



NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

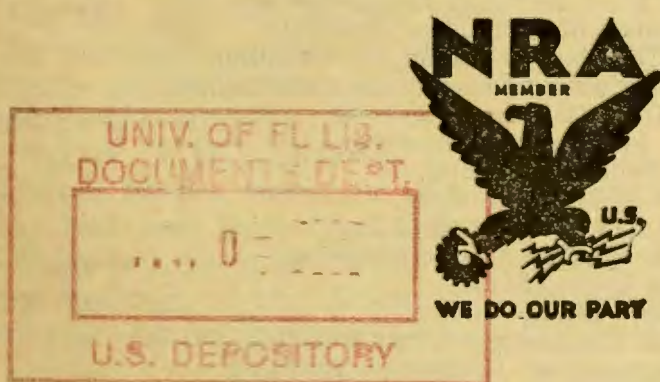
FOR THE

FLOOR AND WALL CLAY TILE
MANUFACTURING INDUSTRY

AS APPROVED ON NOVEMBER 4, 1933

BY

PRESIDENT ROOSEVELT



1. Executive Order
2. Letter of Transmittal
3. Code

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(II)



EXECUTIVE ORDER

CODE OF FAIR COMPETITION FOR THE FLOOR AND WALL CLAY TILE MANUFACTURING INDUSTRY

An application having been duly made, pursuant to and in full compliance with the provisions of title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Floor and Wall Clay Tile Manufacturing Industry, and hearings having been held thereon and the Administrator having rendered his report containing an analysis of the said code of fair competition together with his recommendations and findings with respect thereto, and the Administrator having found that the said code of fair competition complies in all respects with the pertinent provisions of title I of said act and that the requirements of clauses (1) and (2) of subsection (a) of section 3 of the said act have been met:

NOW, THEREFORE, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do approve the report and recommendations and adopt the findings of the Administrator and do order that the said code of fair competition be and it is hereby approved.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
November 4, 1933.

Approval recommended:
HUGH S. JOHNSON,
Administrator.

(III)

OCTOBER 30, 1933.

The PRESIDENT,
The White House.

SIR: This is a report of the hearing on the Code of Fair Competition for the Floor and Wall Clay Tile Manufacturing Industry in the United States, conducted in Washington on September 27, 1933, in accordance with the provisions of the National Industrial Recovery Act.

PROVISIONS OF THIS CODE AS TO WAGES AND HOURS

This code provides for a maximum of forty hours of work per week, averaged over a one-month period for office and branch warehouse employees and over a six-month period for other employees, and a maximum of forty-eight hours in any one week, except as follows:

(a) Executives and supervisory employees receiving \$30.00 or more per week, outside salesmen and employees engaged in emergency maintenance or emergency repair work;

(b) Engineers, kiln burners, gas producer men, and boiler firemen who shall not be permitted to work in excess of forty-two hours per week averaged over a six-month period nor in excess of forty-eight hours in any one week;

(c) Watchmen, who shall not be permitted to work in excess of ninety-six hours in any two-week period.

No employee shall be permitted to work more than twelve days in any fourteen-day period.

This code provides for minimum rates of pay of forty cents per hour for male and thirty-two and one half cents per hour for female employees, regardless of whether the compensation is on a time rate, piece rate, or other basis, provided, however, that female employees performing substantially the same work as male employees shall receive the same rates of pay; and provided further, that where women displace men on the same occupation they shall receive rates of pay not lower than those of the men they displace.

Apprentices and employees physically handicapped may be paid not less than 80% of the above minimum wages, provided that not more than 5% of the total number of employees of any member of the industry be included in either group.

Provision is made for the adjustment of wages above the minimum so as to maintain differentials equal to the average differentials for the industry existing on September 1, 1933, unless this should raise the rate for an occupation higher than the average for the industry existing on July 15, 1929, in which case the latter rate would apply.

No person under sixteen years of age shall be employed and none under eighteen years employed in any hazardous occupation.

ECONOMIC EFFECTS OF THE CODE

According to a survey made by the Tile Manufacturers' Association, there has been a decrease in sales volume in this industry of

approximately 70% since 1928, and an even greater decrease in gross receipts due to the lower prices now prevailing. The number of employees decreased approximately 55% during this period.

Due to the present low volume of business it is doubtful whether the adoption of this code would result in a large immediate increase in employment. However, it should tend to smooth out the sharp seasonal peaks and should result in a rapid spread of employment when volume begins to increase.

The sponsors of the code have estimated an immediate increase in employment of 15%, or 350 persons. They have estimated an increase in total wages paid by the industry of 33%, or approximately \$500,000 per year.

The minimum wages proposed in the code are approximately 70% higher than the average wages now being paid in the lowest-paid occupation and from 10% to 15% higher than the average wages paid in these same occupations in 1928. The lower minimum wage for women is in accordance with past practice in this industry. Approximately 33% of the employees are women.

At the present time this industry is operating at only about 17% capacity. The provision in the code requiring the reporting of intention to increase present kiln capacity or to install new kiln capacity, will tend to discourage further expansion until such time as there is a larger volume of business.

It is hoped that the provisions of this code will tend to stop the unreasonable price-cutting, misrepresentation, and other demoralizing practices which apparently exist in this industry at the present time.

FINDINGS

The Administrator finds that—

(a) The Code as recommended complies in all respects with the pertinent provisions of Title I of the Act, including, without limitation, subsection (a) of Section 7 and subsection (b) of Section 10 thereof; and that—

(b) The applicant group imposes no inequitable restrictions on admission to membership therein and is truly representative of the Floor and Wall Clay Tile Manufacturing Industry; and that—

(c) The Code as recommended is not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of Title I of the National Industrial Recovery Act.

It is recommended, therefore, that this Code be approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

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CODE OF FAIR COMPETITION FOR THE FLOOR AND WALL CLAY TILE MANUFACTURING INDUSTRY

ARTICLE I—PURPOSES

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are submitted as a Code of Fair Competition for the Floor and Wall Clay Tile Manufacturing Industry, and upon approval by the President shall be the standard of Fair Competition for such Industry and shall be binding upon every member thereof.

ARTICLE II—DEFINITIONS

1. The term "Industry" as used herein includes the manufacture and sale by the manufacturer of floor and wall clay tile and related products, including, but not limited to, bathroom accessories, decorated strips, and similar articles used as part of the tiled area.

2. The term "tile" as used herein includes all kinds of glazed or unglazed tile used for floor and wall surfacing which are made exclusively from clay and/or other ceramic materials and are burned in the course of manufacture and which in the case of glazed tile are composed of ceramic body and ceramic glaze.

3. The term "employee", as used herein, includes anyone engaged in the Industry in any capacity receiving compensation for his services, irrespective of the nature or method of payment of such compensation.

4. The term "employer", as used herein, includes any one by whom any such employee is compensated or employed.

5. The term "Member of the Industry" includes anyone engaged in the Industry as above defined either as an employer or on his own behalf.

6. The term "Member of the Code", as used herein, includes any member of the Industry who shall have become a member of the Code as hereinafter provided in Article VII.

7. The term "Association", as used herein, shall mean the Tile Manufacturers' Association.

8. The term "Board of Directors", as used herein, shall mean the Board of Directors of the Tile Manufacturers' Association.

9. The term "majority of the members of the industry", as used herein, shall mean a majority in number of members of the Industry assembled, either in person or voting by proxy, at a meeting which shall have been called by one week's prior notice by telegraph or mail as provided in Section A of Article XIII of this Code, providing such majority in number also represents a majority of the sales volume in dollars of the members of the Industry for the previous three years.

10. The term "majority of the members of the code" as used herein shall mean a majority in number of members of the code as-

sembled, either in person or voting by proxy, at a meeting which shall have been called by one week, prior notice by telegraph or mail as provided in Section A of Article 13 of this code, provided such majority in number also represents a majority of the sales volume in dollars of the members of the code for the previous three years.

11. The terms "President", "Act", and "Administrator" as used herein shall mean respectively the President of the United States, the National Industrial Recovery Act, and the Administrator of said Act.

ARTICLE III—HOURS

1. On and after the effective date and except as hereinafter otherwise provided, no employee shall be permitted to work in excess of 48 hours in any one week nor in excess of 40 hours per week averaged over a six (6) months' period.

2. The foregoing provisions shall not apply to engineers, kiln burners, gas producer men, and boiler firemen who shall not be permitted to work in excess of 48 hours in any one week nor in excess of 42 hours per week averaged over a six (6) months' period; nor shall they apply to watchmen, who shall not be permitted to work in excess of 96 hours in any period of two weeks.

3. The maximum hours fixed in the foregoing sections of this article shall not apply to office or branch warehouse employees who shall not be permitted to work in excess of 48 hours in any one week nor in excess of 40 hours per week averaged over any one (1) month period.

4. The maximum hours fixed in the foregoing sections of this article, shall not apply to executives and supervisory employees receiving \$30.00 or more per week, nor to outside salesmen, nor to employees engaged in emergency maintenance or emergency repair work.

5. No employees shall be permitted to work more than twelve (12) days in any fourteen (14) day period.

6. No employer shall knowingly engage any employee for any time which when totalled with that already performed for any other employer or employers exceeds the maximum specified in the foregoing sections.

7. For the purposes of this Article the remainder of the year 1933 from and after the effective date of this Code to December 31, 1933, inclusive, shall constitute the first six months' period. The subsequent six months shall begin on January 1st and July 1st, respectively, and shall terminate on June 30th and December 31st, respectively.

ARTICLE IV—WAGES

1. No male employee shall be paid at less than the rate of 40¢ per hour and no female employee shall be paid at less than the rate of 32½¢ per hour, provided, however, that female employees performing substantially the same work as male employees during the same hours of the day shall receive the same rates of pay as such male employees, and provided further that where women displace men on the same occupation, they shall receive rates of pay not lower than those of the men they displace.

2. The foregoing provisions establish a minimum rate of pay regardless of whether an employee is compensated on a time rate, piece rate, or any other basis.

3. The hourly rates for occupations other than those receiving the minimum rate herein prescribed, excepting those receiving \$35.00 or more per week, shall maintain the difference in hourly earnings between such occupations which existed on September 1, 1933, provided, however, that if the foregoing provision raises the hourly rate higher than the hourly rate for the same occupations which existed on July 15, 1929, the hourly rate in effect on that date shall apply, but in no event shall this rate be less than specified in Section 1 of this Article. The average hourly rates of the Industry rather than the hourly rate of any individual member of the Industry shall be used to determine the July 15, 1929, rate and September 1, 1933, rate. Within thirty days after the approval of this Code, the Code Authority as hereinafter established shall determine and promulgate to members of the Industry the average hourly rates of pay existing on July 15, 1929, and September 1, 1933, for occupations other than those receiving the minimum wage.

4. The minimum rates established in the foregoing provisions shall not apply to apprentices who shall be paid not less than 80% of the minimum rates of pay hereinabove established; provided, however, that the number of such apprentices shall not exceed 5% of the total number of employees of any member of the Industry at any one time, and provided further, that the period of apprenticeship of any employee shall not exceed four weeks.

5. The minimum rates of pay provided in the foregoing provision shall not apply to employees who are physically handicapped; provided, however, that such employees shall not be paid at less than 80% of the minimum rates hereinabove established, and provided further, that the total number of such excepted employees shall not exceed five percent of the total number of employees of any member of the Industry at any one time.

ARTICLE V—GENERAL LABOR PROVISIONS

1. No person under 16 years of age shall be employed in the Industry, nor anyone under 18 years of age at operations or occupations hazardous in nature or detrimental to health. The Code Authority shall submit to the Administrator within 30 days after the approval of this Code by the President a list of such occupations. In any State an employer shall be deemed to have complied with this provision if he shall have on file a certificate or permit duly issued by the authority in such State empowered to issue employment or age certificates or permits, showing that the employee is of the required age.

2. Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

3. No employee and no one seeking employment shall be required as a condition of employment to join any company union or to re-

frain from joining, organizing, or assisting a labor organization of his own choosing, and

4. Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

5. Within each State this Code shall not supersede any laws of such State imposing more stringent requirements on employers regulating the age of employees, wages, hours of work, or health, fire or general working conditions than under this Code.

6. Employers shall not reclassify employees or duties of occupations performed by employees so as to defeat the purposes of the Act.

7. Each employer shall post copies of this Code and the average Industry wage rates as promulgated by the Code Authority in accordance with the provisions of Article 4 hereof conspicuously at the place of employment.

ARTICLE VI

To effectuate further the policies of the Act, the Code Authority is hereby constituted to cooperate with the Administrator in the administration of this Code.

A. *Organization and Constitution of Code Authority.*—1. The Code Authority shall consist of the Board of Directors and such additional number of members of the Industry not members of the association as may be approved from time to time by the Administrator and as may be elected by fair methods of election to be approved by the Administrator. The Administrator, in his discretion, may appoint not more than three additional members without vote to represent the Administrator or such other groups or interests as may be agreed upon, without expense to the Industry. Such additional members shall serve for terms of from six months to one year, or such other terms as the President may designate, which terms shall be arranged in such a manner that they do not expire at the same time. Such members, together with the Administrator, shall be given notice of and may attend all meetings of the Code Authority.

2. The Association is hereby designated as the agency to conduct such election and as the agency to promote the purposes of this Code.

3. Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall:

- (i) Impose no inequitable restrictions on membership, and
- (ii) Submit to the Administrator true copies of its Articles of Association, By-Laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Administrator may deem necessary to effectuate the purposes of the Act.

4. In order that the Code Authority shall at all times be truly representative of the Industry and in other respects comply with the provisions of the Act, the Administrator may provide such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification in the method of selection of the Code Authority.

B. Powers and Duties of the Code Authority.—The Code Authority shall have the following duties and powers to the extent permitted by the Act and subject to the right of the Administrator on review, to disapprove or modify any action taken by the Code Authority pursuant to this Code:

1. The Code Authority shall be the general planning, coordinating and administering agency of this Code. It may make rules and regulations for the administration of this Code.

2. The Code Authority may designate the Association or such other committees or agents and may delegate to them such of its powers and duties as it may deem necessary for the administration of this Code, provided, however, that it shall reserve final responsibility with respect to any such delegated powers or duties, and provided further that any statistical information of a confidential character submitted to the Code Authority pursuant to the provisions of this Code, shall be submitted to such impartial agency, not connected with or obligated to any member of the Industry, as the Code Authority may designate. The Code Authority may designate appropriate governing agencies for districts or divisions of the Industry for the administration of this Code. In such districts or divisions the Code Authority may delegate to such agencies such of its powers and authority as may be necessary for the administration of this Code within such districts or divisions, including the right to submit to the Administrator recommendations for amendments to this Code, applicable only to such districts or divisions within the scope of the powers granted under this Code.

3. The Code Authority shall, upon complaint of interested parties, upon request of the Administrator, or upon its own initiative, make such inquiry and investigation as to the operation and observance of this Code as may be necessary, and shall report the results thereof to the Administrator. Any complaint concerning an alleged violation of the Code shall be submitted to the Code Authority in writing and by registered mail. The complaint shall contain a complete statement of the facts and shall refer specifically to that part of the Code which is alleged to have been violated. If it shall appear to the Code Authority after investigation that there has been a violation of the Code, a statement of the charges shall be sent by registered mail to the member of the Industry who is alleged to have committed the violation. The statement of charges shall fix the time and place for a hearing, at which the member of the Industry complained of shall be given an opportunity of presenting his defense. The Code Authority shall make recommendations to the Administrator with respect to such violations.

4. In order that the President may be informed of the extent of the observance of the provisions of this Code and of the extent to which the declared policy of the National Industrial Recovery Act is being effectuated in the Industry, the Code Authority shall make such reports as the Administrator may require, periodically or as often as he may direct; each member of the Industry shall make such sworn or unsworn reports to the Code Authority periodically, or as it may direct, on wages, hours of labor, conditions of employment, number of employees, production, shipments, stocks, prices, and other matters pertinent to the provisions of this Code as the

Code Authority may require for the administration of this Code. In addition to the information required to be submitted to the Code Authority, members of the Industry shall furnish to Government agencies such statistical information as the Administrator may deem necessary for the purposes recited in Section 3a of the Act.

5. Statistical information required by the Code Authority in accordance with the provisions of this Code shall be furnished to the Code Authority through an impartial agency, as hereinbefore provided. Such information shall be deemed confidential and shall not be divulged to any member of the Industry except in summary, provided, however, that where summary information in effect divulges the identity of individual members of the Industry it shall not be revealed to any member of the Industry but shall be made available to the Administrator upon request and may be used to facilitate the administration of this Code.

6. In order to insure proper protection for the Industry and for the employees thereof, the Code Authority shall cause to be made such investigations as may be necessary to determine the effect of imports upon the Industry and may make such recommendations with respect thereto to the President for such action by him pursuant to Section 3-e of Title I of the Act as he may deem necessary.

7. The present kiln capacity of the Industry shall be registered by members of the Industry with the Code Authority. The intention to install additional kiln capacity, excepting, however, modernization or replacement of existing capacity, either by members of the Industry or by those intending to engage in the Industry, shall be reported to the Code Authority. The Code Authority shall make such recommendations with respect thereto to the Administrator as it may deem desirable to effectuate the policy of the Act.

8. Any interested party shall have the right to complain to the Code Authority under such rules and regulations as it may prescribe with respect to any rule, regulation, order, or finding made or course of action pursued by the Code Authority, and any interested party shall have the right to appeal to the Administrator under such rules and regulations as he may prescribe in respect to any decision, rule, regulation, or course of action of the Code Authority pursuant to any provision of this Code.

9. Members of the industry shall be entitled to participate in and share the benefits of the activities of the Code Authority and to participate in the selection of the members thereof by assenting to and complying with the requirements of this Code and by either becoming a member of the Association or by sustaining their reasonable share of the expenses of the administration of this Code. The reasonable share of the expenses of administration shall be determined by the Code Authority, subject to review by the Administrator and shall be based upon the amount in dollars of net sales and/or such other factors as may be deemed equitable.

ARTICLE VII

Any member of the Industry shall be eligible for membership in the Code. Any member of the Industry desiring to become a member of the Code may do so by signing and delivering to the Code Au-

thority a letter substantially in the form set forth in Schedule A annexed hereto.

ARTICLE VIII—TRADE PRACTICES

1. No member of the Industry shall make, allow, or sell products of the Industry at a price or discount conditioned on the basis of combined sales or shipments of glazed tile and unglazed tile.

2. No member of the Industry shall make any price discrimination between purchasers of the same class; provided, however, that nothing herein shall prohibit a difference in price that makes allowance only for difference of grade, kind, or of transportation charges.

3. No member of the Industry shall give or permit secret rebates, allowances, refunds, credits, subsidies, or unearned discounts, whether in the form of money, material, premiums, advertising, or otherwise, or extend to certain purchasers special service or privileges not extended to all purchasers under like terms and conditions.

4. No member of the Industry shall induce or attempt to induce by any means any party to a contract with a member of the Industry to violate such contract.

5. No member of the Industry shall make or promise to make, either directly or indirectly, to any purchaser or prospective purchaser of any product, or to any officer, employee, agent, or representative of any such purchaser or prospective purchaser, any bribe, gratuity, gift, or other payment or remuneration.

6. No member of the Industry shall defame any competitor by falsely imputing to him dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations or by the false disparagement of the grade or quality of his goods.

7. No member of the Industry shall sell the products of the Industry on consignment.

8. No member of the Industry shall imitate trade marks, trade names, or designs of a competitor in such a manner as to mislead or deceive customers or prospective customers.

9. No member of the Industry shall publish or circularize threats or suits for infringement of patents or trade marks or of any other legal proceedings not in good faith, with the tendency or effect of harassing competitors or intimidating their customers.

10. No member of the Industry shall withhold from or insert statements on orders or invoices, which makes such record a false or incomplete record, wholly or in part of the transaction or condition represented on the face thereof.

11. No member of the Industry shall guarantee customers or prospective customers against price declines or price advances.

12. No member of the Industry shall permit any misrepresentation in the sale, offering for sale, billing, invoicing, marking, branding or labelling of any product or of containers thereof nor permit the issuance of any grade certificates with the intent or with the effect of deceiving customers, architects, competitors, or the public as to quantity, kind, or grade of tile products.

13. No member of the Industry shall make or cause to be made lump sum bids or quotations except for specialties of plastic faience,

cut ceramic, or other specialties of tile for which prices have not been filed with the Code Authority.

14. No member of the Industry shall deliver two or more grades of tile as established pursuant to this Code in the same container.

15. No member of the Industry shall grant open credit in excess of thirty (30) days net after date of shipment, nor in excess of two (2) percent cash discount for payment of invoice within fifteen (15) days after date thereof, provided however, that fifteen (15) additional days open credit may be granted upon shipments to points beyond the Rocky Mountains, and provided further that no cash discount shall be deducted from prepaid transportation charges, and provided further that payment of all invoices dated between and including the first and the fifteenth of the month may be accepted net on the fifth of the following month, and invoices dated between and including the sixteenth and thirty-first of the month, may be accepted net on the twentieth of the following month.

16. No member of the Industry shall accept orders for specific jobs until the contract for such specific job has been awarded. Orders for specific jobs shall specify the name and location of the specific job on which material is to be used, and the quantity required within a variation of ten percent (10%).

17. No member of the Industry shall accept stock orders for shipments after thirty (30) days from the date of the acceptance of such orders except on condition that shipments made after such 30-day period shall be at the price prevailing on such date.

18. No member of the Industry shall make quantity surveys or perform other estimating services without making reasonable specific charge therefor, provided however, that nothing herein contained shall prevent any member of the industry from making setting plans or details of quantities for a job requiring special or unusual treatment.

ARTICLE IX—PUBLISHED PRICES

A. Each member of the Industry shall use an adequate cost-accounting system which shall be at least as complete and detailed as the cost-accounting system recommended by the Code Authority and approved by the Administrator as hereinafter provided. The Code Authority shall recommend for use in the Industry a uniform and adequate cost-accounting system which shall be adaptable to the cost-accounting procedure and to the business of the Industry. Such plan shall specify the factors which shall be included in determining the costs of each member of the Industry. Upon approval by the Administrator of such a system of cost accounting for the Industry, complete advice concerning it shall be distributed by the Code Authority to all members of the Industry. Thereafter each member of the Industry shall file with the Code Authority his costs for each product of the Industry offered for sale by him. Thereafter no member of the Industry shall initiate a selling price below his own cost or sell the products of the industry at such price or upon such terms or conditions of sale as will result in the purchaser's paying for such product less than the cost of that member of the Industry who has filed with the Code Authority the lowest cost; provided,

however, that the Code Authority may approve, subject to review by the Administrator, the sale of surplus stocks below such costs where necessary to relieve financial emergencies. A detailed record of such surplus stocks shall be filed with and checked by such impartial agency as the Code Authority may designate at the time of application for such approval.

B. Each member of the Industry shall publish and file with the Code Authority within ten days after the effective date of the Code a price list individually prepared by him of all products offered for sale or sold by him and all terms and conditions of sale relating thereto. Such price list shall state for each grade and kind of each product sold or offered for sale one price with appropriate discounts therefrom, if any are allowed, for sales to classified types of buyers; provided, however, that such discounts shall not exceed fifteen percent. Such price list and terms and conditions of sale so filed with the Code Authority shall be open to inspection at all reasonable times by any interested party. Revised price lists or revised terms and conditions of sale may be filed from time to time thereafter with the Code Authority by any member of the Industry; provided, however, that such revisions shall be filed with the Code Authority at least ten days in advance of the effective date thereof; and provided further, that any other member of the Industry may file revisions of his price list or terms and conditions of sale to meet the revisions first filed which may become effective on the date when the revised price list or revised terms and conditions of sale first filed shall become effective.

C. No member of the Industry shall sell or offer for sale any product of the Industry at prices lower than the prices noted in its price list, or on more favorable terms and conditions of sale, than the terms and conditions of sale previously filed by such member with the Code Authority in accordance with the provisions of Section B of this Article and in effect at the time of such sale.

D. A member of the Industry may file with the Code Authority a price to apply between members of the Industry or other manufacturers using tile as a part of other manufactured articles.

ARTICLE X—CLASSIFICATION AND STANDARDIZATION OF TILE

A. All tiles sold or shipped by any member of the Industry shall be branded either Standards or Seconds in accordance with the minimum grade specifications of Simplified Practices Recommendation R-61-30 as issued by the United States Department of Commerce or as may hereafter be established as standards for the Industry and approved by the Administrator. Such brands shall be indicated plainly and conspicuously on each container in such manner as shall be approved by the Code Authority.

B. The Code Authority may recommend from time to time a classification of the various types of tiles manufactured, and upon the approval of the majority of the members of the Code and of the Administrator, after such hearing as he may prescribe, such classification shall be established as the practice of the Industry and no member of the Industry shall sell or offer for sale products for which such classifications have been established except in accord-

ance with such classifications. The provisions of this Section B shall not apply to unglazed quarry tile.

C. No member of the Industry shall sell second-grade tile in an amount in excess of thirty-five percent of the total square footage of glazed tile sold by him, nor in excess of fifteen percent of the total square footage of unglazed tile sold by him, or such other reasonable percentage as may hereafter be decided upon by a majority of the Industry, and approved by the Administrator, from time to time; provided, however, that the Administrator on petition and after such hearing as he may prescribe may modify the percentages herein established; and provided further that any member of the Code may participate in the provisions of Section D hereinafter set forth. The provisions of this Section C shall not apply to unglazed quarry tile.

D. (1) Any member of the Code may exceed the percentages specified pursuant to Section C of this Article on condition that he shall pay to the Treasurer of the Code Authority, as trustee of the Tile Industry Fund, as liquidated damages 20 per cent of the total sales value of the second-grade tiles sold by him in excess of the percentages established pursuant to the aforesaid Section C of this Article.

(2) The liquidated damages referred to in the foregoing subsection shall be based upon the average percentage of seconds sold by any member of the Code in excess of the percentages established pursuant to Section C of this Article sold for the current calendar year or part thereof after the effective date of this Code. Each member of the Code shall send to the agency designated by the Code Authority a monthly statement stating thereon his square footage over or under the allowed percentage of second-grade tiles for the current month, and the Code Authority or such agency as it may designate shall send to each member of the Code a monthly statement stating thereon his square footage over or under the allowed percentage of second-grade tile cumulative to date for the current year and the liquidated damages, if any, due thereon. Each member of the Code shall within 30 days after receipt of such statement pay to the Treasurer of the Code Authority as trustee of the Tile Industry Fund any liquidated damages due in accordance with such statement or the provisions of this Code.

(3) No member of the Code shall be required to pay liquidated damages due for any current month if sufficient credit has accrued to his account for sales under the allowed percentage during any previous months.

(4) Any member of the Code who in earlier months of any current year shall have paid liquidated damages which subsequently are offset by a credit due him for the percentage of second-grade tiles subsequently sold below the percentage established pursuant to Section C of this Article, shall have refunded to him on June 30 and December 31 of each year, or as soon thereafter as possible, such excess liquidated damages as he shall have paid.

(5) All sums due as liquidated damages in accordance with the provisions of this Section D of this Article shall be paid into a separate fund to be known as the Tile Industry Fund. The Treasurer of the Code Authority as an individual shall be the trustee of the

Tile Industry Fund and as such shall place payments for liquidated damages received to the credit of such fund and make disbursements therefrom in accordance with the provisions of this Article. This Fund shall be maintained as a separate fund from any general fund which the Code Authority may establish or maintain. Disbursements from said fund may be made from time to time in such manner and for such purposes as the majority of the members of the Code shall determine; provided, however, that at all times a sufficient fund shall be maintained in the said Tile Industry Fund to refund any liquidated damages which may have been paid into the aforesaid fund and which subsequently may become due for refund to members of the Code, in accordance with the provisions of subsection (4) of this Section D.

(6) The provisions of this Section D may be terminated upon a majority vote of the members of the Code.

E. Offshade Tiles which are so widely different in shade that they cannot be used to fill an order for Standard Grade Tiles of the particular color such Offshade Tiles were intended to reproduce, shall be sold at the manufacturer's published price for Second Grade Tiles and shall be calculated as Second Grade Tiles subject to the provisions of Sections "C" and "D" of this Article.

ARTICLE XI—SAMPLES

No member of the Industry shall furnish samples free of charge, except for a specific job, in excess of two square feet of any one color or pattern, excepting, however, Quarry Tiles. Unmounted samples furnished for display purposes in a showroom, architectural, home owners' or builders' exhibit, in excess of two square feet of any one color or pattern, shall be charged for at the current published prices less a discount not exceeding 50%. Tile furnished on mounted samples in excess of two square feet of any one color or pattern shall be charged for at the current published prices, but the manufacturer may bear the cost of mounting such samples and furnishing metal angle iron surrounding the panel or such other bracing as is used, crating and the crate cost.

ARTICLE XII—DISTRIBUTION

A. No member of the Industry shall grant discounts from his published net prices as filed with the Code Authority, except that a discount of not over fifteen percent may be given to merchant tile contractors or to wholesalers.

B. For the purposes of this Article a merchant tile contractor shall be defined as a concern which:

(1) Specializes in the installation of, but does not engage in the sale of unset tile, bathroom accessories, or other accessories which are a part of the tiled area;

(2) Maintains an adequate showroom and place of business open to the public during usual business hours, which showroom, if a part of a residence, has an entrance separate from any residential entrance and contains at least two hundred and fifty (250) square feet of floor space and is equipped with suitable furniture and equipment in keeping with a business office and showroom;

(3) Maintains display facilities and display cabinets adequate and suitable to its business.

(4) Who shall have purchased two thousand dollars (\$2,000) worth of tile, bathroom accessories, or other accessories which are a part of the tiled area during the past six semiannual periods, or if in business less than the six semiannual periods, then an average of two thousand dollars (\$2,000) worth of tile, bathroom accessories or other accessories which are part of the tiled area for such six-month periods or any portion thereof as he has been in the tile contracting business.

Purchases as set forth in this section shall be construed to mean the total amount billed for products delivered during the semiannual calendar period or any portion thereof and is not intended to mean the value or amount of orders placed.

C. For the purposes of this Article, a wholesaler shall be defined as a concern which:

(1) Specializes in the sale but does not engage in the installation of tile, bathroom accessories, marble sills, and other accessories which are a part of the tiled area;

(2) Maintains a warehouse of adequate size and type suitable for its business;

(3) Maintains at each warehouse display facilities or display cabinets adequate and suitable for the nature of its business;

(4) Maintains an average stock of thirty-five thousand (35,000) square feet of tile at each warehouse.

D. The Administrator, either on his own initiative or on petition, and after such hearing as he may prescribe, may modify (or may approve the recommendations of a majority of the Industry for the modification of) the provisions of Sections B and C of this Article.

E. Each member of the Industry shall submit to the Code Authority a list of persons, firms, or corporations whom such member of the Industry has classified as wholesalers and Merchant Tile Contractors. The Code Authority shall investigate such persons, firms, or corporations and report to members of the Industry whether, in its opinion, subject to review by the Administrator, such persons, firms, or corporations are entitled to qualify as wholesalers or Merchant Tile Contractors as hereinabove defined. No member of the Industry shall thereafter grant wholesalers' or merchant tile contractors discounts to persons, firms, or corporations who have been determined in the manner herein set forth to have failed to qualify as wholesalers or Merchant Tile Contractors.

ARTICLE XIII—GENERAL PROVISIONS

A. Any notice, demand, or request required or permitted to be given to or made upon any member of the Industry shall be sufficiently given if mailed, postage prepaid, addressed to such Member of the Industry at the address of such Member of the Industry on file with the Code Authority. A waiver in writing signed by any Member of the Industry of any such notice, demand, or request and delivered to the Code Authority shall be deemed to be the equivalent of a notice, demand, or request duly given or made, whether or not such waiver was signed and delivered before the time when such notice, demand, or request was required or permitted to be given or made.

B. Nothing contained in this Code shall be deemed to constitute the members of the Industry or members of the Code partners for any purpose. No member of the Industry and no member of the Code shall be liable in any manner to any one for any act of any other member of the Code or member of the Industry or for any act of the Code Authority or any agent or employee thereof pursuant to this Code. No member of the Code Authority and no agent or employee thereof shall be liable to any one for any action or omission to act under this Code except for his wilful misfeasance, nonfeasance or dishonesty. Nothing contained in this Code shall be deemed to confer upon any one other than a member of the Code any right, claim, or demand whatsoever not expressly provided by statute against any member of the Code or against any member of the Code Authority or any agent or employee thereof.

C. As soon as a majority composed of seventy-five percent of the members of the Industry assembled in person or by proxy at any meeting which has been called by a reasonable prior notice shall sign and deliver to the Code Authority a letter in substantially the form set forth in Schedule A annexed hereto, this Code shall constitute a binding contract by and among the manufacturers who have signed the Code, subject, however, to amendment as herein provided.

D. Nothing contained in this Code, excepting, however, Articles II, III, IV, and V of this Code shall be deemed to apply to or affect the sale of any product of the Industry for direct shipment in export trade within the meaning of the term "export trade", as it is used in the Export Trade Act, or unless and to the extent that the Code Authority shall otherwise determine, subject to review by the Administrator, to the sale of any product of the Industry for direct shipment to the Philippines, Hawaii, or Porto Rico, or other insular possessions of the United States of America.

ARTICLE XIV—MONOPOLIES

No provision of this Code shall be so construed or administered as to permit or promote monopolies or monopolistic practices or to eliminate, oppress, or discriminate against small enterprises.

ARTICLE XV—MODIFICATION

A. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of subsection B of Section 10 of the Act, from time to time to cancel or modify any order, approval, license, rule, or regulation issued under Title I of said Act and specifically, but without limitation, to the right of the President to cancel or modify his approval of any provision of this Code or of any condition imposed by him upon his approval thereof.

B. Any decision, rule, regulation, order, or finding made or course of action followed, pursuant to this Code, may be canceled or modified by the Administrator whenever he shall determine such action by him to be necessary to effectuate the provisions of Title I of the Act.

C. This Code, except as to provisions required by the Act, may be modified on the basis of experience or changes in circumstances, such modification to be based upon application to the Administrator and such notice of hearing as he shall specify, and to become effective on the approval of the President.

ARTICLE XVI—EFFECTIVE DATE

This Code shall become effective on the second Monday after its approval by the President.

SCHEDULE A

FORM OF LETTER OF ASSENT TO THE CODE

TO THE CODE AUTHORITY,

THE TILE MANUFACTURING INDUSTRY,

19 West 44th Street, New York, New York.

DEAR SIR: The undersigned, desiring to become a signatory of the Code of Fair Competition of the Floor and Wall Clay Tile Manufacturing Industry, a copy of which is annexed hereto marked Annex A hereby assents to all of the provisions of said Code (hereinafter referred to as the Code), and effective as of the date on which the Code shall have been approved by the President of the United States of America as therein provided, or as of the date on which this letter shall have been delivered, if delivery thereof shall have been made subsequent to the date on which the Code shall have been approved by said President as aforesaid, by the signing and delivery of this letter becomes a member of the Code; and effective as aforesaid hereby agrees with every person, firm, association, and corporation who shall then be or thereafter become a member of the Code that the Code shall constitute a valid and binding contract between the undersigned and all such other members, for a period which shall terminate on October 1, 1934, or at such time prior thereto as the National Industrial Recovery Act passed June 16, 1933, is terminated.

The foregoing time of termination is subject to the right of the undersigned to extend such time if agreeable to other signatories of the Code.

For all purposes of Section A of Article XIII of the Code the address of the undersigned, until it shall file with the Code Authority written notice of a change of such address, shall be as set forth at the foot of this letter.

Yours very truly,

_____, *President.*

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