NEW YORK STATE WORKERS' COMPENSATION BOARD

IN THE MATTER OF **[_____]** **[INSERT NAME OF MEMBER], A MEMBER OF** The OHI Workers' Compensation Trust ("OHI" or "Trust")	DEFICIT ASSESSMENT CONTRACTUAL AGREEMENT

THIS DEFICIT ASSESSMENT CONTRACTUAL AGREEMENT ("Agreement") is entered into by and between the New York State Workers' Compensation Board ("State" or "WCB"), with offices located at 20 Park Street, Albany, New York, and the above-named Member ("Member") of the above-named Trust ("Trust"), said New York State Workers' Compensation Board and Member to be collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the Trust, was approved to operate as a group self-insurer for the payment of workers' compensation benefits under Article IV of the New York State Workers' Compensation Law (WCL);

WHEREAS, the Member was an active member of the Trust for the period of time as shown in Schedule 3 of the Deficit Reconstruction and 2012 Assessment, Attachment B, attached hereto;

WHEREAS, in connection with the approval of the WCB to operate as a group self-insurer the Trust agreed to abide by the terms and conditions contained within the provisions of the WCL and attendant regulations, codified at 12 NYCRR 317 et. seq. (Code), applicable to group self-insurers;

WHEREAS, in accordance with the Code, all group self-insurers, including the Trust, must maintain trust assets in excess of trust liabilities, as those terms are defined in the Code;

WHEREAS, in accordance with the Code, the Chair of the WCB may engage an attorney, actuary, certified public accountant or other qualified person or organization to conduct an examination of the annual reports required to be submitted (Fiscal Review);

WHEREAS, in accordance with the Code, the WCB performed Fiscal Review (s) of the Trust;

WHEREAS, the results of the WCB's Fiscal Review(s) revealed a deficit (Trust Deficit) as reflected in the Deficit Reconstruction and 2012 Assessment;

WHEREAS, the WCB previously provided the Deficit Reconstruction and 2012 Assessment to Member and Member acknowledges both receipt thereof and having read and understood its contents;

WHEREAS, the WCB allocated the Trust Deficit using the allocation methodology set forth in the Deficit Reconstruction and 2012 Assessment;

WHEREAS, the allocation methodology set forth in the Deficit Reconstruction and 2012 Assessment, resulted in the pro rata allocation of the Trust's Deficit to be allocated to Member as set forth in Attachment B, and which may be repaid as set forth in the Payment Plan Options attached hereto as Attachment A;

WHEREAS, the WCL provides at Section 50 (3-a)(3) that all employers that have participated in a group trust, are jointly and severally liable for all of the workers' compensation obligations incurred by the trust during the time of that employer's participation in the trust, and an employer is not relieved of those liabilities until they are paid;

WHEREAS, the document creating the Trust set forth the Member's joint and several liability, and such liability was also agreed to by the Member when it signed the participation or other such agreement to join the Trust or received its workers compensation coverage via the Trust;

WHEREAS, the WCB commenced a performance review of the Trust, the results of which are reflected in the 2012 Performance and Operational Report;

WHEREAS, in the event that the 2012 Performance and Operational Report reflects that the Trust incurred damages as a result of the acts or omissions of third parties, the Board will commence a damages action on behalf of all former Members against such third parties (WCB Legal Action) and,

NOW, THEREFORE, having considered this matter and being duly advised, and based on the promises and agreements as set forth below, which consideration the parties by signature acknowledge and agree to be sufficient**, IT IS HEREBY AGREED AS FOLLOWS:**

I. Collection of Trust's Deficit and 2012 Assessment (Trust's Assessment)

(A) The Member acknowledges and agrees to the Member's indebtedness as set forth in Attachments A and B and further agrees to pay the portion of the Trust's Assessment allocated to the Member in strict conformity with the terms and conditions of this Agreement.

(B) The WCB agrees, subject to paragraph (C) below, that as long as the Member remains in strict compliance with this Agreement, it will not seek from the Member

and/or refer for immediate collection against the Member, the Member's pro rata assessment as set forth in Attachment B.

(C) The Member agrees that the running of all periods of limitation applicable to the claims which the State has or may have against the Member related to the Trust, the Trust's Assessment, and the Member's joint and several liability therefore are hereby tolled from the effective date of this Agreement to the end of the payment plan period for Member, inclusive, but in no event shall it be longer than three (3) years from the effective date of this Agreement ("Tolling Period"). The time during which this Agreement is in effect, which time shall commence as of the effective date of this Agreement, shall not be asserted or relied upon in any way in computing the running of the time under any applicable statute of limitations or by way of laches in defense against the State's claims.

(D) In the event that damages are recouped from any of the WCB's Legal Action and are ultimately allocated to reduce the cumulative deficit of the Trust, they will be used first to repay prior statutory assessments relative to the Trust levied upon other self-insured employers; second to repay current statutory assessments relative to the Trust levied upon other self-insured employers; and third to otherwise reduce the cumulative deficit of the Trust, as set forth in Attachment B, by proportionately reducing the annual yearly deficits of the Trust in the amount that such individual annual yearly deficit of the Trust bears to the total Trust deficit. In accordance with Section II (B) of this Agreement any resultant change in the Member's pro rata assessment as a result of the recoupment of said damages shall be promptly computed by the WCB, the WCB shall issue the Member a new Attachment A reflecting such change and the Member agrees to, and shall, remit payments according to such new Attachment A.

II. Allocation Methodology

(A) The allocation methodology used by the Board has been previously provided to the Member and is reflected in Attachment B.

(B) **BY EXECUTING THIS AGREEMENT, THE MEMBER ACKNOWLEDGES THE APPROPRIATENESS OF THE ALLOCATION METHODOLOGY AND FURTHER AGREES TO AND HEREBY WAIVES ANY RIGHT TO CHALLENGE IN ANY FORUM OR PROCEEDING WHATSOEVER THE WCB ALLOCATION METHODOLOGY USED HEREIN AS CONTAINED IN ATTACHMENT B, PROVIDED HOWEVER, THAT THE RESULTS THEREOF WITH REGARD TO MEMBER'S PAYMENT OF THE PRO RATA ALLOCATION, AS SHOWN IN ATTACHMENT A, AND/OR JOINT AND SEVERAL LIABILITY, ARE SUBJECT TO FUTURE RECONCILIATION AT WCB'S SOLE DISCRETION, INCLUDING BUT NOT LIMITED TO, RECONCILIATION BASED ON ANY APPLICABLE RECOVERIES.**

III. Payment Plan

(A) **Payment Plan Applicable Term**

The Member agrees, by executing this Agreement, that it has chosen the Option as outlined in Attachment A hereto. If an application for hardship is applied for and denied by the WCB, the Member will be notified and will be subject to the minimum monthly installment the Member is eligible to make under the terms of Attachment A.

(B) The Member shall make the payments payable to the name of the Trust, which is set forth in the heading/caption on page one of this Agreement.

(C) The Member shall send the applicable payments to:

NCA Comp., Inc
14 Lafayette Square
Suite 700
Buffalo, NY 14203

(D) The Member shall return this executed Agreement to: NCA Comp., Inc at the address above.

(E) The Member will pay a dishonored check fee of Twenty Dollars ($20.00) for all checks returned for insufficient funds. In the event of a dishonored check, and in the addition to the above fee, the provisions of Section V of this Agreement pertaining to defaults will be immediately implemented.

IV. Joint and Several Liability

(A) The WCL provides at Section 50 (3-a)(3) that all employers that have participated in a group trust, are jointly and severally liable for all of the workers' compensation obligations incurred by the trust during the time of that employer's participation in the trust (including partial year coverage), and an employer is not relieved of those liabilities until they are paid.

(B) The document creating the Trust set forth all members' joint and several liability, and such liability was also agreed to by the Member when it signed the participation or other such agreement to join the Trust.

(C) **THE MEMBER ACKNOWLEDGES THE APPLICABLE JOINT AND SEVERAL LIABILITY PERTAINING TO ITS PERIOD OF MEMBERSHIP IN THE TRUST AND NOTHING CONTAINED HEREIN SHALL IN ANY WAY RELIEVE OR RELEASE ANY MEMBER OF THE TRUST, INCLUDING BUT NOT LIMITED TO THE MEMBER WHO IS A SIGNATORY TO THIS AGREEMENT, FROM ANY ADDITIONAL ASSESSMENT OR BILLING OF WHATEVER KIND, THAT MAY BECOME NECESSARY DUE TO THE JOINT AND SEVERAL LIABILITY OF THE TRUST.**

(D) **THE STATE HEREBY SPECIFICALLY RESERVES THE RIGHT TO ENFORCE JOINT AND SEVERAL LIABILITY AGAINST ANY MEMBER(S) OF THE TRUST, INCLUDING BUT NOT LIMITED TO THE MEMBER WHO IS A SIGNATORY TO THIS AGREEMENT. THE**

PARTIES HERETO SPECIFICALLY RESERVE ALL RIGHTS, CLAIMS AND DEFENSES IN ANY SUCH ACTION BY THE STATE TO ENFORCE JOINT AND SEVERAL LIABILITY.

V. Default

(A) The Member shall strictly comply with the terms and conditions contained in this Agreement.

(B) The Member's failure to comply with any provision of this Agreement, including but not limited to the failure to timely make any payment(s) required under this Agreement, shall constitute a default and a failure to perform an obligation under this Agreement and shall be deemed to be a violation of both this Agreement and the WCL.

(C) In the event of a default WCB shall provide written notice thereof. The Member shall have ten calendar days following the date of such written notice within which to cure any such default (Cure Period). If written notice is provided by regular mail, Member shall have an additional five (5) days within which to cure any such Default.

(D) In the event that the Member fails to cure a default within the Cure Period, it is agreed by the Parties that the entire amount assessed to Member herein shall become due and payable immediately. **In such event,** the WCB, in its sole discretion, may refer this matter to the Attorney General's Office, or other appropriate entity, for collection of both the pro rata assessment and the applicable joint and several liability of the Trust during the Member's period of participation in the Trust or file a judgment, pursuant to Workers' Compensation Law §26, in the amount of the Member's unpaid claims expenses. Additionally, and pursuant to the provisions of State Finance Law §18.4 and §18.5, Member acknowledges and agrees that **it has received notice and demand for interest and an additional collection fee charge of 22% in addition to the outstanding balance.**

(E) If the WCB shall, in its sole discretion, accept any cure of a Default outside the Cure Period, such acceptance shall not be, and shall not be deemed to be, a waiver of the WCB's right to require timely performance with respect to any and all future obligations owed by the Member, including but not limited to timely delivery of subsequent payments.

VI. Indemnification

The Member shall indemnify and hold harmless the WCB, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by the Member and its successors (including successors in title) and assigns.

VII. Reservation of Rights

(A) The WCB hereby reserves all its legal, administrative and equitable rights arising at common law or as granted to it pursuant to statute or regulation, including, but not limited to, any powers under the WCL and the rules and regulations enacted pursuant thereto.

(B) Except as otherwise expressly provided herein, the Parties reserve all of their rights, remedies and defenses against each other and against any person or entity not a party to this Agreement, including, without limitation, their rights to assert any claim, defense, set-off, counterclaim, cross-claim or other claim of whatever nature against each other or against any person or entity not a party to this Agreement.

VIII. Applicable Law

This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of New York.

IX. Entire Agreement

The Agreement, including Attachments A and B hereto, constitutes the entire agreement between the Parties. No modification to this Agreement shall be effective except as set forth in writing and agreed to by the Parties with the same formality as this Agreement. The provisions, terms, and conditions of this Agreement shall be deemed to bind Member, its agents, servants, employees, successors, and assigns.

X. Authority to Execute Agreement

The individual signatories to this Agreement, by their execution of this Agreement, represent and attest that they have the authority to bind the respective Party for whom they are signing and by signing do so bind said Party to all of the terms and conditions of this Agreement.

XI. Effective Date

The Effective Date of this Agreement shall be the date that it is signed by the Board as the last signatory hereto.

XII. Miscellaneous Provisions

(A) This Agreement shall be considered to have been prepared jointly by the Parties and their respective attorneys, and in the event of in any dispute or ambiguity shall not be construed against any Party as if such Party was the drafter.

(B) The captions and section headings, if any, in this Agreement are for convenience only and are not to be considered part of the Agreement.

(C) If any provision of this Agreement shall be held to be invalid or unenforceable in any respect, the same shall not affect the validity and enforceability of the remaining provisions hereof, so long as the material purpose of this Agreement can be determined and effected.

(D) Unless otherwise specifically stated elsewhere in this Agreement, any correspondence or communication to the WCB relating to this Agreement shall be made to the following via regular mail:

Workers' Compensation Board
General Counsel's Office
20 Park Street
Albany, NY 12207

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date(s) set forth below:

NEW YORK STATE WORKERS' COMPENSATION BOARD

ROBERT E. BELOTEN, CHAIR

By: _____
Kenneth Munnelly
General Counsel, NYS Workers' Compensation Board

Date:_____

CONSENT BY MEMBER

The Member acknowledges the authority and jurisdiction of the New York State Workers' Compensation Board to issue this Agreement, affirmatively waives its right, if any, to notice, opportunity to be heard, hearing and judicial review in the manner provided by law, consents to the issuance of this Agreement and agrees to be bound by the terms, provisions and conditions contained herein.

Corporation or Partnership Member:

By: _____

Title: _____

Date: _____

Individual Member:

Respondent:_____

Date: _____

For each signatory:

MEMBER ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF _____) ss.:

On the _____ day of _____, in the year 20_____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to within the instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
NOTARY PUBLIC

WCB ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On the _____ day of _____, in the year 20_____, before me, the undersigned, personally appeared Kenneth Munnelly, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

ATTACHMENT A – [INSERT PAYMENT PLAN OPTIONS HERE]

ATTACHMENT B [INSERT SCHEDULE 3 HERE]