

AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST  
OF THE  
BRICKLAYERS AND TROWEL TRADES INTERNATIONAL PENSION FUND

December 15, 2015

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WHEREAS, the International Union of Bricklayers and Allied Craftworkers and certain Local Unions affiliated with the International Union have now and will hereafter have in effect agreements with certain Employers requiring payments by the Employers into a Trust Fund for the purpose of providing and maintaining benefits for certain Employees; and

WHEREAS, to effect the aforesaid purpose it is desired to establish and maintain a Trust Fund which will conform to the applicable requirements of the Labor Management Act of 1947, as amended, the Employees Retirement Income Security Act of 1974, as amended, and qualify as a "qualified Plan" and as an "exempt Trust" pursuant to the 1954 Internal Revenue Code, Section 401, 501(a) and other pertinent provisions thereof, and with respect to the Canadian Pension Plan, to conform to the requirements applicable to a tax exempt "registered pension plan" under the Income Tax Act (Canada) and under the Alberta Employment Pension Plans Act; and

WHEREAS, the parties desired to set forth the terms and conditions under which the said Fund is to be established and administered; and

WHEREAS, there has heretofore been entered into an Agreement and Declaration of Trust, effective the 29th day of June, 1972, by and between the undersigned Union Trustees and Employer Trustees who, together with the Successor Trustees designated in the manner hereinafter provided, created a pension fund as herein provided; and

WHEREAS, the said Trust Fund is to be known as the "Bricklayers and Trowel Trades International Pension Fund"; and

WHEREAS, the International Union and each such Local Union and each Employer that is party to a collective bargaining agreement with the International Union of Bricklayers and Allied Craftworkers, or any of its affiliated Local Unions or other entities, which accepts this Agreement and Declaration of Trust and agrees to be bound by the provisions hereof shall, upon acceptance by the Trustees, be deemed a party to this Agreement and Declaration of Trust; and

WHEREAS, the sums payable to the Fund as aforesaid, are for the purposes of providing pension benefits and other conventional forms of retirement, disability and related benefits as now are, or may, hereafter be authorized or permitted by law for eligible employees, their families, dependents and beneficiaries as determined hereunder; and

WHEREAS, the Trustees have been duly appointed in accordance with the provisions of this Agreement; and

WHEREAS, under Article X of said Agreement and Declaration of Trust, the Trustees have the power and authority to amend such Agreement and Declaration of Trust from time to time as therein provided; and

WHEREAS, said Agreement and Declaration of Trust was heretofore amended and

restated in October 2000; and

WHEREAS, said Agreement and Declaration of Trust has been amended several times since the October 2000 restatement; and

WHEREAS, it is determined to be desirable to amend said Agreement and Declaration of Trust and to restate the same so as to incorporate therein all of the amendments adopted heretofore or as part of this restatement; and

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, it is hereby agreed as follows:

## ARTICLE I: DEFINITIONS

### Section 1.1 Employer

The term "Employer" as used herein shall mean:

(a) An employer who is a member of, or is represented in collective bargaining by, an association and who is bound by a collective bargaining agreement with the Union providing for the making of payments to the Trust Fund with respect to employees represented by the Union.

(b) An employer who is not a member of, nor represented in collective bargaining by, an association, but who has duly executed or is bound by a collective bargaining agreement with the Union providing for the making of payments to the Trust Fund with respect to employees represented by the Union.

(c) The Union which, for the purpose of making the required contributions into the Trust Fund, shall be considered as the Employer of the Employees of the Union for whom the Union contributes to the Trust Fund.

(d) An Association which, for the purposes of making the required contributions to the Trust Fund shall be considered as the Employer of the Employees of the Association for whom the Association contributes to the Trust Fund.

(e) A Contributing Employer shall also include a Participating Union, Conference or Related Organization that has agreed to contribute and participate in this Fund pursuant to a written agreement with the Trustees specifying the terms and conditions of the participation and has been accepted by the Trustees of this Fund. For this purpose, "Conference" shall mean a state conference or other intermediate organization affiliated with and in good standing with the International Union in accordance with the provisions of the International Union Constitution. "Related Organization" is any welfare fund, pension fund, apprentice or other fund established by a Local Union or any local building trades council with which a Local Union is affiliated and in good standing.

(f) An employer who does not meet the requirements of the definition of "Employer" as stated in subsections (a), (b), and (c) of this Section, but who is required to make payments or contributions to the Trust Fund (1) by any law or ordinance applicable to a State, Territory or Province or to any political subdivision or municipal corporation thereof or (2) pursuant to any written agreement entered into by such employer with such State, Territory or Province or any political subdivision or municipal corporation thereof

(g) Employers as described in this Section shall, by the making of payments to the Trust Fund pursuant to such collective bargaining or other written agreements, be deemed to have accepted and be bound by this Trust Agreement.

## Section 1.2 Union

The term "'Union" as used herein, shall mean the International Union of Bricklayers and Allied Craftworkers including any Local Union affiliated with the International Union of Bricklayers and Allied Craftworkers or any other International Union and its affiliated Local Unions provided the Trustees accept the affiliated local's participation in the Fund. The term "International Union" shall mean the International Union of Bricklayers and Allied Craftworkers and the term "Local Union" shall mean any such local affiliated with the Union or accepted for participation by the Trustees.

## Section 1.3 Employee

The term "Employee" as used herein shall mean:

(a) Any employee represented by the Union and working for an Employer as defined herein, and with respect to whose employment an Employer is required to make contributions into the Trust Fund.

(b) An officer or employee of the Union, Conference or Related Organization (as defined in subsection (e) of Section 1.1) who shall have been proposed for benefits under the Trust Fund by the Union, Conference or Related Organization and who shall have been accepted by the Trustees and for whom the Union, Conference or Related Organization agrees in writing to contribute to the Trust Fund.

(c) An employee of an Employer, as defined in subsection (d) of Section 1.1, on whose behalf such Employer is required to make payments or contributions to the Trust Fund as provided in subsection (f) of Section 1.1 and at a rate for contributions for other Employers.

(d) Employees, if any, of this Trust Fund who are not employed by an Employer as defined in Section 1.1, but as shall be proposed and accepted for such benefits by the Trustees. As to such personnel as are employees of the Trust Fund, the Trustees shall be deemed to be an Employer within the meaning of this Trust-Agreement and shall provide benefits for said Employees out of said Trust Fund, on the same basis as for other Employees.

(e) A person, represented by or under the jurisdiction of the Union, who shall be employed by a governmental unit or agency, and on whose behalf payment of contributions shall be made at the times and at the rate of payment equal to that paid by an Employer, defined in Section 1.1 of this Article, in accordance with a written agreement, ordinance or resolution.

## Section 1.4 Participant

"Participant" means any pensioner, any person receiving benefits as the beneficiary of a deceased Participant, any person who has completed the requirements for a vested benefit, and



any employee who worked in covered employment for one year. Prior to becoming a Participant, an employee shall not in any event be credited with service; however, this shall not preclude credit for service prior to participation, to the extent provided by this plan, once an employee has become a Participant.

#### Section 1.5 Beneficiary

The term "Beneficiary" shall mean a person designated by a Participant or by the terms of the Pension Plan created pursuant to this Agreement and Declaration of Trust, who is or may become entitled to a benefit.

#### Section 1.6 Trustees

(a) The term "U.S. Trustee" as used herein shall mean the Trustees designated pursuant to this Trust Agreement, together with their successors, designated and appointed in accordance with the terms of the Trust Agreement, with respect to the administration of the U.S. Pension Plan and the U.S. Trust Fund.

(b) The term "Canadian Trustee" as used herein shall mean the Trustees designated pursuant to this Trust Agreement, together with their successors, designated and appointed in accordance with the terms of the Trust Agreement, with respect to the administration of the Canadian Pension Plan and the Canadian Trust Fund.

(c) The following terms shall have the following meanings, unless the context otherwise requires:

"Trustee" - "U.S. Trustee or Canadian Trustee, as the case may be."

"Union Trustee" or "Employer Trustee" - "U.S. Union Trustee or U.S. Employee Trustee or Canadian Union Trustee or Canadian Employee Trustee, as the case may be."

"Employer Trustee"- "U.S. Employer Trustee or Canadian Employer Trustee, as the case may be."

(d) The term "Board of Trustees" shall mean the "U.S. Board of Trustees, or the Canadian Board of Trustees, as the case may be", unless the context otherwise requires.

The term "Trustees" as used herein shall mean the Trustees designated in this Trust Agreement, together with their successors designated and appointed in accordance with the terms of this Trust Agreement. The Trustees, collectively shall be the "Administrator" of this Fund as that term is used in the Agreement.

## Section 1.7 U.S. Trust Fund, Canadian Trust Fund

(a) "U.S. Trust Fund", "U.S. Fund" and "U.S. Trust" as used herein shall mean the entire trust estate of the U.S. Section of the Bricklayers and Trowel Trades International Pension Fund as it may, from time to time, be constituted, including, but not limited to, all funds received in the form of contributions, together with all contracts (including dividends, interest, refunds and other sums payable to the U.S. Trustees on account of such contracts) all investments made and held by the U.S. Trustees, all income, increments, earnings and profits therefrom, and any and all property and funds received and held by the U.S. Trustees by reason of their acceptance of this Trust Agreement.

(b) "Canadian Trust Fund" and "Canadian Fund" and "Canadian Trust" as used herein shall mean the entire trust estate of the Canadian Section of the Bricklayers and Trowel Trades International Pension Fund, as it may, from time to time, be constituted, including, but not limited to, all funds received in the form of contributions, together with all contracts (including dividends, interest, refunds or other sums payable to the Canadian Trustees on account of such contracts), all investments made and held by the Canadian Trustees, all income, increments, earnings and profits thereof: and any and all other property or funds received and held by the Canadian Trustees by reason of their acceptance of this Trust Agreement.

(c) The terms "Trust Fund", "Fund", and "Trust", as used herein shall mean "Canadian Trust Fund or U.S. Trust Fund, as the case may be" unless the context otherwise requires.

## Section 1.8 Trust Agreement

The terms "Agreement and Declaration of Trust" or "Trust Agreement" as used herein shall mean this instrument, including all amendments and modifications as may from time to time be made.

## Section 1.9 Association

The term "Association" shall mean the International Council of Employers of Bricklayers and Allied Craftworkers ("ICE"), the Tile Contractors Association of America, Inc. ("TCAA") and such other Employer organizations as consist exclusively of employers which are party to collective bargaining agreements with the Union or one of its affiliates.

## Section 1.10 Act

The term "Act" as used herein shall mean the Employee Retirement Income Security Act of 1974, any amendments as may from time to time be made and any regulations promulgated pursuant to the provisions to the said Act as pertains to the U.S. Pension Plan.

## Section 1.11 U.S. Pension Plan, Canadian Pension Plan

(a) The term "U.S. Pension Plan" shall mean the plan, program, method, rules and procedure for the payment of benefits from the U.S. Trust Fund established by the Trust Agreement and amendments thereto.

(b) The term "Canadian Pension Plan" shall mean the plan, program, method, rules and procedure for the payment of benefits from the Canadian Trust Fund established by the Trust Agreement and amendments thereto. The Canadian Pension Plan is registered under the Income Tax Act (Canada) and in Alberta under the Employment Pensions Plans Act under registration number 0392175. The Pension Plan is a "Collectively Bargained Multi-Employer Plan" and a "Negotiated Cost Plan" as defined in and for the purposes of the Alberta Employment Pensions Plan Act.

(c) The term "Pension Plan" shall mean the "U.S. Pension Plan or the Canadian Pension Plan, as the case may be," unless the context otherwise requires.

#### Section 1.12 Reciprocity Agreement

The term "Reciprocity Agreement" as used herein shall mean the Reciprocal Agreement for the International Union of Bricklayers and Allied Craftworkers, also referred to as the "International Reciprocal Agreement for Bricklayers and Allied Craftworkers Defined Contribution and Defined Benefit Pension Plans," and such other Reciprocity Agreements adopted in conformity with Section 9.4 of this Agreement.

#### Section 1.13 Administrative Committee

The term "Administrative Committee" as used herein shall mean the "U.S. Administrative Committee or the Canadian Administrative Committee, as the case may be," unless the context otherwise requires.

#### Section 1.14 Employment Pensions Plan Act ("EPPA")

The term "Employment Pensions Plan Act" or "EPPA" as used herein shall mean the Alberta Employment Pensions Plan Act of 2012 including any amendments made thereto and any regulations promulgated thereunder.

#### Section 1.15 Income Tax Act (Canada) ("ITA")

The term "Income Tax Act (Canada)" or "ITA" as used herein shall mean the Canadian Income Tax Act of 1985 including any amendments thereto and any regulations promulgated thereunder.

## **ARTICLE II - CREATION AND PURPOSES OF FUND**

### **Section 2.1 Purpose**

(a) The U.S. Trust Fund is created, established and maintained, and the U.S. Trustees agree, as they deem to be appropriate, to receive, hold and administer the U.S. Trust Fund for the purpose of providing such benefits as now are, or hereby may be, authorized or permitted by law for Participants and their Beneficiaries in accordance with the provisions herein set forth and the U.S. Pension Plan. It is intended that the U.S. Trust Fund and the U.S. Pension Plan be a "multi-employer plan" as that term is defined in Section 3(37) of the Act.

(b) The Canadian Trust Fund is created, established and maintained, and the Canadian Trustees agree, as they deem to be appropriate, to receive, hold and administer the Canadian Trust Fund, for the purpose of providing such benefits as now are, or hereafter may be, authorized or permitted by law for Participants and their Beneficiaries and in accordance with the provisions herein set forth and the Canadian Pension Plan.

## **ARTICLE III - BOARD OF TRUSTEES**

### **Section 3.1 Number, Appointment, Term**

#### **(a) U.S. Trustees**

The U.S. Fund shall be administered by U.S. Trustees, at least three (3) but not more than eight (8) of whom shall be appointed by the International Union and shall act as "U.S. Employee Trustees," and at least three (3) but not more than eight (8) shall act as "U.S. Employer Trustees, one (1) of whom shall be appointed by the TCAA and the remainder of whom shall be appointed by ICE. The respective Trustees shall serve at the will of the Union, the TCAA or the ICE, respectively, appointing them, but they shall be compensated or shall be reimbursed for all reasonable and necessary expenses properly and actually incurred by them in connection with the performance of their official duties as such in a manner which complies with applicable law. A vacancy shall occur whenever a Trustee resigns, dies or becomes incapacitated or when a Trustee appointed by the TCAA is removed by that Association, or when any other Employer Trustee is removed by the ICE, or when a Trustee appointed by the Union is removed by the Union.

#### **(b) Canadian Trustees**

The Canadian Fund shall be administered by a board of six (6) Canadian Trustees. Three (3) Canadian Trustees shall be appointed by the International Union and shall act as Canadian Employee Trustees, provided that at least two (2) Canadian Employee Trustees shall be Canadian citizens or landed immigrants. Three (3) Canadian Trustees shall be appointed by the U.S. Employer Trustees and shall act as Canadian Employer Trustees. The respective Trustees shall serve at the will of the Union or the U.S. Employer Trustees, respectively, appointing them,

but they shall be compensated and shall be reimbursed for all reasonable and necessary expenses properly and actually incurred by them in connection with the performance of their official duties in a manner which complies with applicable law. A vacancy shall occur whenever a Trustee resigns or when a Trustee is removed by the party which appointed him, or by reason of resignation, death or incapacity.

### Section 3.2 Resignation and Removal

A Trustee may resign and become and remain fully discharged from all further duty or responsibility hereunder upon giving thirty (30) days' notice in writing to the remaining Trustees and to the party by whom he was appointed or such shorter notice as the remaining Trustees may accept as sufficient in which notice there shall be stated a date on which such resignation shall take effect; and such resignation shall take effect on the date specified in the notice unless a successor Trustee shall have been appointed at an earlier date, in which event such resignation shall take effect immediately upon the appointment of such successor Trustee.

Any Employee Trustee may be removed at any time by the International Union, and any U.S. Employer Trustee appointed by the TCAA may be removed at any time by that Association, and any other U.S. Employer Trustee may be removed at any time by the ICE.

Any Canadian Employer Trustee may be removed at any time by the U.S. Employer Trustees. Any such removed Trustees shall be fully discharged from all further duty and responsibility hereunder.

### Section 3.3 Successor Trustees, Appointment

If any Employer Trustee shall die, become incapable of acting hereunder, or become an inactive employee, resign, or be removed, a Successor Employer shall be designated in the manner set forth in Article III, Section 3.1, such appointment to be in writing and be delivered to the Co-Chairman and Secretary of the Trustees serving at that time. If any Employee Trustee shall die, become incapable of acting hereunder, resign, or be removed, a Successor Employee Trustee shall be appointed by the International Union, such appointment to be in writing and be delivered to the Co-Chairman and Secretary of the Trustees serving at that time. It is the intention hereof that the Fund at all times be administered by an equal number of Employer Trustees and Employee Trustees. The written appointment shall state the term, if any, during which the Trustees is to serve consistent with Section 3.1.

### Section 3.4 Successor Trustee, Assumption of Office

Any Successor Trustee shall immediately upon his appointment as a Successor Trustee and his acceptance of the Trusteeship in writing, as provided in Section 3.5, become vested with all the property rights, powers and duties of a Trustee hereunder with like effect as if originally named Trustee without the necessity of any formal conveyance or other instrument of title.

### Section 3.5 Acceptance of the Trust by Trustees

A Trustee shall execute a written acceptance in a form satisfactory to the Trustees and consistent with the Act and thereby shall be deemed to have accepted the Trust created and established by this Trust Agreement and to have consented to act as Trustee and to have agreed to administer the Trust Fund as provided herein. Such written acceptance shall be filed with the Fund's Administrative Manager who shall notify the remaining Trustees of the receipt of such acceptance.

### Section 3.6 Limitation of Liability of Trustees

No Trustee shall be liable or responsible for his own acts except as otherwise provided for by law. No Trustee shall in any way be liable for the acts or omissions of any investment manager, attorney, agent or assistant employed by them in pursuance of this Agreement, if such investment manager, attorney, agent or assistant was selected pursuant to this Trust Agreement and such person's performance was periodically reviewed by the Trustees who found such performance to be satisfactory, provided that nothing herein shall relieve any Corporate Trustee of any liability with regard to the performance of its employees. No Canadian Trustee shall be liable or responsible for the acts of any U.S. Trustee and no U.S. Trustee shall be liable or responsible for the acts of any Canadian Trustee.

### Section 3.7 Office of the Fund

The principal office of the Trust Fund shall, so long as location is feasible, be located and maintained in the District of Columbia. The location of the principal office shall be made known to the parties interested in the Trust Fund. At such office, and at such other places as may be required by law, there shall be maintained the books and records pertaining to the Trust Fund and its administration.

### Section 3.8 Officers

The Trustees shall select from among themselves two Co-Chairs, and a Secretary to serve until his or their successors have been elected. At no time shall the two offices of Co-Chair be held by Trustees designated by the same parties. The Secretary or such other person as the Trustees may designate, shall keep minutes and records of all meetings, proceedings and acts of the Trustees and shall with reasonable promptness, send copies of such minutes and records to all Trustees. A Co-Chair, and in the absence of both Co-Chairs, a Trustee selected by the Trustees, shall preside at all the meetings of the Trustees.

### Section 3.9 Power to Act in Case of Vacancy

No vacancy on the Board of Trustees shall impair the power of the remaining Trustees,

acting in the manner provided by this Trust Agreement, to administer the affairs of the Trust Fund notwithstanding the existence of such vacancy or vacancies.

### Section 3.10 Meeting Notices

(a) The U.S. Trustees shall meet at least each year and at such other times as they deem it necessary to transact their business. Either Co-Chair or the Secretary of the U.S. Board of Trustees, upon the written request of any two (2) U.S. Trustees, shall call a meeting of the U.S. Trustees at any time, giving at least five (5) days written notice of the time and place thereof to the remaining U.S. Trustees. A meeting of the U.S. Trustees may be held at any time without notice if all the U.S. Trustees consent thereto in writing.

(b) The Canadian Trustees shall meet at least each year and such other times as they deem it necessary to transact their business. Either Co-Chair or the Secretary of the Canadian Board of Trustees, upon the written request of any two (2) Canadian Trustees, shall call a meeting of the Canadian Trustees at any time, giving at least five (5) days written notice of the time and place thereof to the remaining Canadian Trustees. A meeting of the Canadian Trustees may be held at any time without notice if all the Canadian Trustees consent thereto in writing.

A meeting of the U.S. and Canadian Trustees may also be held, on the notice set forth in this section, by telephone conference call.

The Canadian Trustees and the U.S. Trustees may meet in the United States of America or in Canada at any time, for any reason deemed advisable by them.

### Section 3.11 Attendance at Meetings; Minutes

All official meetings of the Trustees shall be attended only by the Trustees and shall not be open to the public, except that there may attend such other persons as may be designated by the Trustees or when invited so to do, and as may be otherwise required by law. Written minutes, which need not be verbatim, a copy of which shall be furnished with reasonable promptness to each Trustee, shall be kept of all business transacted and of all matters upon which voting shall have occurred and the vote of each Trustee shall be recorded. Such minutes shall be approved by the signature of an Employer Trustee and of an Employee Trustee.

### Section 3.12 Quorum Voting; Action without Meeting

(a) With respect to the U.S. Fund, four (4) U.S. Trustees, including at least two (2) U.S. Employer Trustees and at least two (2) U.S. Employee Trustees shall constitute a quorum for the transaction of business. With respect to the Canadian Fund, at least three (3) Canadian Trustees, including at least one (1) Canadian Fund Employer Trustee and at least one (1) Canadian Fund Employee Trustee, shall constitute a quorum for the transaction of business. If at any meeting of either the U.S. or Canadian Fund, as the case may be, the number of Employer and Employee

Trustees present shall be unequal, then the group of Trustees lesser in number shall be entitled to cast the same number of votes as the other group of Trustees. In the event there shall be present at any meeting less than all of the Trustees of a group and such Trustees shall be unable to agree as to the manner in which the vote of the absent Trustee shall be cast, then the majority of the group present may determine how the vote of the absent Trustee shall be cast.

(b) A quorum of a committee of the Board of Trustees, established in accordance with Section 5.7 of this Trust Agreement or otherwise, shall be a majority of the members of the committee, except as may be provided otherwise or by law.

(c) Any action taken by the Trustees, except as herein otherwise provided, shall be by affirmative vote of a majority of the votes cast at a meeting. The Trustees must cast their votes in person or via telephone conference call pursuant to Section 3.10, except as provided in subsection (a) of Section 3.12.

(d) Action by the Trustees on any proposition may also be taken without a meeting if all of the Trustees agree thereon in writing.

### Section 3.13 Manner of Acting in the Event of Deadlock

(a) A deadlock shall be deemed to exist whenever a proposal, nomination, motion or resolution made or proposed by any one of the Trustees is not adopted or rejected by a majority vote and the maker of the proposal, nomination, motion or resolution notifies the remaining Trustees in writing that a deadlock exists.

(b) In the event of such deadlock arising, the Trustees shall meet for the purpose of agreeing upon an impartial umpire to break such deadlock by deciding the dispute in question. In the event of the inability of:

(1) The U.S. Trustees to agree upon the selection of such impartial umpire within a reasonable time, then, on the petition of either group of Trustees, the senior judge on duty of the District Court of the United States of the District of Columbia, shall appoint such impartial umpire; or

(2) The Canadian Trustees to agree upon the selection of such impartial umpire within a reasonable time, then upon the application of either group of Canadian Trustees, the Alberta Court of Queen's Bench shall appoint such impartial umpire.

(3) The impartial umpire shall immediately proceed to hear the dispute between the Trustees and decide such dispute and the decision and award of such umpire shall be final and binding upon the parties. The reasonable compensation of such umpire and the costs and expenses (including without limitation legal and reporter fees) incidental to any proceedings to break such a deadlock shall be paid by the Trust Fund.



#### Section 3.14 Removal of Trustees (Violation of Governing Legislation)

The Board of Trustees shall initiate action to cause removal of any fellow member Trustee who may be serving as a Trustee in violation of the Act or any applicable Canadian legislation, as the case may be. The vacancy or vacancies caused by such a removal shall be filled in accordance with Section 3.3 of this Article.

### **ARTICLE IV - CONTRIBUTIONS AND COLLECTIONS**

#### Section 4.1 Employer Contributions

(a) Each Employer shall make prompt contributions or payment to the Trust Fund in such amount and under the terms as are provided for in the applicable collective bargaining agreement in effect from time to time between the Employer or his bargaining representative and the Union. An Employer may also be required to make contributions in such amount and under such terms as such Employer may be obligated, in writing, to make, provided that such contributions shall be subject to acceptance by the Trustees. The Employer agrees that such contributions shall constitute an absolute obligation to the Trust Fund, and such obligation shall not be a set-off or counterclaim which the Employer may have for any liability of the Union, or of an Employee. All monies paid into and/or due and owing the Trust Fund, including but not limited to fringe benefits contributions due and owing to the Trust Fund, are plan assets and title to all such monies shall be vested and remain exclusively in the Trustees of the Fund.

(b) Contributions to the Fund shall be paid to the Trustees or to such depository as the Trustees shall designate only by check, bank draft, money order or other recognized written method of transmitting money, or its equivalent, made payable to the order of the Trust Fund. The payment of contributions shall be made periodically at such times as the Trustees shall specify by rules and regulations.

(c) Each Employer shall be responsible only for the contributions payable by him on account of Employees covered by him, except as may be otherwise provided by law. Employer's associations or groups shall not be responsible for the contributions, payments or other obligations of any other Employer, or otherwise.

(d) Work Outside Jurisdiction.

In the event an Employee employed by an Employer, as defined herein, shall perform work outside of the geographical jurisdiction of the Union, the Employer may continue to make payments to the Trust Fund and the Trustees may accept such payments.

#### Section 4.2 Receipt of Payment and Other Property of Trust

The Trustees or such other person or entity designated or appointed by the Trustees.in

accordance with Section 3.1 of Article III are hereby designated as the persons to receive the payments heretofore or hereafter made to the Trust Fund by the Employers. The Trustees are hereby vested with all right, title and interest in and to such monies and all interest which may be accrued thereon, and are authorized to receive and be paid the same.

#### Section 4.3 Collection and Enforcement of Payments

The Trustees, or such committee of the Trustees or such employer or other agent as the Board of Trustees shall appoint, or the Administrative Manager if one has been appointed and when directed by such committee or by the Board of Trustees, shall have the power to demand, collect and receive Employer payments and all other money and property to which the Trustees may be entitled, and shall hold the same until applied to the purposes provided in this Trust Agreement. They shall take such steps, including the institution and prosecution of, or the intervention in, such legal or administrative proceedings as the Trustees in their sole discretion determine to be in the best interest of the Trust Fund for the purpose of collecting such payments, money and property, without prejudice, however, to the rights of the Union to take whatever steps it deems necessary and wishes to undertake for such purposes.

#### Section 4.4 Production of Records

Each Employer shall promptly furnish to the Trustees, on demand, the names of his Employees, their Social Security numbers, the hours worked by each Employee and such other information as the Trustees may reasonably require in connection with the administration of the Trust Fund and for no other purpose. The Trustees may, by their respective representatives, audit and examine the pertinent employment and payroll records of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust Fund. The Union shall, upon the request of the Trustees, promptly furnish information with respect to an Employee's employment status.

#### Section 4.5 Collection Costs

In the event that upon audit made by the Trustees and/or upon other evidence it is found by the Trustees that an Employer has failed to make required Employer Contributions, the Trustees are authorized and empowered:

- (a) To impose and receive from such Employer all delinquent contributions.
- (b) To impose and receive from such Employer all costs of the audit.
- (c) To impose and receive from such Employer interest (at the rate of 15 percent per annum on all delinquent contributions, retroactive to the Due Date of each payment).
- (d) To impose and receive from such Employer the higher of an additional computation of interest (at the rate of 15 percent per annum on all delinquent contributions, retroactive to the

Due Date of each payment) or liquidated damages (at the rate of twenty (20%) percent of the delinquent contributions,

(e) To impose and receive from such Employer the attorney's fees and costs incurred by the Fund in pursuing the delinquency.

(f) To impose and receive from such Employer all other legal and equitable relief authorized by ERISA.

(g) To impose and receive from such Employer any amounts Trustees are required to pay for the benefit of an eligible Employee of such Employer, or an Employee who would be eligible except for the failure of such Employer to make required contributions on his behalf

(h) To impose and receive from such Employer all costs, audit expenses and attorney's fees incurred by the Trustees enforcing the provisions here of whether by litigation or otherwise.

(i) To require such Employer to make weekly deposits of Employer Contributions in an amount determined by the Trustees, based on objective standards, provided that the Trustees have given such Employer reasonable notice of such requirement for weekly deposits, the amount to be deposited, the date such deposits are due and the basis on which the weekly deposit is determined and required.

(j) To require such Employer to furnish to the Trustees a cash or surety bond. Any surety bond must be placed, with reputable surety thereon,

(1) with the Trustees as obligees thereunder

(2) in an amount, determined by the Trustees, consistent with the anticipated future obligations of such Employer

(3) with notice provisions acceptable to the Trustees consistent with the purposes of such bond.

#### Section 4.6 Effect of Non-Payment

Non-payment, by any Employer, of any contribution or other monies owed to the Fund shall not relieve any other Employer from his or its obligation to make required payments to the Trust Fund.

### **ARTICLE V - POWERS AND DUTIES OF TRUSTEES**

#### Section 5.1 Conduct of Trust Business

The Trustees shall have general supervision of the operation of this Trust Fund and shall conduct the business and activities of the Trust Fund in accordance with this Trust Agreement

and applicable law. The Trustees shall hold, manage and protect the Trust Fund and collect income therefrom and contributions thereto. Their Trustees may, in the course of conducting the business of the Trust, execute all instruments in the name of the Trust Fund which instruments shall be signed by at least one Employer Trustee and one Employee Trustee, provided however, any one Trustee or the Administrative Manager or a designated Employee or Agent may execute legal documents to commence and process lawsuits to enforce trust collections on behalf of the Trustees.

#### Section 5.2 Use of Fund for Expenses

The Trustees shall have the power and authority to use and apply the Trust Fund to pay or provide for the payment of all reasonable and necessary expenses (i) of collecting the Employer contributions and payments and other monies and property to which they may be entitled and (ii) of administering the affairs of this Trust, including the employment of such administrative, legal, expert and clerical assistance, the purchase of lease of such premises, materials, supplies and equipment and the performance of such other acts, as the Trustees, in their sole discretion, find necessary or appropriate in the performance of their duties.

#### Section 5.3 Use of Fund to Provide Benefits

The Trustees shall also have the power and authority to use and apply the Trust Fund for the purpose of providing benefits and other conventional forms of retirement, disability and related benefits to eligible Participants and Beneficiaries in accordance with the terms, provisions and conditions of the Pension Plan to be formulated and agreed upon hereunder by the Trustees.

#### Section 5.4 Investments

(a) The Trustees shall have the power and authority, in their sole discretion, to invest and reinvest such funds as are necessary for current expenditures or liquid reserves, as they may from time to time determine, in such investments as are legal investments under applicable law relating to investment of the employee pension trust funds, not limited, however, by any limitation restricting investments in common stocks to a percentage of the Fund or to a percentage of the total market value of the Fund. The Trustees may sell, exchange or otherwise dispose of such investments at any time, and from time to time, as provided in Section 5.10(f). The Trustees shall also have power and authority (in addition to, and not in limitation to common law and statutory authority) to invest in any stocks, bonds or other property, real or personal, including improved or unimproved real estate and equity interest in real estate, where such an investment appears to the Trustees, in their discretion and consistent with their fiduciary obligations, to be in the best interest of the Trust Fund and its Participants and Beneficiaries, judged by then prevailing business conditions and standards.

Further, to the extent provided by ERISA the Trustees are authorized to invest the assets of the U.S. Trust Fund in common or collective trust funds or pooled investment funds,

including but not limited to those described in Section 408(b)(8) of ERISA. The terms and provisions of said trust are hereby adopted and incorporated by reference and shall be deemed to be part of this Trust. The Trustees shall have the authority in respect of any stocks, bonds or other property, real or personal, held by them as Trustees to exercise all such rights, power and privileges as might be lawfully exercised by any person holding similar stocks, bonds or other property in his own right. In their discretion and to the extent they deem wise, beneficial or necessary to invest the U.S. Trust Fund or any part thereof in retirement annuity contracts, retirement income contracts, group contracts and such other form of contracts provided that all such contracts are issued by legal reserve life insurance companies authorized to do business in the District Columbia as may be selected by the U.S. Trustees for the purpose of providing for all or part of the benefits therein.

(b) Delegation and allocation of investment functions.

(1) The Trustees are authorized, in their discretion, by resolution, to allocate to the Finance Committee such duties and responsibilities to invest and reinvest such Fund assets as they shall specify in such allocation in accordance with Section 5.7.

(2) The Trustees shall have the power and authority to appoint one or more investment managers (as defined in Section 3 (38) of the Act with respect to the U.S. Fund) who shall be responsible for the management, acquisition, disposition, investing and reinvesting of such of the assets of the Trust Fund as the Trustees shall specify. Any such appointment may be terminated by the Trustees upon written notice or as specified in written agreements with such managers. The fees of such investment manager, and its expenses to the extent permitted by law, shall be paid out of the Trust Fund.

(3) In connection with any allocation or delegation of investment functions under paragraphs (1) and (2) of this subsection (b), the Trustees shall, from time to time, adopt appropriate investment policies or guidelines.

Section 5.5 Deposits and Disbursements

All Trust Funds not invested shall be deposited by the Trustees in such depository or depositories as the Trustees shall from time to time select, and any such deposit or deposits, or disbursements therefrom, shall be made in the name of the Trust in the manner designated by the Trustees and upon the signature(s) of persons designated and authorized by the Trustees or by an investment manager appointed in accordance with Section 5.4(b)(2) of this Article.

Section 5.6 Allocation and Delegation of Fiduciary Responsibilities

The Trustees may, by resolution or administrative rule, or by provisions of this Trust Agreement, allocate fiduciary responsibilities and various administrative duties to committees or subcommittees of the Board of Trustees, and they may delegate such responsibilities and duties to other individuals as they may deem appropriate or necessary in their sole discretion and

consistent with the Act.

#### Section 5.7 Committees of the Board of Trustees

(a) The standing committees of the Board of Trustees may consist of an Executive Committee, an Eligibility Committee, a Finance Committee, an Employer Accounts Committee, and such other standing committees as the Trustees may wish to create by-law or resolution.

##### (b) Appointment of Committee Members

Each Committee shall consist of an equal number of Employer and Employee Trustees. A quorum of a committee shall be as provided in Section 3.12 (b). If the Employee Trustee group and/or the Employer Trustee group, respectively, nominate a Trustee of their group for membership on any committee, the Co-Chairmen from the group shall appoint such nominee in filling any vacancy. Appointment as a member of any committee shall be communicated to the appointee by the Administrative Manager who shall promptly notify the Executive Committee thereof.

##### (c) Removal of Committee members

Any appointed member of any committee may be removed from membership in such committee by the group of Trustees appointing him at any time for any reason.

##### (d) Executive Committee

The Trustees may appoint an Executive Committee which shall have all authority normally attributable to such a Committee and such other powers and authority as may be delegated by the Board of Trustees.

##### (e) Administrative Committee

The Trustees may appoint an Administrative Committee which shall supervise the operation of the Trust Fund between meetings of the Board of Trustees. The Administrative Committee shall formulate general or specific policies for submission to and consideration by the Board of Trustees. It shall advise the officers in matters of policy and administration not inconsistent with the Trust Agreement or with any policy or decision heretofore adopted or made by the Board of Trustees. Pending the convening of a meeting of the Board of Trustees, it shall decide and pass upon matters requiring immediate action, subject to ratification at the next meeting of the Board of Trustees to whom a report shall be made of any such immediate action, as well as of its recommendations. The Administrative Committee shall also perform such other functions, duties and responsibilities as may be delegated or assigned to it by the Board of Trustees under the Trust Agreement and applicable laws, or as may be allocated to it pursuant to Section 5.4(b) and 5.6 of this Article; any actions taken or duties performed under such allocation shall not be subject to ratification by the full Board of Trustees,

unless such allocation expressly provides otherwise.

In addition to the delegation provided above, the Canadian Trustees and the Canadian Administrative Committee may delegate to the U.S. Administrative Committee such functions as they deem necessary or desirable, provided that all decisions of the U.S. Administrative Committee with respect to matters delegated to them by the Canadian Trustees must be ratified by the Canadian Board of Trustees.

(f) Eligibility Committee

The Trustees may appoint an Eligibility Committee which shall, in conjunction with the Administrative Manager, formulate rules and procedures for the processing of applications for, and the determination and payment of, benefits and make appropriate reports and recommendations in regard to the same to the Trustees. The Eligibility Committee shall review all applications for benefits with regard to eligibility and amount thereof and make appropriate determinations with respect thereto. As to any applicant for benefits whose claim for benefits has been denied by the Eligibility Committee, the Committee shall give such applicant adequate notice in writing thereof and, further, shall afford such applicant a reasonable opportunity for a fair review of its decision denying the claim for benefits.

(g) Finance Committee

The Trustees may appoint a Finance Committee which shall review the investment policies of the Trustees and the activities of any investment managers which may have been appointed by the Trustees. It shall make appropriate recommendations to the full Board of Trustees on any matter entrusted to it. With respect to assets of the Trust Fund which the Trustees have not specified to be managed by an investment manager appointed by an investment manager appointed pursuant to Section 5.4(b)(2) of this Article, and subject to such limitations and requirements as may be contained in this Trust Agreement or in the Act, the Trustees may allocate to the Finance Committee the authority to authorize and approve the investment of Trust Fund assets in investments permitted under Section 5.4(a), subject to pertinent investment policies and guidelines adopted by the Board of Trustees.

(h) Employer Accounts Committee

The Trustees may appoint an Employer Accounts Committee which shall formulate policies and procedures in regard to the collection of delinquent payments and contributions due the Fund. It shall collaborate with the administrative manager and with counsel in the administration of such policies and procedures and make appropriate reports and recommendations to the Trustees.

The Trustees may allocate to the Employer Accounts Committee authority to initiate legal actions to collect any delinquent employer contributions or other obligations owed to the Trust Fund.

## Section 5.8 Administrative Manager

(a) The Trustees may employ or contract for the services of an individual, firm or corporation, to be known as "Administrative Manager" or "Executive Director", who shall, under the direction of the Trustees or under the direction of any appropriate committee of the Trustees, administer the office or offices of the Trust Fund and of the Trustees, coordinate and administer the accounting, bookkeeping and clerical services, provide for the coordination of actuarial services furnished by the consulting actuary, prepare (in cooperation where appropriate with the consulting actuary and independent auditor) all reports and other documents to be prepared, filed or disseminated by or on behalf of the Trust in accordance with law, assist in the collection of contributions required to be paid to the Trust Fund by Employers and perform such other duties and furnish such other services as may be assigned, delegated or directed or as may be contracted by or on behalf of the Trustees. The Administrative Manager shall be the custodian on behalf of the Trustees of all documents and other records of the Trustees and of the Fund.

(b) The Trustees are authorized and empowered and may at their discretion see to the preparation of and expenditure for instruction programs or seminars for the training and direction of administrative staff, of the Trust, of Local Union, of contract administrative managers, or of other entities retained or designated by the Trustees to perform required administrative services for the Trust.

## Section 5.9 Administrative Rules and Regulations

(a) The Trustees are hereby empowered and authorized to adopt Administrative Rules and Regulations and to promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust Fund, provided the same are not inconsistent with the terms of this Trust Agreement. All such rules and regulations adopted by action of the Trustees shall be binding upon all parties hereto, all parties dealing with the Trust Fund and all persons claiming any benefits hereunder.

(b) No such regulations, rule, action or determination made or adopted by the Trustees, nor any decision or determination made by any impartial umpire appointed pursuant to Section 3.13 of this Agreement, shall in any manner conflict or be inconsistent:

(1) with this Trust Agreement, and

(2) with any applicable law.

## Section 5.10 Additional Authority

The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law.



(a) to enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration of the Trust Fund, and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the Participants involved;

(b) to keep property and securities registered in the names of the Trustees or of the Fund or in the name of any other individual or entity duly designated by the Trustees;

(c) to establish and accumulate as part of the Trust Fund such reasonable reserve funds as the Trustees, in their sole discretion, deem necessary or desirable to carry out the purposes of such Trust Fund;

(d) to pay out of the Trust Fund all real and personal property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund, or any money, property, or securities forming a part thereof;

(e) to do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder;

(f) to sell, exchange, lease, convey, mortgage or dispose of any property, whether real or personal, at any time forming a part of the Trust Fund upon such terms as they may deem proper, and to execute and deliver any and all instruments of conveyance, lease, mortgage and transfer in connection therewith.

(g) to establish and carry out a funding policy and method consistent with the objectives of the Pension Plan and the applicable legislation.

#### Section 5.11 Bonds

The Trustees shall obtain from an authorized surety company such bonds as may be required by law, covering such persons and in such amounts (but not less than required by law) as the Trustees, in their discretion, may determine. The cost of the premiums for such bonds shall be paid out of the Trust Fund.

#### Section 5.12 Insurance

The Trustees may in their discretion obtain and maintain policies of insurance, to the extent permitted by law, to insure themselves, the Trust Fund as such, its administrators and other fiduciaries, as well as employees, agents or the professional consultants of the Trustees and of the Trust Fund, while engaged in business and related activities for and on behalf of the Trust Fund (1) with respect to liability to others as a result of acts, errors or omissions of such individuals, respectively, provided such insurance policy shall provide recourse by the insurer

against such individuals, as may be required by law and (2) with respect to accidental death or injuries received or property damage suffered by them. The cost of the premiums for such policies of insurance shall, where not prohibited by law, be paid out of the Trust Fund.

#### Section 5.13 Information to Participants and Beneficiaries

The Trustees shall provide Participants and Beneficiaries such information as may be required by law, or may provide such additional information as the Trustees in their sole discretion may deem desirable to fulfill the purpose of the Trust.

#### Section 5.14 Accountants and Actuaries

The Trustees shall engage one or more certified public accountants and one or more enrolled actuaries to perform all services as may be required by applicable law and such other services as the Trustees may deem necessary.

#### Section 5.15 Trustees to Act without Compensation

The Trustees shall act in such capacity without compensation, but they shall be entitled to reimbursement for the expenses properly and actually incurred in the performance of their duties with the Trust Fund, including, without limitation, attendance at meetings and other functions of the Board of Trustees or its committee or while on business of the Board of Trustees, or on behalf of the Trust Fund.

#### Section 5.16 Reports

All reports required by law to be signed by one or more Trustees shall be signed by all of the Trustees, provided that all of the Trustees may appoint in writing, or by resolution adopted and spread on the minutes, one or more of their members to sign such report on behalf of the Trustees.

#### Section 5.17 Records of Trustee Transactions

The Trustees shall keep true and accurate books of account and a record of all of their transactions and meetings (including actions taken at such meetings and by informal action of the Trustees) which records and books shall be audited annually by a certified public accountant. A copy of the audit report shall be available for inspection by interested persons at the principal office of the Trustees.

#### Section 5.18 Construction and Determination by Trustees

Subject to the stated purposes of the Fund and the provisions of this Agreement, the Trustees shall have full and exclusive authority to determine all questions of coverage and

eligibility, methods of providing or arranging all questions of coverage and eligibility, methods of providing or arranging for benefits and all other related matters, they shall have full power to construe the provisions of this Agreement, the terms used herein and the by-laws and regulations issued thereunder. Any such determination and any such construction adopted by the Trustees in good faith shall be binding upon all of the parties hereto and the Beneficiaries hereof. No matter respecting the foregoing or any difference arising thereunder or any matter involved in or arising under this Trust Agreement shall be subject to the grievance or arbitration procedure established in any collective bargaining agreements between the Employer and the Union, provided, however, that this clause shall not affect the rights and liabilities of any of the parties under any of such collective bargaining agreements.

#### Section 5.19 Liability

The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person.

#### Section 5.20 Reliance on Written Instruments

Any Trustee, to the extent permitted by applicable law, may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument.

#### Section 5.21 Reliance by Others

No party dealing with the Trustees shall be obligated (a) to see the application to the stated Trust purposes, of any funds or property of the Trust Fund or (b) to see that the terms of this Trust Agreement have been complied with or (c) to inquire into the necessity or expediency of any act of the Trustees. Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon (a) that at the time of the execution of said instrument, the Trust was in full force and effect, (b) that the instrument was executed in accordance with the terms and conditions of this Trust Agreement and (c) that the Trustees were duly authorized and empowered to execute the instrument.

#### Section 5.22 Discharge of Liability

The receipt by the Trustees for any money or property or checks (after such checks are honored at the bank and paid to the Trust Fund) shall discharge the person or persons paying or transferring the same, to the extent permitted by applicable state, provincial or federal law.

### Section 5.23 Establishment of U.S. Pension Plan and Canadian Pension Plan

The Trustees shall formulate a Pension Plan for the payment of such retirement pension benefits, permanent disability pension benefits, death benefits, and related benefits, as are feasible. Such Pension Plan shall at all times comply with all applicable government statutes and regulations and the provisions of this Trust Agreement. The Trustees shall not be under any obligation to pay any pension if the payment of such pension will result in loss of the Trust Fund's tax exempt status under the then applicable Internal Revenue Code or the Income Tax Act (Canada), and any rulings or administrative determinations issued pursuant thereto, as the case may be. Said Trustees shall draft procedures, regulations, and conditions for the operation of the Pension Plan, including by way of illustration and not limitation: conditions of eligibility for Participants and Beneficiaries, procedure for claiming benefits, schedules of types and amount of benefits to be paid, and procedure for the distribution of benefits. The Trustees may also provide for the payment of partial pensions, and may enter into agreements with other Trustees of pension plans which conform to the applicable sections of the then applicable Internal Revenue Code or Income Tax Act (Canada), as the case may be, for purposes of tax deductions for the reciprocal recognition of service credits and payments of pension benefits based upon such service credits.

### Section 5.24 Amendment of Plan

The Pension Plan may be amended by the Trustees from time to time, provided that such amendments comply with the applicable sections of the then applicable Internal Revenue-Code, or the Income Tax Act (Canada), as the case may be, all applicable, federal, state and provincial statutes and regulations, the contract articles creating the Trust Fund and the purposes as set forth in this Trust Agreement. Additionally, but not by way of limitation, the Trustees may amend the Pension Plan, in the future, or retroactively, where they deem it necessary to maintain the continuation of the Trust Fund's tax exempt status or to preserve compliance with the then applicable Internal Revenue Code or the Income Tax Act (Canada), as the case may be, applicable state or provincial statutes, and any regulations, ruling or administrative determinations issued with respect thereto.

## **ARTICLE VI - CONTROVERSIES AND DISPUTES**

### Section 6.1 Reliance on Records

In any controversy, claim, demand, suit at law or other proceeding between any Participant, Beneficiary or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees any instruments on file with the Trustees, with the Union or with the Employers, any facts certified to the Trustees by the Union or the Employers, any facts which are of public record and any other evidence pertinent to the issue involved.

## Section 6.2 Submission to Trustees

All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons in connection with the Trust Fund or the operation thereof, whether as to any claim for any benefits preferred by any Participant, Beneficiary or any other person, or whether as to the construction of the language or meaning of the by-laws, rules and regulations adopted by the Trustees or this instrument, or as to any writing, decision, instrument or accounts in connection with the operation of the Trust Fund or otherwise, shall be submitted to the Trustees or, in the case of questions related to claims for benefits, to the Eligibility Committee, if one has been appointed, and the decision of the Trustees or the Eligibility Committee shall be binding upon all persons dealing with the Trust Fund or claiming benefits thereunder.

## Section 6.3 Settling Disputes

The Trustees may in their sole discretion compromise or settle any claim or controversy in such manner as they think best, and any majority decision made by the Trustees in compromise or settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all parties interested in this Trust.

# **ARTICLE VII - BENEFICIAL RIGHTS**

## Section 7.1 No Right, Title or Interest of Employers, or Unions

No Employer, Union, or Employees, or Participants and their Beneficiaries shall have any right, title or interest in or to the Trust Fund or any part thereof other than vesting under the Pension Plan. There shall be no pro-rata or other distribution of any of the assets of the Trust Fund as a result of any Union or Employer or Group of Employees or Employers or Participants and their Beneficiaries, ceasing their participation in this Trust Fund for any purpose or reason except as required by law.

## Section 7.2 Limitations upon Beneficial Rights of Employees

All the benefits shall be free from the interference and control of any creditor, and no benefits shall be subject to any assignment or other anticipation, nor to seizure or to sale under any legal, equitable or any other process, and in the event that any claim or benefit shall, because of any debt incurred by or resulting from other claim or liability against any Employee, Participant or Beneficiary, by reason of any sale, assignment, transfer, encumbrance anticipation or other disposition made or attempted by said Participant, Beneficiary or Employee, or by reason of any seizure or sale or attempted sale under any legal, equitable or other process, or in any suit or proceeding become payable, or be liable to become payable to any person other than the Participant or Beneficiary for whom the same is intended, as provided herein, pursuant

hereto, the Trustees shall have power to withhold payment of such benefit to such Participant or Beneficiary until such assignment, transfer, encumbrance, anticipation or other disposition, writ or legal process is cancelled or withdrawn in such manner as shall be satisfactory to the Trustees. Until so cancelled or withdrawn, the Trustees shall have the right to use and apply the benefits as the Trustees may deem best, directly for the support and maintenance of such Participant or Beneficiary.

## **ARTICLE VIII - TERMINATION OF TRUST**

### **Section 8.1 Conditions of Termination**

This Trust Agreement shall cease and terminate upon the happening of any one or more of the following events:

(a) In the event the Trust Fund shall, in the opinion of the Trustees, be inadequate to carry out the intent and purpose of this Trust Agreement, or be inadequate to meet the payments due or to become due under this Trust Agreement and under the plan of benefits to Participants and Beneficiaries already drawing benefits;

(b) In the event there are no individuals living who can qualify as Employees hereunder;

(c) In the event of termination by action of the Union and the Participating Employer;

(c) In the event of termination as may be otherwise provided by law.

### **Section 8.2 Procedures in Event of Termination**

(a) In the event of termination of the U.S. Fund, the U.S. Trustees shall:

(1) make provisions out of the Trust Fund for the payment of any and all obligations of the Trust, including expenses incurred up to the date of termination of the Trust and the expenses incidental to such termination;

(2) arrange for a final audit and report of their transactions and accounts, for the purpose of termination of their Trusteeship;

(3) give any notice and prepare and file any reports which may be required by law;

(4) distribute the remaining assets among participants and beneficiaries of the Plan in the following order:

a. First, to that portion of each individual's accrued benefit which is derived which is

derived from the participant's mandatory contribution.

b. Second, in the case of benefits payable as an annuity.

(i) in the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the Plan, to each such benefit based on the provisions of the Plan (as in effect during the 5 - year period ending on such date) under which such benefit would be the least;

(ii) in the case of a participant's or beneficiary's benefit which would have been in pay status as of the beginning of the 3 - year period ending on the termination date of the Plan, if the participant had retired prior to the beginning of the 3 - year period and if his benefits had commenced (in the normal form of an annuity under the Plan) as of the beginning of such period, to each such benefit based on the provisions of the Plan (as in effect during the 5 - year period ending on such date) under which such benefit would be the least.

For the purposes of Subparagraph (1), the lowest benefit in pay status during a 3 - year period shall be considered the benefit in pay status for such period.

c. Third, to all other non-forfeitable benefits (other than benefits becoming non-forfeitable solely on account of termination of the Plan) subject to the limitation that such non-forfeitable benefits shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65, equal to the lesser of-

(i) his average monthly gross income from his employer during the five (5) consecutive calendar year period during which his gross income from that employer was greater than during any other such period with that employer or,

(ii) \$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under Section 230 of the Social Security Act) in effect at the time the Plan terminates and the denominator of which is such. Contribution and benefit base in effect in calendar year 1974.

d. Fourth, to all other non-forfeitable benefits under the Plan.

e. Fifth, to all other benefits under the Plan.

(b) In the event of termination, the rights of all employees to benefits accrued to the date of termination shall be non-forfeitable.

(c) In the event of termination of the Canadian Fund, the Canadian Trustees shall:

- (1) provide for a final audit and accounting for purposes of termination of the Canadian Fund;
- (2) provide for payment out of the Canadian Fund of all expenses, claims and obligations including the expenses incidental to the termination of the Canadian Fund;
- (3) distribute and apply any remaining balance or surplus to additional benefits in such manner as will, in their opinion, best effectuate the purpose of the Canadian Fund; provided however, that no part of the corpus or income of the Canadian Fund shall be used for or diverted to purposes other than for the exclusive benefit of the members of the Canadian Pension Plan, their families, beneficiaries or dependents, or the administrative expenses of the Canadian Fund or for other payments in accordance with the provisions of the Trust Agreement or the Canadian Pension Plan.

## **ARTICLE IX -MISCELLANEOUS**

### **Section 9.1 Law Applicable**

The U.S. Trust is created and accepted in the District of Columbia and all questions pertaining to the validity or construction of this Trust Agreement and of the acts and transactions of the parties hereto shall be determined in accordance with the laws of the District of Columbia.

With respect to all matters pertaining to a Plan adopted for Employees of Employers in Canada, the Province of Alberta shall be deemed the situs of the Trust Fund and all questions pertaining to validity, construction and administration shall be determined in accordance with the laws of such Province.

### **Section 9.2 Savings Clause**

Should any provision of this Agreement and Declaration of Trust be held to be unlawful, or unlawful as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of said provisions to any other person or instance, unless such illegality shall make impossible the functioning of this Fund.

### **Section 9.3 Other Employers and their Employees May Join the Plan**

The Trustees may extend the coverage of this Trust Agreement to such other parties and upon such terms and conditions as the Trustees shall determine, provided such parties are required to conform to the terms and conditions of this Trust Agreement and to make the same rate of contributions required of the Employers herein for the same schedule of benefits. Such



other Employers and their Employees shall have no right to participate in the appointment or replacement of Trustees.

#### Section 9.4 Reciprocity Agreements and Agreements with Other Trustees

The Trustees may, in their sole discretion, enter into such reciprocity agreement or agreements with other pension funds as they determine to be in the best interest of the Trust Fund, provided that any such reciprocity agreement or agreements shall not be inconsistent with the terms of this Trust Agreement.

The Trustees are hereby authorized to enter into agreements with trustees of other pension funds. In such agreements the Trustees may agree with the trustees of other such funds to exercise any and all of the powers, duties, rights or obligations granted the Board under the terms of its trust indenture and may provide that any such agreements shall be binding on their successor trustees.

Such agreements may also provide for reciprocity with regard to the continuation of eligibility of covered employees whose employment may be split geographically between the jurisdiction of two or more pension funds. However, the Trustees shall not enter into any reciprocal agreements unless:

(a) A collective bargaining agreement is in force between each such other Local Union and the employers within its jurisdiction, requiring contributions to be made to a pension fund;

(b) Each of such other pension funds has been established on the basis of an agreement and declaration of trust, which permits the trustees of said fund(s) to enter into a reciprocal agreement with another fund;

(c) Each of such other pension funds has an operative plan of pension benefits in effect as of the date of the reciprocal agreement is concluded; and

(d) With respect to reciprocal agreements involving the U.S. Fund, the said operative plan of pension benefits is a qualified plan within the meaning of the applicable U.S. Treasury Department Regulations.

#### Section 9.5 Merger

The Trustees shall have the power to merge with any other fund established for similar purposes as this Trust Fund under terms and conditions mutually agreeable to the respective Board of Trustees.

#### Section 9.6 Refund of Contributions

In no event shall any Employer directly or indirectly, receive any refund on contributions made by them to the Trust nor shall an Employer directly or indirectly participate in the disposition of the Trust Fund upon termination or receive any benefits from the Trust Fund, except as set forth below.

Contributions to the U.S. Trust Fund under the terms of the U.S. Pension Plan may be returned to an Employer, as set forth below, if the Executive Director determines that the contributions were made to the Fund by mistake of fact or law. The decision of the Executive Director as to whether the contribution was made by mistake of fact or law shall be binding on the Employer. Mistaken contributions may be returned to the Employer only if the Executive Director finds, in his sole judgment, that such action is in the interests of the Fund, and the corrective action is taken within six months after the Executive Director determines that the contribution was made by such a mistake. Interest or earnings attributable to an excess contribution shall not be returned to the employer, and any losses attributable to an excess contribution, must reduce the amount returned to the employer. For the purpose of this rule, the plan-wide investment experience will be measured by the investment return reflected in plan consultant's most recent Performance Report. This Section will not apply if, in the sole judgment of the Executive Director, the Fund has relied to its detriment on those mistaken payments.

Contributions to the Canadian Trust Fund under the terms of the Canadian Pension Plan may be returned to an Employer if the Executive Director determines that the contributions to the Fund have been made as the result of reasonable error. Contributions may also be returned to an Employer where it is determined that such contributions place the Canadian Pension Plan in a revocable position under the Income Tax Act (Canada). However, no contributions shall be returned to the employer except in accordance with the terms of the Income Tax Act (Canada), as well as any applicable provincial statutes or regulations. Except as otherwise provided by applicable federal and provincial statutes and regulations, interest or earnings attributable to an excess contribution shall not be returned to the employer, and any losses attributable to an excess contribution, must reduce the amount returned to the employer. For the purpose of this rule, the plan-wide investment experience will be measured by the investment return reflected in plan consultant's most recent Performance Report.

## Section 9.7 Accounting and Judicial Settlements

### (a) Accounting

The Union or an Employer may, at any time demand of the Trustees an accounting with respect to any and all accounts. Any requests for an accounting shall be given in the manner required by applicable law and the Trustees shall comply to the extent required by applicable law and the Trustees may reserve the right to assess costs and charges reimbursing the Trust for such audit or audits materials.

### (b) Judicial Settlements and Action by Trustees

The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts

and seek judicial protection by any action or proceeding they determine necessary and, further, to obtain a judicial determination or declaratory judgment as to any questions of construction of this Trust Agreement or for instructions as to any action thereunder and, further, as to any question relating to the discharge of their duties and obligations under, or in connection with the administration of, this Trust and as to the distribution of assets belonging to the Trust. Any such determination, decision or judgment shall be binding upon all parties to, or claiming under this Trust Agreement.

#### Section 9.8 Withholding Payment

In the event any questions or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until there shall have been made an adjudication of such question or dispute which, in the Trustees' sole judgment, is satisfactory to them, or until the Trustees shall have been fully protected against loss by means of such indemnification agreement or bond as they, in their sole judgment determine to be adequate.

#### Section 9.9 Gender

Whenever any words are used in this Trust Agreement in the masculine gender, they shall also be construed to include the feminine or neuter gender in all situations where they would so apply and wherever any words are used in the plural, they shall also be construed to include the singular.

#### Section 9.10 Amendment of Trust Agreement

The provisions of this Trust Agreement, as they affect either the U.S. Fund or Canadian Fund, or the U.S. Plan or the Canadian Plan, may be amended at any time by an instrument in writing executed by the U.S. Trustees provided, however, in no event shall the Trust Fund be used for any purpose other than the purposes set forth in this Trust Agreement and for the purposes of paying the necessary expenses incurred in the Administration of this Trust.

#### Section 9.11 Article and Section Titles

The Article and Section titles are included solely for convenience and shall, in no event, be construed to affect or modify any part of the provisions of this Trust Agreement or be construed as part thereof.

### **ARTICLE X - VESTING OF RIGHTS**

The Trustees shall establish standards for vesting of benefits which conform to no less than the minimum standards required by law. No Participant, Beneficiary or Employee or other

person shall have any vested interest or right in the Trust Fund except as provided by the Trustees in conformance with the law.

IN WITNESS WHEREOF, the Trustees have caused this Amended and Restated Agreement and Declaration of Trust to be executed and effective the 15th day of December, 2015.

Union Trustees

James Bond

[Signature]

Gene Scam

Trig Hill

Paul Doolan

\_\_\_\_\_

Employer Trustees

[Signature]

William McGrath

Anthony M. Mar

John G. [Signature]

Robert [Signature]

## HISTORICAL RECORD

Initial signers of the Agreement and Declaration of Trust Establishing the Bricklayers and Trowel Trades International Pension Fund:

### UNION TRUSTEES

Thomas F. Murphy  
John T. Joyce  
Edward M. Bellucci  
L. Gerald Carlisle  
Merlin L. Taylor  
James F. Richardson  
Robert E. Shepherd  
Donald E. Williams

### EMPLOYER TRUSTEES

Joseph F. Szabo  
O.L. Jollay  
Robert C. Tubesing  
Robert Ebeling  
G.W. Veazey, Jr.  
George A. Miller  
J.L. Loomis  
Eugene George

Dated: June 29, 1972