

**AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST**  
**OHIO BRICKLAYERS**  
**PENSION FUND**

**PREAMBLE**

**WHEREAS**, this Agreement was originally entered on the 1st day of May, 1967 at Dayton, Ohio, to provide pension benefits to certain Employees employed under Collective Bargaining Agreements between the Affiliated Unions of the Ohio State Conference of the Bricklayers, Masons, and Plasterers International Union AFL-CIO, and Employers whose Employees were working in the Collective Bargaining Unit of the Union, and who were signatory to the Collective Bargaining Agreement, or who were otherwise eligible to participate under applicable law, who signed an Assent of Participation, who agreed to be bound by the Trust Agreement, and who made payments into the Ohio Bricklayers Pension Fund; and

**WHEREAS**, pursuant to the authority reserved in such Agreement, this Agreement is being amended and restated by the parties with authority to do so

**NOW, THEREFORE**, the following shall constitute the Amended and Restated Agreement and Declaration of Trust, Ohio Bricklayers Pension Fund, as amended and restated effective as of June 1, 2018.

## ARTICLE I

### DEFINITIONS

**Section 1.1      Employer.** The term "Employer" as used in this Agreement shall be deemed to include any person, firm, Association, partnership or corporation employing persons working in the Collective Bargaining Unit of the Union as well as Employers who employed persons represented for purposes of collective bargaining by the Union and who signify their intentions to be bound by the provisions of the Agreement and Declaration of Trust by signature hereto, or by signing an Assent of Participation, and by making payments into the Fund hereby created. This Section shall also include the various Unions participating in this Fund as an Employer for those Employees working in full time capacities of the Union.

**Section 1.2      Employees.** The term "Employee" as used in this Agreement shall include:

- a. All the Employees working or available for work in the Collective Bargaining Unit of the Union and represented for the purpose of collective bargaining of the Union who are employed by Employers who are signatory to the Trust Agreement or who signify their intention to be bound by the Trust Agreement by signing an Assent of Participation and by making payments into the Fund hereby created.
- b. Elected or appointed Officers or Employees of the Union, its State Affiliate or International Organization, or any Association entering into contractual relations with the Union; providing that the Trustees agree to accept such Officers and Employees.
- c. 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, as defined in Section 1.1 of this Article, in accordance with a written agreement, ordinance, resolution or assent of Participation.

The term "Employee" shall not include self-employed persons who are described as follows:

- a. A sole proprietor who is a contributing Employer, or
- b. A partner in a contributing Employer, regardless of the size of partnership interest, or
- c. Anyone who, owns 100% of the stock of a corporate Employer, or
- d. Anyone else whose ownership interest in a contributing Employer would, in the opinion of the Trustees jeopardize the tax exempt status of the Fund, or violate ERISA.

**Section 1.3      Union.**      The term "Union" as used in this Agreement shall mean the Participating Unions affiliated with the Ohio-Kentucky Administrative District Council, and other Unions who have executed an Assent to this Trust Agreement and entered into Collective Bargaining Agreements providing for equivalent Contributions to be made to this Trust, and upon written approval of the Trustees; provided that the term Union as used in Article III shall mean the participating Unions affiliated with the Ohio-Kentucky Administrative District Council. The Ohio-Kentucky Administrative District Council is administered by its Director.

**Section 1.4      Trust Agreement.**      The term "Trust Agreement" as used herein shall mean this instrument, including all amendments and modifications as may be made from time to time subsequent hereto.

**Section 1.5      Trust Fund.**      The term "Trust Fund" as used in this Agreement shall mean the Ohio Bricklayers Pension Fund, which is created, established and continued pursuant to the terms of this Agreement. It shall include but not be limited to all funds received in the form of Contributions, together with all contracts, including dividends, interest, refunds, transfers of funds under reciprocity and any other sums payable to the Trustees on account of such contracts, all investments made and held by the Trustees, all income, increments, earnings and profits therefrom, and any and all

other property or funds received and held by the Trustees by reason of their acceptance of this Agreement and Declaration of Trust.

**Section 1.6 Pension Plan.** The term "Pension Plan" as used in this Agreement shall mean the Plan of Pension and other related benefits created pursuant to the Collective Bargaining Agreements and this Agreement, including any and all amendments to any of said Agreements.

**Section 1.7 Collective Bargaining Agreement.** The term "Collective Bargaining Agreement" shall mean any written contract by and between the Union and an Employer as defined herein. It shall also include any and all extensions thereof, renewals thereof, amendments or addenda thereof and any new Collective Bargaining Agreements entered into between the Union and an Employer hereunder, which require Contributions to be made to this Trust Fund, as presently existing or as hereafter amended.

**Section 1.8 Trustees.** "Trustees" shall mean the Trustees from time to time acting as Trustees hereunder.

**Section 1.9 Named Fiduciaries.** The Board of Trustees as designated in Section 3.1 of this Restated Agreement and Declaration of Trust shall constitute all of the Named Fiduciaries of this Trust, and jointly shall have authority to control and manage the operation and administration of the Pension Trust.

**Section 1.10 Fiduciary.** Under the terms of this Agreement and Declaration of Trust, each of the following are deemed to be a Fiduciary:

- a. The Board of Trustees;
- b. Any designated Investment Manager as provided in Section 5.5(b)(ii), and
- c. Any persons meeting the definition of "fiduciary" in Section 3(21) of ERISA.

**Section 1.11 Investment Manager.** "Investment Manager" means any

person, firm or corporation who has been appointed as such and has evidenced acknowledgement and acceptance of such appointment by a document signed in writing and returned to the Trustees and who is:

Registered as an investment advisor under the Investment Advisers Act of 1940;

Is a Bank as defined in that Act; or

Is an insurance company qualified under the laws of more than one State to have the power to manage, acquire or dispose of the assets of Trust Funds such as this Fund.

**Section 1.12 Qualified Actuary.** The term "Qualified Actuary" means any individual who has satisfied the standards and qualifications as set forth in the regulations of the Joint Board for the Enrollment of Actuaries and who has been approved as an enrolled actuary to perform actuarial services required under the Employee Retirement Income Security Act of 1974 (ERISA).

**Section 1.13 Participant.** The term "Participant" as used herein shall mean any Employee or former Employee of an Employer who is or may become eligible to receive a benefit of any type from the Fund or whose Beneficiaries may be eligible to receive any such benefit.

**Section 1.14 Beneficiary.** The term "Beneficiary" as used herein shall mean a person designated by a Participant or by the terms of the Plan who is or may become entitled to a benefit thereunder.

**Section 1.15 Consultant.** The term "Consultant" as used herein shall mean any person or entity who for compensation, advises, represents or provides other assistance to the Trustees concerning the operation of the Plan.

**Section 1.16 Professional Administrator.** The term "Professional Administrator" as used herein shall mean that person or company defined in Section 5.8 of this Agreement and Declaration of Trust.

**Section 1.17 Administrator.** The term “Administrator” as used herein shall mean the Board of Trustees.

**Section 1.18 Custodian.** The term “Custodian” as used herein shall mean one who is officially entrusted with guarding and keeping records and documents of this Trust Fund.

**Section 1.19 Contributions.** The term “Contributions” as used herein shall mean the payments required of any Employer for this Fund. The Employer Contributions to be paid into the Trust Fund shall not constitute or be deemed wages due to the Employees, and such Contributions shall not in any manner be liable for, nor subject to the debts, contracts or liabilities of the Employers, the Union or the Employees. However, Contributions or other monies received from or owing from an Employer and/or an individual(s) who has control over the payment of such Contributions shall be deemed Trust Fund assets.

**Section 1.20 ERISA.** The term “ERISA” as used herein shall mean the Employee Retirement Income Security Act of 1974 and any amendments thereto, together with any regulations promulgated pursuant to its provisions.

**Section 1.21 Party in Interest.** The term “Party in Interest” as used herein shall mean such persons as are described in Section 3(14) of ERISA.

**Section 1.22 Association.** The term “Association” shall mean any association of Employers who contract to make Contributions to this Fund, and any other associations who may hereinafter become affiliated with this Fund.

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

**Section 2.1      Creation.**      The Trust Fund is created, established and maintained, and the Trustees agree to receive, hold and administer the Trust Fund, for the purpose of providing pension benefits and any other related benefits as such benefits 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 Pension Plan. It is intended that this Trust Fund and Pension Plan be a "multiemployer plan" as that term is defined in Section 3(37) of ERISA.

**Section 2.2      Effective Date.**      This Agreement and Declaration of Trust shall be in full force and effect as of the day following the original execution date hereof.

## **ARTICLE III**

### **BOARD OF TRUSTEES**

**Section 3.1      Number, Appointment, Term.**      The Trust Fund shall be administered by six (6) Trustees. Three (3) of the Trustees shall be appointed by the Union and shall act as the Union Trustees. The appointment of said Trustees shall be by the Director of the Ohio-Kentucky Administrative District Council.

Three (3) of the Trustees shall be appointed by the Employers and shall act as the Employer Trustees. Such a Trustee must be employed by an Employer signatory to a Collective Bargaining Agreement with the Union with no history of chronic or serious delinquency problems with the Fund. After appointment as Trustee, should a chronic or serious delinquency problem exist between the Fund and said Trustees Employer, such delinquency shall be considered reasonable grounds for removal of said Trustee for cause.

It is the intention of the Parties that there shall always be an even number of Trustees, of whom one-half shall be appointed by the Union and the other one-half shall be appointed by the Employers.

A vacancy shall occur whenever a Trustee may resign or when a Trustee is removed or by reasons of death or incapacity. Successor Trustees shall be named as provided in Section 3.4

**Section 3.2      Qualification.**      No person shall be appointed or elected as Trustee who has been convicted of a crime identified in Section 411 of ERISA, and any person acting as Trustee hereunder who is convicted of such crime shall be deemed to have resigned upon such conviction.

**Section 3.3      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, Union if he is a Union Trustee, or the Employer, if he is an Employer Trustee. The requirement of 30 days prior notice may be shortened to such

shorter notice as the remaining Trustees may accept as sufficient. In the 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 such event such resignation shall take effect immediately upon the appointment of such Successor Trustee. An Employer Trustee may be removed from office at any time by action of the Employers who appointed him, or by the other two Employer Trustees for good cause. Written notice of such action shall be delivered to the Union, the Chairman and Secretary-Treasurer of the Trustees serving at that time, the Professional Administrator and legal counsel. A Union Trustee may be removed from office at any time by action of the Union which appointed him. Written notice of such action shall be delivered to the Employers, the Chairman and Secretary-Treasurer of the Trustees serving at that time, the Professional Administrator and legal counsel. The Board of Trustees shall presume any notice of removal provided by an appointing organization is valid and lawful, unless and until overturned by a court of competent jurisdiction.

**Section 3.4      Successor Trustees, Appointment.** If any Employer Trustee shall die, become incapable of acting hereunder, resign, or be removed, a Successor Employer Trustee shall be immediately appointed by the two (2) remaining Employer Trustees. Such appointment shall be in writing and be delivered to the Union, the Chairman and Secretary-Treasurer of the Trustees serving at that time, the Professional Administrator and legal counsel. If any Union Trustee shall die, become incapable of acting hereunder, resign, or be removed, a Successor Union Trustee shall immediately be appointed by the Director of the Ohio-Kentucky Administrative District Council, such appointment to be in writing and be delivered to the Employers, the Chairman and Secretary-Treasurer of the Trustees serving at that time, the Professional Administrator and legal counsel.

Upon the failure of any party to appoint such Successor Trustee then any Trustee may petition the local United States District Court for an Order appointing such Successor Trustee to serve until a Successor Trustee has been appointed by the proper party. The costs and expenses (including by way of illustration and not limitation,

reasonable attorneys' fees and reporter fees) incidental to any proceedings to appoint a Successor Trustee shall be paid by the Trust Fund.

It is the intention hereof that the Fund shall at all times be administered by an equal number of Employer and Union Trustees.

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

**Section 3.6     Acceptance of the Trust by Trustees.** A Trustee shall execute a written acceptance in a form satisfactory to the Trustees and consistent with ERISA and thereof 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 Professional Administrator who shall notify the remaining Trustees of the receipt of such acceptance.

**Section 3.7     Limitation of Liability of Trustees.** No Successor Trustees shall in any way be liable or responsible for anything done or committed in the administration of the Trust prior to the date of becoming a Trustee. No Trustee shall be liable for the acts or omissions of another Trustee to whom certain responsibilities, obligations or duties have been delegated pursuant to this Trust Agreement, nor shall any Trustee be liable for the acts or omissions of any investment manager, attorney, Professional Administrator, agent, or assistant employed by them pursuant to this Agreement, if such person's performance was periodically reviewed by the Trustees who found such performance to be satisfactory.

**Section 3.8     Situs of the Fund.** The principal offices of the Trust Fund shall be located and maintained in Hamilton County in the State of Ohio or at such other

locations as the Trustees may determine.

**Section 3.9 Officers.** In June of each year the Trustees shall select from among themselves a Chairman and a Secretary-Treasurer to serve for a term of one (1) year or until his or their successors have been elected. When the Chairman is the Employer Trustee, then the Secretary-Treasurer shall be the Union Trustee; and when the Chairman is the Union Trustee, then the Secretary-Treasurer shall be the Employer Trustee. The Chairmanship shall alternate between the Employer Trustee and the Union Trustee. The Secretary-Treasurer 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, and legal counsel. The Chairman shall preside at all meetings of the Trustees.

**Section 3.10 Power to Act in Case of Vacancy.** No vacancy or vacancies on the Board of Trustees less than all of the Union Trustees or all of the Employer 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 3.11 Meetings; Notices.** The Trustees shall meet at such times as they deem it necessary to transact their business. The Chairman or the Secretary-Treasurer of the Board of Trustees may call a meeting of the Trustees at any time by giving at least five (5) days' notice in writing or by electronic notification, of the time and place thereof to the remaining Trustees. A meeting of the Trustees may be held at any time without notice if all of the Trustees consent thereto by an instrument in writing, or if all of the Trustees attend such meeting.

**Section 3.12 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 such other persons may attend as may be designated by the Trustees or when

invited to do so, and as may otherwise be required by law. Written minutes, a copy of which shall be furnished with reasonable promptness to each Trustee and legal counsel, shall be kept of all business transacted and of all matters upon which voting shall have occurred and the vote shall be recorded. Such minutes shall bear the signature of the Secretary-Treasurer and shall be approved at the succeeding meeting.

**Section 3.13 Quorum; Voting; Action Without Meeting.** A quorum shall consist of at least two (2) Employer Trustees and two (2) Union Trustees. 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 Union and Employer Trustees shall have equal voting strength, with the votes of any absent Trustee being cast by the Trustees present appointed by the same party. Action by the Trustees on any proposition may also be taken without a meeting if all of the Trustees agree thereto in writing.

**Section 3.14 Manner of Acting in the Event of a 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 the Trustees to agree upon the selection of such impartial umpire at such meeting, and if an impartial umpire is not selected by the next meeting of the Trustees thereafter, then an arbitrator shall be selected by the American Arbitration Association in accordance with their Voluntary Labor Arbitration Rules. If the American Arbitration Association fails to appoint an arbitrator within a reasonable time, then any Trustee may petition the local United States District Court for an Order appointing an impartial umpire. Such 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 by way of illustration without limitation, reasonable attorneys' fees and reporter fees) incidental to any proceedings instituted to break a deadlock shall be paid by the Trust Fund.

- c. Any impartial umpire selected or designated to break a deadlock shall be required to enter his decision within a reasonable time fixed by the Trustees. The scope of any such proceeding before such impartial umpire shall be limited to the provisions of this Trust Agreement and to the provisions of the rules, regulations and by-laws adopted by the Trustees and to the plan of benefits established by them. The impartial umpire shall have no jurisdiction or authority to change or modify the provisions of this Trust Agreement or to decide any issue arising under or involving the interpretation of any Collective Bargaining Agreements between the Union and the Employers, and such impartial umpire shall have no power or authority to change or modify any provisions of any such Collective Bargaining Agreements.

**Section 3.15 Removal of Trustees.** The Board of Trustees shall initiate action to cause the removal of any fellow Trustee who may be serving as a Trustee in violation of this Agreement, ERISA or other applicable law. The vacancy or vacancies caused by such a removal shall be filled in accordance with Section 3.4 of this Article.

**Section 3.16 Prohibited Transactions.** Notwithstanding any action being taken by the Board of Trustees as provided in this Article, no transaction shall be authorized between the Trust Fund and any party-in-interest, except to the extent that such transactions are permissible practices under ERISA.

**Section 3.17 Training Trustee.** The three (3) Trustees appointed by the Union may elect to have in attendance at meetings an individual for the purpose of exposing the individual to the business of the Pension Trustees and to educate said

individual about the operations of the Trust in anticipation that said individual will ultimately be appointed a Trustee on the Fund.

The three (3) Trustees appointed by the Employers may elect to have in attendance at meetings an individual for the purpose of exposing the individual to the business of the Pension Trustees and to educate said individual about the operations of the Trust in anticipation that said individual will ultimately be appointed a Trustee on the Fund.

These individuals shall have no voting rights and shall not be considered Trustees or Plan Fiduciaries. The Trustees may reimburse said individual for the costs and expenses of attending the meetings and may choose to pay for the education of said individual in anticipation of the appointment of the individual ultimately as a Trustee. Prior to attendance at a meeting, the Training Trustee must execute a confidentiality agreement. The Training Trustee may be excused from a meeting if his presence may jeopardize attorney-client or similar privilege.

## 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 agreed to by such Employer in writing, 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 subject to, by way of illustration and not limitation, set off or counterclaim which the Employer may have for erroneous Contributions to any other Trust Funds, or for any other liability of the Union, of any Employee, or any other person.
- b. Contributions to the Fund shall be paid to the Trustees or to such depository as the Trustees shall designate, only by electronic funds transfer, check, bank draft, or money order, or its equivalent, made payable to the order of the Ohio Bricklayers Pension Fund or as otherwise provided in the applicable Collective Bargaining Agreement. The payment of Contributions shall be made periodically at such times as may be provided in the applicable Collective Bargaining Agreement. In the absence of any such provision in a Collective Bargaining Agreement, the payment of Contributions shall be made periodically at such times as the Trustees shall specify.
- 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. No Employer or Association or groups shall be responsible for the Contributions, payments, or other obligations of any other Employer except as may be otherwise provided by law.
- 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. However, nothing contained in this subsection shall alter, modify, or extinguish the obligations or conditions required by the applicable Collective Bargaining Agreement.

- e. The Employer Contributions to be paid into the Trust Fund shall not constitute or be deemed wages due to the Employees, and such Contributions shall not in any manner be liable for, nor subject to the debts, contracts or liabilities of the Employers, the Union, or the Employees. However, Contributions or other monies received from or owing from an Employer and/or an individual(s) who has control over the payment of such Contributions shall be deemed Trust Fund assets.
- f. All amounts paid by the Employers to the Trust shall be used and applied for the sole and exclusive benefit of the Participants under the Plan adopted under this Agreement excepting in each case only such amounts, if any, as may have been contributed as a result of a mistake in fact or law. Any material overpayment discovered by the Administrator while processing Contributions will be credited to the Employer's account. The Board of Trustees shall have the discretion to adopt a policy addressing overpayments to the Fund.

**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 are hereby designated as the persons to receive the payments heretofore or hereafter made to the Trust Fund by the Employers and Employees. 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 as the Board of Trustees shall appoint, or the Professional Administrator 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 purpose 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 wished to undertake for such purposes.

**Section 4.4      Production of Records.**    Each Employer shall promptly furnish to the Trustees, on demand, such records and information as are required by the applicable Collective Bargaining Agreement, and shall also furnish to the Trustees, on demand, such other information as the Trustees may reasonably require in connection with the administration of the Trust Fund. The Trustees may employ an independent and qualified auditor to examine the pertinent employment records, payroll records and other records as considered necessary of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable to the Trustees in connection with the proper administration of the Trust Fund. The Union shall, upon request of the Trustees, promptly furnish information in respect to an Employee's employment status. An Employer shall, within 30 days after a written request from the Board of Trustees, furnish such information as the Board reasonably determines to be necessary to enable the Plan monitor, assess and collect withdrawal liability.

**Section 4.5      Costs of Collection.**    The Trustees may require the payment by Employers of a service fee, interest, other costs and expenses (including cost of an audit, reasonable attorney's fees and court costs), incurred by the Trustees and arising out of the collection of such Employer's delinquent Contributions, in accordance with the applicable Collective Bargaining Agreement, or if there is no such provision or Collective Bargaining Agreement, then the accordance with a schedule established by the Board of Trustees.

**Section 4.6      Effect of Non-payment.**   Non-payment, by any Employer of any Contributions or other monies owed to the Fund shall not relieve any other Employer from its obligation to make required payments to the Trust Fund.

In the case of an Employer that fails to make the Contributions to the Plan for which it is obligated, in accordance with the terms and conditions of its obligation, the Trustees may bring an action on behalf of the Plan pursuant to Section 502(g)(2) and 515 of ERISA to enforce the Employer's obligation.

Nothing in this Section shall be construed as a waiver or limitation on the Plan's or the Trustees' right to enforce an Employer's Contribution obligation in any other type of proceeding.

**Section 4.7      Guarantee Deposit.**   The Trustees may, in their discretion, require the Employer to deposit with the Trustees in advance as a guarantee of the payment of monthly Contributions, an amount equal to three time the estimated monthly Contribution of such Employer as a condition of such Employer's becoming a party to this Agreement. In the event that an Employer has been delinquent in the reporting and payment of monthly Contributions, the Trustees may, in their discretion, require that said guarantee be made and continuously maintained by such Employer as a condition of continuing as a party to this Agreement. In the event that any such Employer ceases to be a party to this Agreement in the manner hereinafter provided, any excess in such guarantee fund over the Contributions required of such Employer shall be returned to him.

**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 the income therefrom and Contributions thereto. The Trustees may in the course of conducting the business of the Trust, execute all instruments in the name of the Ohio Bricklayers Pension Fund. Generally, such instruments shall be signed by at least one Employer Trustee and One Union Trustee, provided, however, any one Trustee may execute legal documents to commence and process law suits to enforce trust collection on behalf of the Trustees. Additionally, when consistent with the Plan's investment policy and Board action, any Trustee may execute an instrument required to invest, reallocate, transfer or liquidate assets.

**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:

- a. Of collecting the Employer Contributions and payments and other monies and property to which they may be entitled and,
- b. Of administering the affairs of this Trust, including the employment of such administrative, legal, expert and clerical assistance, the purchase or lease of such premises, materials, supplies, and equipment and the performance of such other acts, as the Trustees, in their discretion, find necessary or appropriate in the performance of their duties.

**Section 5.3      Use of Fund to Provide Benefits.** The Trustees shall have the power and authority to use and apply the Trust Fund to pay or provide Pension and related benefits to eligible Participants and Beneficiaries in accordance with a Pension Plan of benefits established by the Trustees.

**Section 5.4      Adoption of Pension Plan.**      The Trustees are expressly directed, by majority vote of the Trustees, to establish and maintain a Plan or Plans to provide any and all pension benefits, as the Trustees, in their sole discretion, may determine, directly out of the Trust Fund; provided, however, that such payments can be legally made and that the same are in full compliance with all statutory and legal requirements. Such Plan may be established and maintained in lieu of, or in combination with, coverage provided by an insurance carrier or carriers.

**Section 5.5      Investments.**

- a. The Trustees shall have the power and authority, in their sole discretion, to invest and reinvest such funds as are not necessary for current expenditures or liquid reserves, as they may from time to time determine, not constrained 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, provided, however, that
  - i. The Trustees shall diversify the investments of the Plan so as to minimize the risk of large losses (unless under the circumstances it is clearly prudent not to do so), and
  - ii. The Trustees shall only make such investments which are permitted under applicable State and Federal law relating to the investment of the Employee Trust Funds.

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 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 real estate and equity interests 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.

The Trustees shall have the authority, in respect to 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 owning similar stocks, bonds or other property in his own right.

Notwithstanding any other provisions of this plan and/or trust, assets held under this Plan may be invested in any collective investment fund maintained exclusively for the investment of assets of exempt, qualified Employee benefit trusts. The assets so invested shall be subject to all the provisions of the instrument establishing such collective investment fund, as it may be amended from time to time. The instrument creating such collective investment fund, as amended from time to time, is hereby incorporated and made part of this plan and/or trust.

b. Delegation and Allocation of Investment Functions

- i. The Trustees are authorized, in their discretion by resolution, to allocate such duties and responsibilities to invest and reinvest such Fund assets as they shall specify in such allocation to a committee or subcommittee of the Board of Trustees.
- ii. The Trustees shall have the power and authority to appoint one or more investment managers (as defined in Section 3(38) of ERISA) 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. The fees of such investment manager, and its expenses to the extent permitted by law, shall be paid out of the Trust Fund. The Trustees shall require that the investment manager acknowledge in writing that he is a Fiduciary with respect to the Plan.
- iii. In connection with any allocation or delegation of investment functions under paragraph (i) and (ii) of this subsection (b), the Trustees shall, from time to time, adopt appropriate investment policies or guidelines.

**Section 5.6      Deposits and Disbursements.** All Trust monies not invested

shall be deposited by the Trustees in such appropriate 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 and authorized by the Trustees or by the investment manager appointed by the Trustees.

#### **Section 5.7      Allocation and Delegation of Non-Investment**

**Responsibilities.** The Trustees may, by resolution or by-law or by provisions of this Trust Agreement, allocate fiduciary responsibilities and various administrative duties to committees or subcommittees or 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 ERISA.

**Section 5.8      Professional Administrator.** The Trustees may employ or contract for the services of an individual, firm or corporation, to be known as the "Professional Administrator," who shall, under the direction of the Trustees or under the direction of any appropriate committee of the Trustees, to be ministerially responsible to:

- a. Administer the office or offices of the Trust Fund and of the Trustees;
- b. Coordinate and administer the accounting, bookkeeping and clerical services;
- c. Prepare (in cooperation where appropriate with the independent auditor) all reports and other documents to be prepared, filed or disseminated by or on behalf of the Trust in accordance with law;
- d. Assist in the collection of Contributions required to be paid to the Trust Fund by Employers;
- e. Be the Custodian of all documents and other records of the Trustees and of the Trust Fund; and
- f. 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.

**Section 5.9 By-Laws, Rules and Regulations.**

- a. The Trustees are hereby empowered and authorized to adopt by-laws 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 by-laws, 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 by-law, 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 with any provision of an applicable current Collective Bargaining Agreement, with this Trust Agreement, or with any applicable, federal, state or local law, except to the extent such law may be preempted by ERISA.

**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 name of the Trustees or of the Fund;
- 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; and
- g. To enter into reciprocity agreements with other Funds so as to afford the greatest opportunity for eligibility on behalf of its Participants.

**Section 5.11 Bonds.** The Trustee 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 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, as well as Employees or agents of the Trustees and of the Trust Fund, while engaged in business and related activities for and on behalf of the Trust Fund:

- a. With respect to liability to others as a result of acts, errors or omissions of such Trustee or Trustees, Employees or agents, respectively, provided such insurance policy shall provide recourse by the insurer against Trustees as may be required by law,
- b. With respect to injuries received or property damage suffered by them,
- c. With respect to cyber, data, and security breaches, and
- d. With respect to any other liabilities, as the Trustees find necessary or appropriate.

The cost of the premiums for such policies of insurance shall 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.

**Section 5.14 Accountants/Auditors.** The Trustees may engage one or more independent, qualified public accountants to perform all services as may be required by applicable law and such other services as the Trustees may deem necessary. The costs incurred under this Section may be paid out of the Trust Fund.

**Section 5.15 Trustee Reimbursement.** The Trustees 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, attendance at institutes, seminars, conferences or workshops for or on behalf of the Trust Fund. A Trustee may be paid directly from the Fund by way of reimbursement for the amount of actual wages that he has lost by reason of his performance of duties for the Trust Fund in accordance with any reasonable schedule for reimbursement which may be established by the Board of Trustees.

**Section 5.16 Reports.** The Board of Trustees shall make reports to and file such information with appropriate public authorities as may be required by applicable law.

**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 at least annually by a certified public accountant. A copy of each audit report shall be furnished to the Employers and the Union and shall be available for inspection by interested persons at the principal

office of the Trustees and the respective offices of the Professional Administrator and the Union at reasonable times and after reasonable notice.

**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 for benefits and all other related matters. They shall have full power to construe and interpret 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 questions or disputes arising under this Trust Agreement shall be subject to the grievance or arbitration procedure established in any Collective Bargaining Agreement between an 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, electronic communication or other paper or document believed by them to be genuine, to contain a true statement of facts, and to be signed by the proper person.

**Section 5.20 Reliance on Written Instruments.**

- a. By Trustees. Any Trustee, to the extent permitted by applicable law, may rely upon any instrument in writing purporting to have been approved by a majority of the Trustees and signed in accordance with Section 5.1 as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been in such instrument. In any controversy, claim, demand, suit at law or other proceeding between any Participant or any person and 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, with any Association or with any Employers, and

any facts certified to the Trustees, by the Union, by an Employer, or an Association, any facts which are of public record and any other evidence pertinent to the issue involved.

b. By Others

- i. 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.
- ii. Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon:
  - a. That at the time of 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 signing Trustees were duly authorized and empowered to execute the instrument.
- c. Reliance on Counsel's Opinion. The Trustees may consult with legal counsel concerning any question which may arise with reference to the duties and powers or with reference to any other matter pertaining to this Agreement or the Trust hereby established. The written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustees hereunder in good faith in accordance with the opinion of such counsel. The Trustees shall not be liable therefor to the extent permitted by ERISA or other applicable law.

**Section 5.21 Discharge of Liability.** The receipt by the Trustees of 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 of such payment or transfer.

**Section 5.22 Establishment of Plan.** The Trustees shall adopt a written plan with one or more Named Fiduciaries who, jointly and severally, shall have authority to control and manage the operation and administration of the Plan. Such Plan shall set forth the nature, amount, duration, and conditions of receiving pension or other benefits to be provided to Participants and Beneficiaries. The Plan and any amendments thereto shall be signed by the Chairman and Secretary-Treasurer of the Trustees. Such Plan, including any amendments thereto, shall be for the exclusive benefit of Participants and their Beneficiaries and shall be established and maintained on a sound fiscal and actuarial basis and shall qualify under the Internal Revenue Code for the purposes of assuring the tax deductibility of the Contributions of the Employer.

- a. The Trustees shall promulgate rules, regulations and procedure in order to carry out the provisions of the Plan, including by way of illustration and not limitation:
  - i. Conditions of eligibility for Participants and Beneficiaries;
  - ii. Schedules of type and amount of benefits to be paid;
  - iii. Procedures for claiming benefits and for the distribution of benefits;
  - iv. A procedure for establishing and carrying out a funding policy;
  - v. Any procedures for the allocation of responsibilities for the operation and administration of the Plan;
  - vi. The basis on which payments are made to and from the Plan.Such Plan shall at all times comply with all applicable laws.
- b. The Trustees shall agree by a majority vote of their total number to the Plan. This Plan and any amendments thereto, shall qualify under applicable provisions of the Internal Revenue Code, so that the Employers can receive tax deductions for their Contributions to the Trust Fund.
- c. A copy of such Plan shall be adopted and filed by the Trustees as part of the records and minutes of the Trustees and one copy of such Plan shall be distributed to the Union, to each of the contributing Employers, and shall be made available to each of the Participants and their Beneficiaries requesting such.

**Section 5.23 Amendment of Plan.** The Plan may be amended by the Trustees at any time and from time to time provided that such amendments comply with the applicable sections of the then applicable Internal Revenue Code, provisions of the Agreements between the Employers and the Union authorizing the Pension Fund and the purposes as set forth in this Agreement and Declaration of Trust. A copy of each amendment of the Pension Plan shall be adopted and filed by the Trustees as part of the records and minutes of the Trustees, and copies thereof shall be distributed to the Union and to the then currently contributing Employers and Participants and their Beneficiaries requesting such; provided, however, that in determining and continuation, increase, or reduction of benefits under any existing Plan, the Trustees will apply accepted fiscal practices and will not reduce existing benefits unless required to do so by law or to preserve the economic integrity of the Fund and shall notify the Employers and Union prior to the reduction of existing benefits.

## ARTICLE VI

### CONTROVERSIES AND DISPUTES

**Section 6.1      Submission to Trustees.** All questions or controversies of whatever character, arising in any manner or between any persons or entities in connection with the Trust Fund or the operation thereof, which are related to any claim for any benefit by any Participant or any other person, shall, pursuant to Rules and Regulations adopted by the Trustees, be submitted to the Trustees, a committee of the Trustees, or an arbitration body if the Trustees so provide, and the decision of the Trustees, the committee or arbitration body shall be final and binding upon all persons dealing with the Trust Fund or Plan, or claiming benefits thereunder.

**Section 6.2      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 involved in this Trust.

## ARTICLE VIII

### BENEFICIAL RIGHTS

**Section 7.1     No Right, Title or Interest of Employers.**    No Employer, Association, Union, Employee, Participant, or Beneficiary shall have any right, title or interest in or to the Trust Fund or any part thereof other than a benefit for which a Participant or Beneficiary is entitled under the terms and conditions set forth in the Plan. There shall be no pro-rata or other distributions of any of the assets of the Trust Fund as a result of any Union, Association, 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     Limitation Upon Beneficial Rights of Employees.**

- a. 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. In the event that any claim or benefit shall, because of any debt incurred by or resulting from any 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, no benefit shall be payable under the Pension Plan 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, for such Participant or Beneficiary.
- b. Notwithstanding any provisions contained in this Section to the contrary, no Participant or Beneficiary may assign pension benefits except through the use

of a Qualified Domestic Relations Order.

**Section 7.3      Optional Benefits Prohibited.**    No Employee or Participant shall have the right, privilege or option to receive, instead of the benefits provided hereunder:

- a. Any part of the Contributions payable by Employers under this Trust Agreement;
- b. A cash consideration either upon termination of the plan or benefits provided hereunder or upon such Employee's or Participant's withdrawal from coverage under this Fund, either voluntarily or through severance of employment with any particular Employer.

## **ARTICLE VIII**

### **TERMINATION OF TRUST**

**Section 8.1      Conditions of Termination.**      This Trust Agreement shall cease and terminate upon the happening of any 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;
- 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, the Employers, and the Associations
- d. In the event of termination as may be otherwise provided by law.

**Section 8.2      Procedure in Event of Termination.**      In the event of termination, the Trustees shall:

- a. Make provision out of the Trust Fund for 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;
- b. Arrange for a final audit and report of their transactions, and accounts, for the purpose of termination of their Trusteeship;
- c. Apply the Trust Fund to pay any and all obligations of the Trust;
- d. Distribute and apply any remaining surplus in such manner as will best effectuate the purposes of the Trust and the requirements of law; and
- e. Give any notices and prepare and file any reports which may be required by law.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.1      Law Applicable.**   This Trust is created and accepted in the State of Ohio 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 State of Ohio, except as to matters governed by Federal law.

**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.**   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 interests of the Trust Fund, provided that any such reciprocity agreement or agreements shall not be inconsistent with the terms of this Trust Agreement or to the Collective Bargaining Agreements under which this Trust Agreement is maintained.

**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 Boards of Trustees, subject to the approval of the Union, Employers, and the Associations and provided that each Participant in the Plan will receive benefits after the merger which are equal to or greater than the benefits which would have been received prior to the merger.

**Section 9.6      Judicial Settlements.** The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts and to seek judicial protection by any action or proceeding they determine necessary and, further, to obtain a judicial determination or declaratory judgment as to any question of construction of this Trust Agreement or for instructions as to any 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 9.7      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 9.8      Qualification of Trust Personnel.** No person shall serve as a Trustee, Professional Administrator, Custodian, investment manager, or Consultant to the Trust Fund or Plan or serve in any other capacity thereof whether as an agent, officer or employee, unless such person is eligible for service in accordance with Section 411 of ERISA.

**Section 9.9      Vesting of Rights.** No Participant, Beneficiary or Employee or other person shall have vested interest or right in the Trust Fund except as provided by the Trustees in conformance with the law.

**Section 9.10 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 whenever any words are used in the singular, they shall also be construed to include the plural in all situations where they would so apply and whenever any words are used in the plural, they shall also be construed to include the singular.

**Section 9.11 Amendment to Trust Agreement.** The provisions of this Trust Agreement may be amended at any time by an instrument executed by the Employers and the Union, or by a unanimous vote of the current 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 9.12 Action by Employers.** Any action required or permitted by the Employers under this Agreement (such as, but not limited to, appointment of the Employer Trustees, amending the Trust Agreements, etc.) shall be taken in accordance with action by the Employers and Associations, consistent with any internal by-laws or rules of the Associations.

**Now Therefore**, the Union, Employers, and their respective Trustees, hereby adopt, approve and consent to a complete amendment and restatement of the Declaration of Trust, Ohio Bricklayers Pension Fund, in the form attached hereto and effective as of the 1st day of June, 2018.

**In Witness Whereof**, the Employers affiliated with Ohio-Kentucky Administrative District Council of the International Union of Bricklayers and Allied Craftworkers and/or Bricklayers & Allied Craftworkers District Council of West Virginia, hereby execute this document in counterparts on the date shown below.

Employer Representative for  
BAC Local No. 6 (Parkersburg):

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Employer Representative for  
BAC Local No. 16 (Mentor):

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**Employer Representative for  
BAC Local No. 18 (Cincinnati/Lexington):**

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**Employer Representative for  
BAC Local No. 39 (Portsmouth):**

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**Employer Representative for  
BAC Local No. 40 (Mansfield):**

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**Employer Representative for  
BAC Local No. 44 (Nashport):**

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**Employer Representative for  
BAC Local No. 45 (Chillicothe):**

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**Employer Representative for  
BAC Local No. 46 (Fremont):**

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**Employer Representative for  
BAC Local No. 52 (Athens):**

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**In Witness Whereof, Ohio-Kentucky Administrative District Council and  
Bricklayers & Allied Craftworkers District Council of West Virginia hereby execute and  
accept this document on the 14<sup>th</sup> day of MAY, 2018.**

Ken Kudela, Director  
Ken Kudela, Director  
OH-KY ADC

Leroy E. Hunter, Jr., Director  
Leroy Hunter, Jr., Director  
BAC DC WV

In Witness Whereof, Board of Trustees hereby executes and accepts this document on the 14<sup>th</sup> day of May, 2018.

Royce D. Kohman

Thomas E. Kehler

Howard Johnson

Kurt C. Kudah

Bruce D. Woon

Steve Shuey

**Now Therefore**, the Union, Employers, and their respective Trustees, hereby adopt, approve and consent to a complete amendment and restatement of the Declaration of Trust, Ohio Bricklayers Pension Fund, in the form attached hereto and effective as of the 1st day of June, 2018.

**In Witness Whereof**, the Employers affiliated with Ohio-Kentucky Administrative District Council of the International Union of Bricklayers and Allied Craftworkers and/or Bricklayers & Allied Craftworkers District Council of West Virginia, hereby execute this document in counterparts on the date shown below.

Employer Representative for  
BAC Local No. 6 (Parkersburg):



Name

\_\_\_\_\_  
Date

3/7/18

  
Executive Director, PMCA  
Title

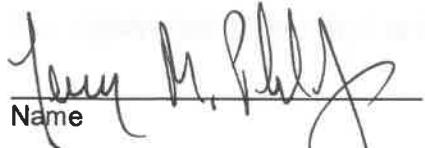
Employer Representative for  
BAC Local No. 16 (Mentor):

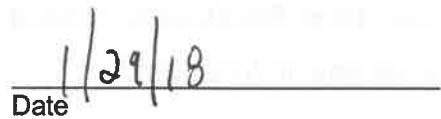
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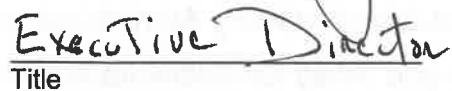
\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

Employer Representative for  
BAC Local No. 18 (Cincinnati/Lexington):

  
Name

  
Date

  
Title

Employer Representative for  
BAC Local No. 39 (Portsmouth):

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Name

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Date

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Title

Employer Representative for  
BAC Local No. 40 (Mansfield):

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Name

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Date

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Title

Employer Representative for  
BAC Local No. 44 (Nashport):

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Name

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Date

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Title

Employer Representative for  
BAC Local No. 45 (Chillicothe):

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Employer Representative for  
BAC Local No. 46 (Fremont):

Tim J. Snivill  
Name \_\_\_\_\_

3-26-18  
Date \_\_\_\_\_

CEO, Construction Employer Association  
Title \_\_\_\_\_

Employer Representative for  
BAC Local No. 52 (Athens):

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**In Witness Whereof**, Ohio-Kentucky Administrative District Council and  
Bricklayers & Allied Craftworkers District Council of West Virginia hereby execute and  
accept this document on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Ken Kudela, Director  
OH-KY ADC

\_\_\_\_\_  
Leroy Hunter, Jr., Director  
BAC DC WV

Employer Representative for  
BAC Local No. 18 (Cincinnati/Lexington):

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Employer Representative for  
BAC Local No. 39 (Portsmouth):

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Employer Representative for  
BAC Local No. 40 (Mansfield):

  
Name \_\_\_\_\_

Date \_\_\_\_\_

3-26-18

CEO, Construction Employers Association  
Title \_\_\_\_\_

Employer Representative for  
BAC Local No. 44 (Nashport):

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Now Therefore, the Union, Employers, and their respective Trustees, hereby adopt, approve and consent to a complete amendment and restatement of the Declaration of Trust, Ohio Bricklayers Pension Fund, in the form attached hereto and effective as of the 1st day of June, 2018.

In Witness Whereof, the Employers affiliated with Ohio-Kentucky Administrative District Council of the International Union of Bricklayers and Allied Craftworkers and/or Bricklayers & Allied Craftworkers District Council of West Virginia, hereby execute this document in counterparts on the date shown below.

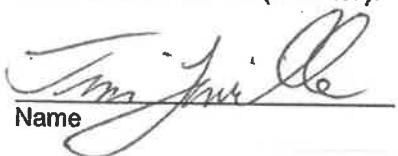
Employer Representative for  
BAC Local No. 6 (Parkersburg):

Name \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Employer Representative for  
BAC Local No. 16 (Mentor):

  
Name \_\_\_\_\_

Date \_\_\_\_\_

3-26-18

CEO, Construction Employers Association  
Title \_\_\_\_\_

SCANNED

**First Amendment to the Amended and Restated  
Agreement and Declaration of Trust, Ohio Bricklayers Pension Fund**

**Whereas**, a new Amended and Restated Agreement and Declaration of Trust was recently adopted for the Ohio Bricklayers Pension Fund; and

**Whereas**, the Section 9.11 of the Trust grants authority to the Board of Trustees to amend the document from time to time by unanimous action; and

**Whereas**, the Board deems it necessary to modify the Trust provisions concerning the appointment and removal of Employer Trustees;

**Now therefore, be it resolved**, Sections 3.1, 3.3 and 3.4 will be modified, effective July 1, 2018, to read as follows:

\* \* \* \*

**Section 3.1      Number, Appointment, Term.** The Trust Fund shall be administered by six (6) Trustees. Three (3) of the Trustees shall be appointed by the Union and shall act as the Union Trustees. The appointment of said Trustees shall be by the Director of the Ohio-Kentucky Administrative District Council.

Three (3) of the Trustees shall be appointed by the Construction Employers Association, Cleveland, Ohio and shall act as the Employer Trustees. Employer Trustees should be appointed in such a manner so as to provide representation from the varying geographic areas within the Plan's jurisdiction. Such a Trustee must be employed by an Employer signatory to a Collective Bargaining Agreement with the Union with no history of chronic or serious delinquency problems with the Fund. After appointment as Trustee, should a chronic or serious delinquency problem exist between the Fund and said Trustees Employer, such delinquency shall be considered reasonable grounds for removal of said Trustee for cause.

It is the intention of the Parties that there shall always be an even number of Trustees, of whom one-half shall be appointed by the Union and the other one-half shall be appointed by the Construction Employers Association, Cleveland, Ohio.

A vacancy shall occur whenever a Trustee may resign or when a Trustee is removed or

by reasons of death or incapacity. Successor Trustees shall be named as provided in Section 3.4.

\* \* \* \*

**Section 3.3**

**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, Union if he is a Union Trustee, or the Employers, if he is an Employer Trustee. The requirement of 30 days prior notice may be shortened to such shorter notice as the remaining Trustees may accept as sufficient. In the 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 such event such resignation shall take effect immediately upon the appointment of such Successor Trustee. An Employer Trustee may be removed from office at any time by action of the Construction Employers Association, Cleveland, Ohio, or by the other two Employer Trustees for good cause. Written notice of such action shall be delivered to the Union, the Chairman and Secretary-Treasurer of the Trustees serving at that time, the Professional Administrator and legal counsel. A Union Trustee may be removed from office at any time by action of the Union which appointed him. Written notice of such action shall be delivered to the Employers, the Chairman and Secretary-Treasurer of the Trustees serving at that time, the Professional Administrator and legal counsel. The Board of Trustees shall presume any notice of removal provided by an appointing organization is valid and lawful, unless and until overturned by a court of competent jurisdiction.

\* \* \* \*

**Section 3.4**

**Successor Trustees, Appointment.** If any Employer Trustee shall die, become incapable of acting hereunder, resign, or be removed, a Successor Employer Trustee shall be immediately appointed by the Construction Employers Association, Cleveland, Ohio. Such appointment shall be in writing and be delivered to the Union, the Chairman and Secretary-Treasurer of the Trustees serving at that time, the Professional Administrator and

legal counsel. If any Union Trustee shall die, become incapable of acting hereunder, resign, or be removed, a Successor Union Trustee shall immediately be appointed by the Director of the Ohio-Kentucky Administrative District Council, such appointment to be in writing and be delivered to the Construction Employers Association, Cleveland, Ohio, the Chairman and Secretary-Treasurer of the Trustees serving at that time, the Professional Administrator and legal counsel.

Upon the failure of any party to appoint such Successor Trustee then any Trustee may petition the local United States District Court for an Order appointing such Successor Trustee to serve until a Successor Trustee has been appointed by the proper party. The costs and expenses (including by way of illustration and not limitation, reasonable attorneys' fees and reporter fees) incidental to any proceedings to appoint a Successor Trustee shall be paid by the Trust Fund. It is the intention hereof that the Fund shall at all times be administered by an equal number of Employer and Union Trustees.

\* \* \* \*

**Section 3.17**      Training Trustee.    The three (3) Trustees appointed by the Union may elect to have in attendance at meetings an individual for the purpose of exposing the individual to the business of the Pension Trustees and to educate said individual about the operations of the Trust in anticipation that said individual will ultimately be appointed a Trustee on the Fund.

The three (3) Trustees appointed by the Construction Employers Association, Cleveland, Ohio, may elect to have in attendance at meetings an individual for the purpose of exposing the individual to the business of the Pension Trustees and to educate said individual about the operations of the Trust in anticipation that said individual will ultimately be appointed a Trustee on the Fund.

These individuals shall have no voting rights and shall not be considered Trustees or Plan Fiduciaries. The Trustees may reimburse said individual for the costs and expenses of attending the meetings and may choose to pay for the education of said individual in anticipation of the appointment of the individual ultimately as a Trustee. Prior to attendance at a meeting, the Training Trustee must execute a confidentiality agreement. The Training Trustee may be excused from a meeting if his presence may jeopardize attorney-client or similar privilege.

\* \* \* \*

In Witness Whereof, Board of Trustees hereby executes and accepts this document on the 14th day of May, 2018.

Union Trustees

Lutha Kendall  
Andy Moon  
Steve Shimp

Employer Trustees

Raye D. Kehman  
Thomas E. Kahler  
Howard Wirtz