Purpose	Period	Check #	Amount
1.	Batoff Associates, P.A.			
	Legal Fees	8/20	1309	1,208.70
2.	Ira Marc Miller & Company, P.A.			
	Progress Billing - Audit	12/19	1310	500.00
3.	Associated Administrators, LLC			
	4th Quarter Administration Fee	10/20 - 12/20	1311	1,750.00
4.	Void			
			1312	-
5.	Ira Marc Miller & Company, P.A.			
	Progress Billing - Audit	12/19	1313	500.00
6.	Batoff Associates, P.A.			
	Legal Fees	9/20	1314	1,622.10
7.	Batoff Associates, P.A.			
	Legal Fees	10/20	1315	737.95
8.	Ira Marc Miller & Company, P.A.			
	Final Billing - Audit	12/19	1316	1,000.00
9.	Associated Administrators, LLC			
	Printing - Envelopes		1317	0.93
10.	Washington Street Insurance Group			
	Cyber Liability Insurance	12/20/12/21	1318	75.19
				$ 7,394.87

CARPENTERS DELINQUENCY LIST
AS OF
DECEMBER 8, 2020

1) If Local has "X" in a block, please indicate "Worked" or "No Men"
2) Please fax updates to Ramona at 410-683-7794

	See Instructions Above			
EMP #	**Balt.**	**Wash.**	**COMPANY NAME**	**WORK MONTHS DELINQ.**

LOCAL 491 AUDIT UPDATE

EMPLOYER NAME	INITIAL AUDIT DATE(S)	AUDITOR	TOTAL DUE	COMMENTS 1	COMMENTS 2	AUDIT YEAR
4TH ROUND (2019)						
BRUNSWICK WOODWORKING	IN OFFICE	J DOBBS		AUDIT IS COMPLETE; GOOD AUDIT	FINAL REPORT FORWARDED ON 9/9/2020	1/1/2015-6/30/2019

EMPLOYER NAME	INITIAL AUDIT DATE(S)	AUDITOR	TOTAL DUE	COMMENTS 1	COMMENTS 2	AUDIT YEAR
5TH ROUND (2020)						
ARATA EXPOSITION SERVICES	IN OFFICE	A HOYT			AWAITING AUDIT RECORDS - REQUESTED 12/1	2015-2019
BREDE EXPOSITIONS SERVICES	8/4/2020	N WALKER		INFORMATION RECEIVED 8/4/2020	IN HOUSE AUDIT IN PROGRESS, COMPANY IS CLOSING DOWN, WE WILL AUDIT THROUGH THE END OF 2020 TO MAKE SURE EVERYTHING IS ACCOUNTED FOR. WAITING ON 2020 YEAR END RECORDS	2015-2019
COASTAL INTERNATIONAL, INC.	6/9/2020	A PATINO	$1,481.59	INFORMATION RECEIVED 6/9/2020	FINAL REPORT FORWARDED ON 9/9/2020, $21,812.22 BILLING. BILLING WAS UDPATED ON 12/08/2020. AND DECREASED SIGNIFICANTLY TO $1,481.59	2015-2019
CZARNOWSKI DISPLAY SERVICE	6/3/2020	A HOYT		INITIAL INFORMATION RECEIVED 6/3/2020	IN HOUSE AUDIT IN PROGRESS, WAITING ON ADDITIONAL INFORMATION	2015-2019
FREEMAN EXPOSITIONS INC	12/1/2020	A HOYT			AUDIT IN PROGRESS, ADDITIONAL RECORDS NEEDED	2015-2019
GES EXPOSITION SERVICES				SCHEDULING	AWAITING AUDIT RECORDS - REQUESTED 12/1	2018-2019
NTH DEGREE				SCHEDULING		
NEXXTSHOW EXPOSITION SERVICES, LLC	11/30/2020	R RANDLE		HAVE SOME PAYROLL, WAITING ON ADDITIONAL INFORMATION		2016-2019
RENAISSANCE MANAGEMENT, INC.				SCHEDULING		
SHEPARD CONVENTION SERV, INC.				SCHEDULING		

65548

BINDER OF INSURANCE

AJ Wayne

Named Insured: **Carpenters Local 491 Health & Welfare Pension Annuity and Apprenticeship Funds**

Mailing Address: **911 Ridgebrook Road**
Sparks, MD 21152

Term of this Binder: **December 01,2020** To **December 01,2021** ***or upon policy issuance***

Type of Coverage **Cyber Liability**

Limit of Liability: **$2,000,000 each claim / $2,000,000 aggregate**
$5,000 retention each claim

Premium and rate if applicable: **$4,574.00** **Plus $150 Broker Fee**

Special Conditions: **N/A**
Retrodate: Full Prior Acts

Insurer(s): **Beazley Insurance Company, Inc.** Policy No. **V2102F200401**

Acting on the instructions of the Producer shown below, Alexander J. Wayne Associates, Inc. has bound coverage as described above. This Binder is issued in accordance with confirmation from the Insurer(s) to evidence coverag until such time that policies are issued. Nothing contained hereinshall be construed to be an actual insurance policy. Coverage as evidenced here shall follow the terms of the policy to be issued by the Insurer(s).

Producer: **Washington Street Insurance Group**
Address: **PO Box 360**
Palos Park, IL 60464

Signed

for **Alexander J. Wayne and Associates Inc.**

2551 N. Clark Street., Suite 601
Chicago, Illinois 60614
(773) 328-0500; Fax: (773) 328-0508

Dated: **November 19,2020**

FIFTH AMENDMENT TO THE CARPENTERS LOCAL NO. 491 TRAINING FUND RESTATED TRUST AGREEMENT

Pursuant to the Powers of Amendment reserved under Section 3 of Article XII of the Carpenters Local No. 491 Training Fund Restated Trust Agreement (the "Trust"), as amended and restated, effective January 1, 2006, said Trust shall be and is hereby amended by the Trustees of the Carpenters Local No. 491 Training Fund (the "Trustees"), effective as of September 1, 2020, as follows:

FIRST AND ONLY CHANGE

Article V, Section 5, Examination by Trustees, shall be deleted in its entirety, effective as of September 1, 2020, and the following language is substituted in lieu thereof:

"**Section 5.** **Production of Records – Audit.** Notwithstanding Section 4 above, each Employer shall promptly furnish to the Trustees, on demand, the names of its employees, their Social Security numbers, the hours worked by each employee, and such other information as the Trustees may reasonably require in the administration of the Trust Fund and the accomplishment of the purposes thereof. The Trustees or their authorized representatives shall be permitted to examine the pertinent records of each Employer, whether or not in connection with a formal audit, at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees for the proper administration of the Trust. The Union shall comply with any reasonable request of the Trustees to examine those records of the Union which may indicate the employment record of any Employee whose status is in dispute.

Any dispute or disagreement arising between an Employer and the Trustees concerning any claim arising from delinquent contributions, including with regard to the production of records, may be resolved before an impartial arbitrator.

In the event that an Employer refuses to permit an examination of its records by the Trustees or their authorized representatives, the Trustees shall determine the estimated amount of the Employer's delinquent contributions based on the assumption that the Employer's weekly hours subject to contributions for each week of the requested audit period are the highest number of average hours reported per week for any period of four consecutive weeks during the audit period.

In the event that proceedings are instituted before an arbitrator under this Trust Agreement to collect delinquent contributions in favor of the Fund, such arbitrator shall be empowered to award such principal, interest, liquidated damages, and/or costs as may be applicable under this Trust Agreement."

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Trustees have executed this Fifth Amendment to the Trust this ____ day of October 2020.

TRUSTEES:

____
Sandra Forstner

____
D. Michael Goodwin

____
Bill Sproule

____
Scott Staub

____
Robert Tarby

____
Todd Weitzman

CARPENTERS LOCAL NO. 491 TRAINING FUND

DELINQUENCY POLICY

WHEREAS, the Trustees of the Carpenters Local No. 491 Training Fund (hereinafter referred to as the "Fund") recognize the importance of maintaining a firm policy of collecting payments due from contributing employers (hereinafter referred to as "Contractors") on a timely basis; and

WHEREAS, the Trustees desire to modify and restate existing policies for the collection of delinquent payments for the members of the Fund;

NOW, THEREFORE, BE IT RESOLVED: That the following policies be adopted:

I. UNPAID CONTRIBUTIONS

1. Contributions to the Fund are required by the 20th day of the month next following the month in which work is performed under applicable collective bargaining agreements. This date is hereinafter referred to as the "Due Date" and any contribution that has not been received by the Due Date will be considered delinquent. In any case where a collective bargaining, or other agreement requiring contributions to the Fund, specifies a date certain by which contributions are due the Fund other than the 20th day of the month following the month in which work is performed, such date certain shall be the "Due Date" with respect to the contributions due under such collective bargaining, or other agreement.

2. On or about the last day of the calendar month in the same month of the Due Date the Fund Administrator:

   a. Will correspond with each delinquent Contractor advising the Contractor of its delinquency and that liquidated damages (if applicable) and interest in the amount or percentages specified in the Restated Trust Agreement of the Fund may be assessed if the

Contractor fails to immediately make payment in full of the delinquent contributions. The Administrator is authorized to waive Liquidated Damages in those cases where the Contractor has not failed to pay contributions due by the end of the month following a Due Date more frequently than twice in a twelve (12) consecutive-month period prior to the Due Date; and

b. May notify the United Brotherhood of Carpenters and Joiners of America Local No. 491 (hereinafter referred to as "Union") and any relevant Contractors association (hereinafter referred to as "Association") of each delinquency incurred by a Contractor signatory to a collective bargaining agreement with said Union.

3. On or about the 20th day after the Due Date the Administrator will forward to Fund Counsel the appropriate documents regarding each delinquency which will enable Fund Counsel to take appropriate legal action, which may include, but not be limited to, arbitration, suit in U.S. District Court or other appropriate jurisdiction, action on applicable bonds, the enforcement of mechanic's liens, and the assertion of claims in bankruptcy.

4. On or about the 25th day after the Due Date, at the direction of the Trustees, Counsel will notify the delinquent Contractor that unless the delinquencies, assessed interest, and liquidated damages (if applicable) are paid within ten (10) days after such notification, legal action will be taken to collect the delinquencies, liquidated damages (if applicable), and interest due. Unless the Trustees otherwise require, to the extent that the interest on the delinquent contributions is $500.00 or less, Fund Counsel is instructed not to notify the delinquent Contractor in writing. Further, to the extent that the known amount of the delinquencies is $500.00 or less, Fund Counsel is instructed not to notify the delinquent Contractor in writing.

5. The Administrator will prepare for the Trustees at each meeting of the Board of Trustees a delinquency list setting forth the delinquencies, if any, and indicating the status of legal action, if any, taken against each delinquent Contractor.

6. If the Trustees, based on the legal opinion of Counsel, determine that legal action would be inadvisable in a particular case, the name of the delinquent Contractor will be removed from the delinquent list. The Administrator, however, will, on an on-going basis, continue to advise the Union and the Association of all delinquent Contractors whether or not legal action has been undertaken.

7. The schedule outlined in Paragraphs 2 through 4 may be advanced when the circumstances (such as the amount of the delinquency or the impending departure of the delinquent Contractor from the geographical area of the Union) dictate such action.

8. The Administrator shall also report to the Board of Trustees on an ongoing basis information concerning Contractors who have been assessed interest and liquidated damages pursuant to Paragraph 2, including the amount of such damages and interest, who have made payment of delinquencies prior to legal action being taken but have not paid the assessed damages and interest. The Trustees shall determine, on a non-discriminatory basis, the action to be taken in each such case, which may include the procedures set forth below.

II. LATE-PAID CONTRIBUTIONS

1. In the event that any Contractor pays contributions more than five (5) days after the Due Date, the Administrator will, upon receipt of the untimely contributions, send a letter to the Contractor showing the liquidated damages (if applicable) and interest assessed, along with a statement requiring that interest be paid in full within five (5) days of the date of the

Administrator's letter, or appropriate legal action may be taken in accordance with Section I and the Restated Trust Agreement

2. If interest is paid within the designated five (5) days after the Due Date, the Trustees shall waive the liquidated damages (if applicable) for that period for which interest is paid. If payment of the interest is not received within the designated five (5) days after the Due Date, the Administrator will forward to Fund Counsel the appropriate documents regarding the assessment of liquidated damages (if applicable) and interest, which will enable Fund Counsel to take appropriate legal action, including but not limited to, arbitration, suit in U.S. District Court or other appropriate jurisdiction, action on applicable bonds, the enforcement of mechanics liens, and the assertion of claims in bankruptcy.

3. In the event that a Contractor's late-paid contributions become delinquent to the Fund pursuant to the Restated Trust Agreement, the Trustees may, in their sole and absolute discretion, demand reimbursement to the Fund of all costs incurred by the Fund in the recovery of the delinquent contributions, including attorney's fees.

4. If the Trustees, based on the legal opinion of Fund Counsel, determine that legal action would be inadvisable in a particular case of a Contractor who has made untimely payments, the name of the delinquent Contractor will be removed from the delinquent list. The Administrator, however, will, on an on-going basis, continue to advise the Union and the Association of all delinquent Contractors whether or not legal action has been undertaken. The Trustees shall determine, on a non-discriminatory basis, the action to be taken in each such case of late-paid contributions.

III. PRODUCTION OF RECORDS – AUDIT

1. The Trustees may, at any time, inspect the books and records of the Contractor consistent with the Restated Trust Agreement and the Employee Retirement Income Security Act of 1974, whether or not in connection with a formal audit of the Contractor. The Trustees shall have the right to designate an accountant, attorney, or other representative to perform such inspection on behalf of the Fund at the Contractor's place of business.

2. Upon receiving written notice from the Trustees, the Contractor shall promptly furnish all information including, but not limited to:

    a. A complete list of the names of its employees, their Social Security numbers, their personnel files, and the hours worked by each employee;

    b. General, production cost, and other ledgers; and

    c. Any other items concerning the Contractor's payroll(s) or contributions to the Fund deemed necessary by Trustees or designated representative of the Trustees to determine the accuracy, completeness, and timeliness of the Contractor's contributions and payments to the Fund.

3. If, after ten (10) days, a Contractor refuses to furnish its books and records upon written notice, or otherwise fails to comply with the Trustees' direction to provide information for inspection, including, but not limited to, ignoring communication attempts by or on behalf of the Trustees, the Administrator shall inform the Contractor that the Contractor is in violation of the Restated Agreement and Declaration of Trust.

4. If a Contractor with unpaid or late-paid contributions refuses to permit an examination of its books and records, the Trustees may initiate proceedings before an impartial arbitrator in accordance with the Restated Agreement and Declaration of Trust. The Trustees

shall determine the estimated amount of the Contractor's delinquent contributions based on the assumption that the Employer's weekly hours subject to contributions for each week of the specified period are the highest number of average hours reported per week for any period of four (4) consecutive weeks during the specified period.

ACCEPTED BY: ________________________________ ________________________________

	Chairman	Date	Secretary	Date