

**AMENDMENT AND RESTATEMENT
OF
~~AGREEMENT AND DECLARATION OF TRUST~~
FOR
BRICKLAYERS AND MASONS' LOCAL UNION NO. 5, OHIO
VACATION AND SAVINGS FUND**

**AMENDMENT AND RESTATEMENT
OF
AGREEMENT AND DECLARATION OF TRUST
FOR
BRICKLAYERS AND MASONS' LOCAL UNION NO. 5, OHIO
VACATION AND SAVINGS FUND**

This Amendment and Restatement of the Vacation and Savings Fund's Agreement and Declaration of Trust originally executed on October 16, 1967, as subsequently amended on several occasions, is made on the tenth day of May, 2005 by THOMAS F. DENK, ROBERT J. ZAVAGNO, JR., RICK J. SEMERSKY, JR., JAMES A. BARBER, VINCENT K. ISAAC and ROSS J. PAGANO who, with their successors designated as herein provided, are hereinafter called the "Trustees".

WITNESSETH THAT:

WHEREAS, the Vacation and Savings Fund's original Agreement and Declaration of Trust (the "Trust Agreement") was executed on October 16, 1967 by and among:

- (a) the Mason Contractors' Association of Cleveland, Ohio (the "Association") as then affiliated with the Building Trades Employers' Association and now named the Construction Employers Association;
- (b) Bricklayers and Masons' Local Union No. 5, Ohio (the "Local Union"); and
- (c) the original duly designated Employer-Employee Trustees (who, with their successors, are hereinafter referred to as the Fund's "Trustees"); and

WHEREAS, since the Trust Agreement has been amended from time to time it is considered necessary and desirable that the October 16, 1967 Trust Agreement and all subsequent amendments be consolidated and restated herein; and

WHEREAS, the geographical jurisdiction of said Bricklayers and Masons' Local Union No. 5, Ohio, includes all of Cuyahoga, Lorain and Medina Counties, in the State of Ohio; and

WHEREAS, the Association, on behalf of its employer members, have and hereafter expect to have in effect collective bargaining agreements covering the wages, hours, working and other conditions pertaining to the employment of members of said Local Union; and

WHEREAS, the collective bargaining agreement effective May 1, 2005 requires employer members of said Association to make periodic payments to the Vacation and Savings Fund for the work hours performed within the Local Union's geographical jurisdiction by the members of the International Union; and

WHEREAS, other employers, who are not members of said Association, but also employ members of the International Union within the above mentioned geographical jurisdiction, have promised or may hereafter agree to make similar periodic payments to said Vacation and Savings Fund with the understanding that such Fund shall be maintained and administered in trust in accordance with this Agreement and Declaration of Trust, the By-Laws, Rules and Regulations adopted by the Trustees, and the plan maintained, arbitrated or amended as herein provided; and

WHEREAS, the parties hereto desire to affirm their aforesaid agreements and to implement and supplement the same by providing for the manner and method of managing, controlling and administering said Vacation and Savings Fund;

NOW THEREFORE, it is mutually understood and agreed as follows:

Article I
Name of the Trust Fund

The trust fund previously established and maintained under this Amended and Restated Agreement and Declaration of Trust is known as the "Bricklayers and Masons' Local Union No. 5, Ohio, Vacation and Savings Fund".

Article II
Purpose of the Trust Fund

The purpose of the Fund, as carried out in the Vacation and Savings Plan, is to enable the employees to accumulate savings through payroll deductions to make up for the loss of earnings during the vacation period. The accumulated savings when disbursed as hereinafter provided may be used for any purpose, but it is expected that the Plan will encourage the employees to take vacations for the benefit and pleasure of themselves and their families.

Article III
Definitions

1. **LOCAL UNION** - The term "Local Union" or "Union" as used herein shall mean Bricklayers and Masons' Local Union No. 5, Ohio, of the Bricklayers and Allied Craftworkers, Northern Ohio Administrative District Council, International Union of Bricklayers and Allied Craftworkers.

2. **EMPLOYER** - The term "Employer" as used herein shall mean any member of the Mason Contractors' Association who employs members of the Local Union, together with any other mason contractors who have in effect or voluntarily abide by collective bargaining agreements requiring periodic payments to Bricklayers and Masons' Local Union No. 5, Ohio Vacation and Savings Fund. It is understood that the Local Union, if permitted by law or governmental regulations, shall be considered an employer with respect to Local Union members directly employed by the Local Union.

3. **EMPLOYEE** - The term "Employee" as used herein shall mean and include all persons who are properly employed under the jurisdiction and authority of Bricklayers and Masons' Local Union No. 5, Ohio, of the Bricklayers and Allied Craftworkers, Northern Ohio Administrative District Council as:

- (a) Employees of the above mentioned Employers who perform bricklaying or masonry work within the geographical jurisdiction of the Local Union excluding shareholders, other owners and officers of an Employer; or
- (b) Bricklayers and masons who are employed by political subdivisions within the jurisdiction of the Local Union, and who are authorized to make periodic contributions on their own behalf; or
- (c) Local union members and other persons directly employed by the Local Union; or

- (d) Self employed persons who perform bricklaying or masonry work within the geographical jurisdiction of the Local Union, if and when it is permissible for such persons to be covered by the Bricklayers and Masons' Local Union No. 5, Ohio Pension Fund.

4. **TRUSTEES** - The term "Trustees" as used herein shall mean the natural persons named herein and the successor Trustees designated in accordance with this Agreement and Declaration of Trust.

5. **AGREEMENT AND DECLARATION OF TRUST** - The term "Agreement and Declaration of Trust" as used herein shall mean this instrument, including any amendments and modifications hereto which are made in conformity with the provisions hereof.

6. **COLLECTIVE BARGAINING AGREEMENT** - The term "Collective Bargaining Agreement" as used herein shall include:

- (a) The 2005-2010 Collective Bargaining Agreement between the Mason Contractors' Association and the Bricklayers and Masons' Local Union No. 5, Ohio, of the Bricklayers and Allied Craftworkers, Northern Ohio District Council;
- (b) Any other collective bargaining agreement between the Local Union and any Employer association or organization which provides for the making of employer contributions to the Health and Welfare Fund; and
- (c) Any extension or renewal of any of said agreements which provides for the making of employer contributions to the Health and Welfare Fund.

7. **EMPLOYER PAYMENTS** - The term "Employer Payments" or Payments" as used herein shall mean the agreed and required payments to the Vacation and Savings Fund, as deducted by the Employers from the wages as specified from time to time under the Collective Bargaining Agreement and remitted to the Fund.

8. **VACATION AND SAVINGS PLAN** - The term "Vacation and Savings Plan" as used herein shall mean the plan, method, rules and procedures for the collection, deposit,

segregation, crediting and disbursement of Employer payments as individually accumulated to the savings or other account of each employee from the Fund.

9. **BANK** - The term "Bank" shall mean the bank, trust company, or savings and loan association or company selected by the Trustees to perform services for the Fund in carrying out the Vacation and Savings Plan, as directed by the Trustees from time to time.

10. **DISTRIBUTION DATE OR DATES** - The term "Distribution Date or Dates" shall mean the annual or other calendar dates directed by the Trustees for disbursement of accumulated savings to employees.

11. **ADMINISTRATION CHARGE** - The term "Administration Charge" as used herein shall mean the amount charged against each employee's accumulated savings account prior to the Distribution Date or Dates in order to provide payment for the cost of managing, administering and disbursing the Fund.

12. **FUNDS' ADMINISTRATION OFFICE** - The term "Funds' Administration Office" as used herein shall be understood to mean the Administration Office established by the Trustees of the Local Union's Health and Welfare, Pension, Vacation and Savings and Individual Account Plan Funds to manage and administer the affairs hereof.

13. **VACATION AND SAVINGS FUND, TRUST FUND, TRUST, OR FUND** - The terms "Vacation and Savings Fund", "Trust Fund", "Trust" or "Fund" as used herein shall mean the trust estate of Bricklayers and Masons' Local Union No. 5, Ohio, Vacation and Savings Fund.

14. **CODE** - The term "Code" as used herein shall mean the Internal Revenue Code of 1986, as amended.

15. ACT - The term "Act" as used herein shall mean the Employee Retirement Income Security Act of 1974, as amended.

Article IV
Provisions Relating to Employer Contributions

Section 1. Each Employer shall deduct from the earnings of each employee such amounts as are stipulated in the Collective Bargaining Agreement made between the Association and the Local Union for remittance to the Fund. The Trustees shall advise the Bank in writing from time to time as to the rate of deductions to be reported and remitted, and shall furnish any required Bank signature cards for the individual savings accounts, copies of Employers' monthly reports, and all other information necessary and desirable to handle and administer the Vacation and Savings Plan.

~~Section 2.~~ — Unless otherwise agreed, the Association shall not be responsible for the contributions of any of its member Employers, and no Employer shall be responsible for the contributions of any other Employer.

Section 3. The Trustees shall have the power to demand, collect, and receive Employer contributions and may take such steps, including the institution and prosecution of or the intervention in any proceeding at law, in equity, or in bankruptcy as may be necessary or expedient in order to effectuate the collection of such Employer contributions.

Section 4. Nothing herein contained shall be deemed either to authorize or prevent economic or legal action by the Local Union against any Employer who is delinquent in its contributions to the Vacation and Savings Fund. All rights of the Local Union to refuse to furnish Employees to any delinquent Employer, or to withdraw employees from the job of any delinquent Employer, shall be determined by the provisions of the existing Collective Bargaining Agreements and applicable rules of law.

Section 5. The Trustees shall have the power to specify the exact time and manner in which payments of Employer contributions are to be made; and any Employer, when so required, shall furnish such information and reports as the Trustees may require for the performance of their duties under this Agreement and Declaration of Trust. Further, the Trustees are empowered and authorized to engage an independent accountant to audit any Employer's records which relate to employment of Local Union No. 5, Ohio members, or other members of International Union of Bricklayers and Allied Craftworkers within the geographical jurisdiction of said Local Union No. 5.

Section 6. The Trustees are also given power to add to the contributions of any ~~Employer a substantial interest or administrative charge for failure to make prompt payments to~~ the Fund as demanded; and they are further empowered to collect such interest or administrative charges, when assessed, in the same manner as they are given power to collect the required Employer contributions.

Section 7. The Trustees are further given power and authority, in their discretion, to require delinquent Employers to deposit with the Trustees, in advance, as a guaranty for future periodic payments, an amount equal to six (6) times the average weekly contributions of such Employer, as estimated by the Trustees, as a condition to the continued right of such Employers' participation herein.

Section 8. It is the intention of the parties hereto that the contributions of the Employers to the Fund are deductible as business expenses for tax purposes

Article V
Board of Trustees

Section 1. The Fund shall be vested in, held, managed, controlled and administered by a Board of Trustees consisting of six (6) members, three of whom shall be designated as Employer Trustees and three of whom shall be designated as Employee Trustees. Until otherwise modified by mutual consent of the original parties hereto or their successors, the Employer Trustees shall be appointed by the Mason Contractors' Association, and the Employee Trustees shall be appointed by the Local Union.

- (a) Thomas F. Denk, Robert J. Zavagno, Jr., and Rick J. Semersky, Jr. have been designated and are recognized as the presently qualified and acting Employer Trustees.
- (b) James A. Barber, Vincent K. Isaac and Ross J. Pagano have been designated and are recognized as the presently qualified and acting Employee Trustees.
- (c) Each and all of the aforementioned Trustees, by execution of this Agreement and Declaration of Trust, do hereby acknowledge their trusteeship and declare that they receive and hold the Health and Welfare Fund solely by virtue of the provisions hereof and in accordance with the expressed uses, purposes, powers and duties set forth herein.

Section 2. Only bona fide active employers who have had substantial experience in the mason construction industry, or employees of bona fide active employer corporations with similar experience, may be eligible to serve as Employer Trustees hereunder; and only persons who are (a) available for employment in their trade by a contributing Employer and (b) bona fide members of the Local Union may be eligible to serve as Employee Trustees hereunder.

Section 3. The term of the Board of Trustees as an entity shall be for the duration of this Agreement and Declaration of Trust and as long thereafter as the proper consummation and

administration of this Trust and the Fund shall require. Each Trustee shall continue to serve as such until his death, resignation, or removal, as herein provided.

Section 4. Any individual Trustee may resign by giving written notice to the Board of Trustees, the Mason Contractors' Association and the Local Union, at least thirty days prior to the effective date of such resignation.

Section 5. The Mason Contractors' Association may at any time terminate the designation of any Employer Trustee by mailing or delivering to said Trustee, the Board of Trustees and the Local Union a true copy of the appropriate action taken in terminating said designation. Similarly, the Local Union may at any time terminate the designation of any ~~Employee Trustee by mailing or delivering to said Trustee, the Board of Trustees and the Mason~~ Contractors' Association a true copy of the appropriate action taken by the Local Union in terminating said designation.

Section 6. In the event of the termination of the designation of any Trustee, or in the event of the resignation, death, incapacity, or unwillingness to serve of any Trustee, the Mason Contractors' Association shall, subject to the provisions of Article V, Section 1 hereof, designate the successor to any Employer Trustee and shall notify the remaining Trustees and the Local Union thereof; and, similarly, the Local Union shall designate the successor to any Employee Trustee and give notice thereof to the remaining Trustees and the Employer Association.

Section 7. Any successor Trustee designated as herein provided shall, upon his qualification and written acceptance of this Agreement and Declaration of Trust, become vested with the estate, rights, powers, discretions and duties of his predecessor Trustee with like effect and as if originally designated as Trustee herein.

Section 8. Any retiring Trustee shall forthwith turn over to the remaining Trustees or his successor Trustee, any and all records, books, documents, monies and other property in his possession owned by the Trustees or incident to the fulfillment of this Agreement and Declaration of Trust and the administration of the Fund.

Article VI
Personal Liability of the Trustees and Parties Hereto

Section 1. A Trustee who, as a fiduciary, breaches any of the responsibilities, obligations or duties imposed under the provisions of the Act shall be liable as provided in Section 409(a) of the Act.

Section 2. As provided in Section 409(b) of the Act, a Trustee shall not be liable with respect to a breach of fiduciary duty if such breach was committed before he became a Trustee or after he ceased to be a Trustee.

Section 3. Fiduciary insurance policies for the Fund, or elimination of recourse ~~policies for the Trustees, shall be purchased in accordance with the provisions of Section 410(b)~~ of the Act.

Section 4. Except as otherwise provided by law, or determined in a legal proceeding, neither any employer, the Mason Contractors' Association nor the Local Union shall be liable for any breach of fiduciary duty by any of the Trustees, even in the case where a particular Trustee may be an officer of the Association or the Local Union.

Article VII
Powers and Duties of the Trustees

Section 1. The Trustees jointly shall have the power to construe the terms and provisions of this Agreement and Declaration of Trust, and any construction adopted by the Trustees in good faith shall be binding upon the parties hereto and all Employees; provided, however, that any construction made as aforesaid which shall be in contravention of or inconsistent with the then effective collective bargaining agreements between the parties hereto, shall not be binding upon the employers, the Association, the Union or the Employees.

Section 2. The Trustees shall also have the power and authority to employ a bank, trust company, or savings and loan association or company to act as the depository, agent or trustee for the Fund; and to delegate to such institutions any of the powers of the Trustees set forth herein.

Section 3. The Trustees shall have the right and authority, from time to time, to direct the Bank (as designated herein) to apportion and impose an administrative charge against the account of each employee in order to provide payment for the expenses incurred in holding, managing, administering and disbursing the Fund; and to borrow such sums as may be necessary from time to time to pay administration expenses until the same have been determined, apportioned and imposed against the employees' savings accounts.

Section 4. The decision of the Board of Trustees with reference to any claim presented to it by an Employee, his beneficiary, heirs or personal representative, shall be final and binding upon all parties, subject to the provisions of Section 503 of the Act.

Section 5. The Trustees shall deposit all monies received by or on account of the Fund in such banks or savings and loan associations or companies as the Board of Trustees may

determine; and in their discretion, the Trustees may establish separate bank, savings and loan or trust accounts for one or more purposes of the Fund. With the consent and approval of the Trustees of Bricklayers and Masons' Local Union No. 5, Ohio Health and Welfare, Pension and Individual Account Plan Funds, the Trustees may establish and maintain a common commercial bank account for the deposit of all Employer contributions and payments made to the Health and Welfare, Pension, Individual Account Plan and Vacation and Savings Funds. As authorized by the Trustees of the Vacation and Savings Fund, the Funds' Administration Office Manager shall, from time to time, be permitted to withdraw and transfer Employer payments deposited to such commercial account, as allocable to the Vacation and Savings Fund.

~~Section 6.~~ The Trustees shall have the right and authority to pay or provide for the payment of all reasonable and necessary expenses incurred in collecting the employer contributions and administering the affairs of the Trust Fund, including, but not limited to, all expenses concerned with the establishment of the Trust Fund, the providing of fidelity bonds, the payment of all taxes and assessments, the employment of administrative, clerical, legal, actuarial, accounting, investment, medical or other expert services, the leasing or purchasing of real property and such materials, supplies, personal property and equipment as the Trustees in their discretion find necessary or appropriate in the performance of their duties.

Section 7. The Board of Trustees shall have power and authority to establish and accumulate as part of the Trust Fund such reasonable reserves as the Trustees shall determine advisable to carry out the purposes and objectives of the trust. However, the Trustees shall not accumulate reserves in excess of those necessary to maintain and administer the Fund.

Section 8. The Trustees shall deposit all monies received by or on account of the Fund in such bank or banks as the Board of Trustees may determine; and in their discretion, the

Trustees may establish separate bank or trust accounts for one or more purposes of the Fund. The Fund's Trustees, with the approval of the Trustees of Bricklayers and Masons' Local Union No. 5, Ohio, Pension, Health and Welfare and Individual Account Plan Funds, may establish and maintain a common commercial bank account for the deposit of all Employer contributions and payments made to the Pension, Health and Welfare, Individual Account Plan and Vacation and Savings Funds. As authorized by the Trustees of the Vacation and Savings Fund, the Funds' Administration Office Manager shall, from time to time, be permitted to withdraw and transfer Employer payments deposited to such commercial account, as allocable to the Vacation and Savings Fund.

~~Section 9.~~ The Fund shall provide for fidelity bonds covering the Trustees or other persons who may be authorized to receive, deposit, withdraw or otherwise handle Trust Fund monies. Such fidelity bonds shall be procured at the expense of the Fund in such amounts as are required by law or otherwise determined by the Board of Trustees in the exercise of its discretion.

Section 10. The Board of Trustees shall have the following general powers in addition to such other powers as are set forth herein or conferred by law:

- (a) To adopt and promulgate such Rules, Regulations and By-Laws as may, in their discretion, be necessary and proper for the sound and efficient administration of the Trust Fund;
- (b) To appoint an Executive Committee consisting of an equal number of Employer and Employee Trustees for the purpose of carrying out the details of policies determined by the full Board of Trustees;
- (c) To delegate any of their administrative or ministerial powers and duties to an administrator, agent or employee engaged by the Trustees; provided, however, that the Trustees reserve the right to review any decision reached by such administrator, agent or employee. Any action taken by the Trustees in delegating their administrative or ministerial powers and duties

shall not relieve them of their duty to exercise due care to perform their obligations of trust;

- (d) To co-ordinate the Vacation and Savings Fund's administrative activities with Bricklayers and Masons' Local Union No. 5, Ohio, Pension, Health and Welfare and Individual Account Plan Funds, or any other fund to such extent as may be necessary or desirable to minimize costs, eliminate unnecessary bookkeeping or avoid duplicating employer contribution reports;
- (e) To enter into reciprocal agreements and arrangements with the trustees of similar health, welfare or other benefit funds now or hereafter established by other local unions of Bricklayers and Allied Craftworkers International Union of America, A.F.L. - C.I.O. for the purpose of assuring maximum benefit coverage for all contribution "work hours" performed by members of the participating local unions. Any proper remittance, forwarding or transfer of contributions to another vacation benefit fund pursuant to the terms of reciprocity agreement shall not be deemed to be in violation of any provision of this Agreement and Declaration of Trust; and
- (f) To enter into any and all contracts, do such acts, execute such instruments, and exercise such rights and privileges which they may in good faith deem necessary and proper to carry out the purposes and objectives of this Agreement and Declaration of Trust; and generally to exercise the rights and privileges of an owner with respect to all assets held by the Trustees in the Vacation and Savings Fund.

Section 11. Any instrument in writing, specifically authorized by action of the Board of Trustees, may be signed by any two Trustees, provided that it is signed by one Employer Trustee and one Local Union Trustee. Any instrument so executed, and all actions taken thereunder and in accordance with the provisions of this Agreement and Declaration of Trust, shall have the same force and effect as if the instrument had been signed and the particular action had been taken by all the Trustees.

Section 12. In the event any suit, action or proceeding is brought against one or more of the Trustees, or the Trust Fund in connection with any matter arising out of the administration of the Trust Fund or any action or omission of one or more of the Trustees, or in the event any suit, action or proceeding is instituted by the Trustees with respect to the Trust Fund, the

Trustees shall have power and authority to employ counsel to represent them, or one or more of them, in any such suit, action or proceeding. In connection therewith, counsel fees, and other necessary expenses and cost shall be paid from the Trust Fund, so long as the Trustees have acted in good faith; it being the intention of the parties to indemnify the Trustees against any honest mistakes in judgment and all other acts or omissions that are not deliberate and willful violations of their obligations and duties as Trustees.

Section 13. Suits and proceedings to recover Employer contributions, or to enforce or to protect any other right, demand or claim on behalf of the Trustees, or the Trust Fund, may be instituted and prosecuted on behalf of the Fund and the Trustees by any two Trustees; provided ~~that they shall be thereunto authorized by the Board of Trustees, and one of such authorized~~ Trustees shall be an Employer Trustee and the other authorized Trustee shall be an Employee Trustee.

Article VIII
Officers of the Board of Trustees

Section 1. The officers of the Board of Trustees and Trust Fund shall consist of a Chairman, a Secretary, and such other officers as the Board of Trustees may deem necessary and proper.

Section 2. All officers shall be elected annually, or upon vacancy of office, by the Board of Trustees from its own members by majority vote; provided, however, that one of the persons elected to the respective offices of Chairman and Secretary must be an Employer Trustee and the other person must be an Employee Trustee.

~~**Section 3.** The respective duties of the officers of the Board of Trustees shall be as follows:~~

- (a) **Chairman:** The Chairman shall preside at all meetings; he shall, with the approval of the Board of Trustees, appoint all Committees; he shall carry into effect all orders and resolutions of the Board of Trustees; and shall otherwise have such duties as the Board of Trustees shall prescribe from time to time.
- (b) **Secretary:** The Secretary shall be responsible for keeping the minutes of all meetings of the Board of Trustees; he shall attend to the giving and serving of all notices of meetings; he shall have charge of such books, records, papers and accounts as the Board of Trustees may direct; he shall discharge the usual duties which are incident to the office of Secretary subject at all times to the direction and control of the Board of Trustees; he shall send to the Association and the Local Union copies of the minutes of all meetings of the Board of Trustees; and shall have such other and further duties as the Board of Trustees shall prescribe from time to time.
- (c) **Other Officers:** Shall have the duties and obligations which the Board of Trustees shall prescribe from time to time.

Article IX
Provisions Relating to Meetings
and Voting of the Trustees

Section 1. Regular or periodic meetings may be held at such time or times as may be established by resolution of the Board of Trustees. The Trustees shall meet at other times upon the call of the Chairman or upon written request signed by not less than two members of the Board and delivered to the Secretary. Five days written notice of all meetings shall be sent to all Trustees, unless such notice is unanimously waived.

Section 2. Action by the Trustees may also be taken by them in writing without a meeting; provided, however, that in such cases there shall be unanimous written concurrence by all the Trustees then in office.

Section 3. Except as otherwise provided herein, any action taken by the Trustees pursuant to the provisions of this Agreement and Declaration of Trust shall be by a majority vote of the Trustees attending any duly called meeting of the Trustees. Any and all actions so taken shall have the same force and effect as if taken by all the Trustees, provided that at least one Employer Trustee and one Local Union Trustee is present at the meeting.

Section 4. Four members of the Board of Trustees, present at any meeting duly called, shall constitute a quorum; provided, however, that no vacancy or vacancies in the Board of Trustees shall impair the power of the remaining Trustees, acting in the manner provided by this Agreement and Declaration of Trust, to administer the affairs of Trust Fund. So long as any vacancy exists in the Board of Trustees the number of Trustees necessary to constitute a quorum shall be reduced by the number of existing vacancies.

Section 5. Each Trustee shall have one vote on all matters presented to the Board of Trustees; provided, however, that if there are an unequal number of Employer Trustees or

Employee Trustees present at any meeting, then in that event, the group of Trustees being the lesser in number shall be entitled to cast an equal number of votes as the group of Trustees that has the larger number present at any such meeting, it being the intention of the parties hereto that at any time any vote or action is taken by the Board of Trustees the number of Employer Trustees and Employee Trustees qualified to act and vote shall always be equal.

Section 6. In the event that the vote upon any matter presented to the Board of Trustees shall be equally divided, and such deadlock shall exist for a period of five days, or in the event that a quorum is not available after two called meetings, the matter or question, at the request of the proponents, shall be submitted to an impartial umpire who shall be agreed upon or appointed in the manner hereinafter provided. ~~The decision of the impartial umpire shall be final~~ and binding upon all parties hereto and all other interested persons.

Article X
Provisions Relating to the Appointment of an
Impartial Umpire

Section 1. Whenever it shall become necessary, as provided in Article IX, Section 6, to submit any matter or question to an impartial umpire for consideration and determination, the Board of Trustees shall select a person to act as impartial umpire who, in all instances, shall accept this Agreement and Declaration of Trust in writing before engaging in the performance of his duties as impartial umpire. His term or office shall be for the period determined by the Trustees from time to time.

Section 2. In the event of a deadlock and the Trustees are unable to agree on the appointment of an impartial umpire, or in the event that in such situation a designated impartial umpire previously appointed for a particular term is unable to act, and the Board of Trustees are unable to agree on a successor impartial umpire, an impartial umpire shall, on petition of either the Employee Trustees or the Employer Trustees, be appointed by the United States District Court in Cleveland, Ohio, to decide the dispute, as provided by Title III, Section 302 (c) (5) (B) of the Labor Management Relations Act, 1947, as amended.

Section 3. The costs, expenses and fees incidental to the services of an impartial umpire, and the holding of proceedings before him, shall be a proper charge against the Trust Fund, and the Trustees are authorized and directed to pay all reasonable and proper expenses incurred.

Article XI
Application of the Fund by the Board of Trustees

Section 1. The Trustees hereinbefore named and their successor Trustees covenant and declare that they will receive and hold the contributions herein provided for, and any other money or property which may be entrusted to them as Trustees hereunder, solely for the uses, purposes and trusts herein name, and in the faithful exercise and discharge of the powers and duties herein specified.

Section 2.

- (a) Title to all of the monies paid into the Trust Fund and all of the property of the Fund (until transferred to the Bank) shall be vested in and remain ~~exclusively in the Trustees and neither the Association, the Local Union,~~ nor any employer, employee or beneficiary under the Plan shall have the right, title or interest in any of the monies or property of the Fund.
- (b) The Employer Payments made to the Fund shall not in any manner be liable for, nor subject to the debt, contract, liability or provision of the Association, the Local Union, the employers or the employees.
- (c) No employee, or his beneficiary, shall have the right to receive any part of the Employer Payments made on his behalf except as provided herein and under the provisions of the Plan.
- (d) In no event shall the employers, directly or indirectly, except where erroneously received, receive any refund of contributions made by them to the Trust Fund, either during the term of this Agreement and Declaration of Trust or upon its termination.
- (e) In no event shall any part of the Trust Fund be paid to the Local Union or the Association, except for reimbursement of expense incurred in connection with the establishment and administration of the Trust Fund.
- (f) It is the intention of the parties that no part of the Trust Fund shall be used for or diverted to purposes other than for the exclusive benefit of the employees or beneficiaries entitled to Fund distributions. No money, property, equity or interest of any nature whatsoever in the Fund shall be subject to anticipation, alienation, assignment, sale, transfer, pledge, encumbrance or charge, nor to seizure, transfer or sale under any legal, equitable or other process or judgment except in accordance with the Act.

In the event that any claim or benefit shall, by reason of any sale, assignment, transfer, encumbrance, anticipation or other disposition, be made or attempted, against the Fund or the accumulated savings of any employee, the Trustees shall have the power and authority to withhold distribution of the savings balance of the employee concerned until such sale, 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 benefit to those purposes which they consider best fosters the general welfare of the participant or beneficiary concerned.

Section 3. Interest payable by the Bank on the savings balance of each employee shall be periodically and individually credited thereto in accordance with the Bank's customary practices; provided, however, that the entire balance of each such account shall be subject to the ~~forementioned administration charge directed by the Trustees prior to any Distribution Date.~~ Notwithstanding the foregoing, monies may be invested collectively with the interest earned being apportioned between and among the respective accounts of the employees.

Section 4. Annual or other distribution of all or part of the individual savings account balances of the employees shall be made at such time or times as directed by the Board of Trustees and agreed upon by the Bank.

Section 5. In case of death or incompetency of an employee, distribution of the balance in his savings account shall be made to his personal representative, beneficiary, guardian, administrator, executor, or other person, as directed by the Board of Trustees through the Funds' Administration Office Manager or administrator.

Section 6. The Trustees shall not receive compensation for the performance of their duties hereunder except as permitted by the Act, but shall be reimbursed for all reasonable and necessary expense which they may incur in the performance of their duties; provided, however, that in all instances such compensation and expenses are approved by the Board of Trustees.

The Trustees may also call upon the Local Union, its employees, or the Association, or its employees, for assistance in the administration of the Trust Fund, and may reimburse the Local Union, the Association, or their respective employees for any reasonable expenses incurred in connection therewith.

Article XII
Audits and Reports

Section 1. The fiscal year of the Trust Fund shall be March 1st to February 28th or 29th of any year.

Section 2. If considered necessary or advisable by the Trustees, an annual audit of the Trust Fund may be made at the end of each fiscal year by independent certified public accountants selected by the Trustees. A statement of the results of all such annual audits shall be furnished to the Local Union and the Association and further made available for inspection of interested persons at the office of the Trust Fund and at such other places as may be designated by the Trustees. ~~More frequent audits may be made at the discretion of the Trustees.~~

Section 3. The Trustees, within their discretion, shall at reasonable intervals, or upon the request of the Association or Local Union, furnish reports indicating the status of the Trust Fund, the application of the contributions received, and other pertinent information regarding the administration of the Vacation and Savings Plan; provided, however, that the Board of Trustees shall not be required to furnish such reports more often than semi-annually. The Trustees shall require the Bank to submit appropriate and desired monthly, quarterly, annual and distribution reports to the Trustees in the form and manner agreed upon with the Bank.

Section 4. The employers, the Association and the Local Union shall furnish to the Trustees upon request all information, reports and records in their possession considered necessary by the Trustees in order efficiently to maintain and administer the Trust Fund.

Article XIII
Additional Parties to the Trust Fund

Any person, firm, corporation, association or other entity employing bricklayers or masons under the jurisdiction and authority of the Local Union may become an additional party hereto in either of the following ways:

- (a) By becoming a member of the Collective Bargaining Agreement, or
 - (b) By executing with the Local Union an agreement whereby the employer assumes and agrees to perform all the terms, covenants and conditions to be performed by contributing employers hereunder, and to abide by the provisions of this Agreement and Declaration of Trust, the By-Laws, Rules and Regulations adopted by the Trustees, or otherwise adopted, maintained, arbitrated or amended by the Board of Trustees.
-

Article XIV
Amendments to the Agreement
and Declaration of Trust

Section 1. This Agreement and Declaration of Trust may be amended to any extent at any time by the majority vote of the Board of Trustees exercised and taken as herein specified in the provisions of Article IX hereof; provided, however, that no amendment may be made or acted upon which shall attempt to:

- (a) divert the Trust Fund, as then constituted, or any part thereof, to a purpose or objective other than as set forth in Article II; or
 - (b) to permit a return of properly collected contributions or payments to the Trust Fund and by any employers; or
-
- (c) change the method of voting by the Trustees from that which is now set forth in this Agreement and Declaration of Trust; or
 - (d) provide that the Fund shall be administered other than by an equal number of Employer Trustees and Employee Trustees; or
 - (e) adopt amendments which will be in contravention of or inconsistent with the then existing Collective Bargaining Agreements made between the parties hereto; or
 - (f) violate or ignore any binding decision by an impartial umpire or final judgment entered by a competent court.

Article XV
Termination of the Trust

Section 1. This Trust may be terminated when there is no longer in effect a collective bargaining agreement requiring the employers bound thereby to make contributions to the Trust Fund for the purposes hereinbefore provided.

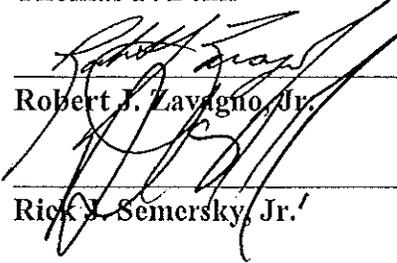
Section 2. This Trust may also be terminated at any time by the unanimous concurrence of all the Trustees serving at the particular time, if such termination is duly approved in writing by the parties hereto.

Section 3. In the event that this Trust shall terminate, the Trustees shall pay any and ~~all remaining Fund obligations and then distribute, by and through the Bank, the balance of all~~ savings to the employees (or their beneficiaries) entitled thereto.

IN WITNESS WHEREOF, the Trustees have executed this Agreement and Declaration
of Trust this 10th day of May, 2005.



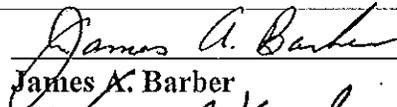
Thomas F. Denk



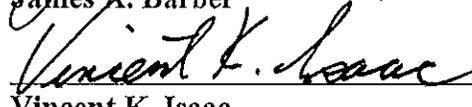
Robert J. Lavagno, Jr.

Rick J. Semersky, Jr.

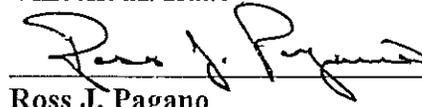
EMPLOYER TRUSTEES



James A. Barber



Vincent K. Isaac



Ross J. Pagano

EMPLOYEE TRUSTEES