

**THIRD AMENDMENT
TO
MICHIGAN BAC PENSION FUND
AGREEMENT AND DECLARATION OF TRUST**

WHEREAS, the Michigan BAC Pension Fund Agreement and Declaration of Trust ("Agreement") was effective May 1, 1989 by agreements among the Michigan Chapter of the Associated General Contractors of America, Inc. (the "Association") and Locals 7 and 31 of Michigan of the Bricklayers and Allied Craftsmen International Union, AFL-CIO. The Agreement subsequently was amended to include Local 40 of Michigan of the Bricklayers and Allied Craftsmen International Union, AFL-CIO as a sponsoring party (all of the above are referred to individually as Local 7, Local 31 and Local 40 and collectively as the "Union"); and

WHEREAS, the Local 7, Local 31 and Local 40 and other Michigan Locals of the Bricklayers and Allied Craftsmen International Union, AFL-CIO were consolidated into Local 9 of Michigan of the Bricklayers and Allied Craftsmen International Union, AFL-CIO ("Local 9") and the Bricklayers and Allied Craftsmen International Union, AFL-CIO has changed its name to the Bricklayers and Allied Craftworkers International Union, AFL-CIO; and

WHEREAS, the Association has designated its Labor Relations Division to serve as the Association for purposes of this Agreement; and

WHEREAS, the Union and the Association now want to amend the Agreement to reflect the correct names of the sponsoring parties and to expand the number of Trustees from ten to twelve;

NOW, THEREFORE, the Agreement is amended as follows effective _____ .

1. The Preambles to the Agreement are amended to replace all references to Local 7, Local 31 and Local 40 with references to Local 9, to replace all references to the Bricklayers and Allied Craftsmen International Union, AFL-CIO with references to the Bricklayers and Allied Craftworkers International Union, AFL-CIO, and to replace all references to the Michigan Chapter of the Associated General Contractors of America, Inc. with references to Michigan Chapter, Associated General Contractors of America, Inc., Labor Relations Division. Specifically, the portion of the preamble that identifies the sponsoring parties is amended as set forth below:

MICHIGAN CHAPTER, ASSOCIATED GENERAL CONTRACTORS OF
AMERICA, INC., LABOR RELATIONS DIVISION (hereinafter referred to as
the "Association")

and

LOCAL 9 OF MICHIGAN OF THE BRICKLAYERS AND ALLIED
CRAFTWORKERS INTERNATIONAL UNION, AFL-CIO (hereinafter referred
to as "Local 9")

2. Article I, Section 6 of the Agreement is amended to read as follows:

SECTION 6 - UNION

The term "Union" shall mean collectively the Local Unions of the Bricklayers and Allied Craftworkers International Union, AFL-CIO which are domiciled in the State of Michigan and which are participating in the Fund at any time of reference.

3. Article I, Section 7 is amended to read as follows:

SECTION 7 - PARTICIPATING LOCAL

The term "Participating Local" shall, at any time of reference, mean a Local of the Union which is participating in the Fund. As of March 1, 1998, Participating Locals are Michigan Locals 9 and 6 of the Bricklayers and Allied Craftworkers International Union, AFL-CIO.

4. Article I, Section 8 is amended to read as follows:

SECTION 8 - ASSOCIATION

The term "Association" shall mean the Michigan Chapter, Associated General Contractors of America, Inc., Labor Relations Division.

5. Article III, Section 1 is amended to read as follows:

SECTION 1 - APPOINTMENT OF TRUSTEES

There shall be twelve (12) Trustees under this Agreement and Declaration of Trust who shall be the Trustees of the Trust Fund created hereunder and who shall be named fiduciaries with respect to the Trust Fund as required under ERISA.

Local 9 shall appoint six (6) Trustees to serve hereunder. The Trustees appointed by Local 9 shall be called "Union Trustees."

The Association shall appoint six (6) Trustees to serve hereunder. The Trustees appointed by the Association shall be called "Employer Trustees."

No person shall be appointed by the Association or by Local 9 to serve as a Trustee who is prohibited from serving as a fiduciary by ERISA.

6. Article VII, Section 5 is amended to read as follows:

SECTION 5 - METHOD OF AMENDMENT

This Agreement and Declaration of Trust may be amended in any respect from time to time by written agreement between the Union and the Association, except that no amendment shall divert the Trust Fund as constituted immediately prior thereto or any part thereof to a purpose other than as set forth herein, nor shall there be any amendments which will eliminate the requirement of an annual audit, provide for the Fund to be held in trust other than by an equal number of Union Trustees and Employer Trustees, or be inconsistent with the provisions of applicable Collective Bargaining Agreements.

In order for a Local Union of the Bricklayers and Allied Craftworkers International Union, A.F.L. - C.I.O. to become a Participating Local hereunder, it shall be sufficient to amend this Agreement and Declaration of Trust to permit such participation by the Local Union involved executing a statement accepting this Agreement and Declaration of Trust and agreeing to be bound by its terms and provisions, provided the Association and Local 9 also evidence their approval, in writing, of extension of participation to such Local.

IN WITNESS WHEREOF, Local 9 and the Association have executed this Amendment to the Agreement on this 11 day of March, 1998 to be effective as of _____, 1998.

MICHIGAN CHAPTER, ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC., LABOR RELATIONS DIVISION

By: Bob Fontana

Its: _____

LOCAL 9 OF MICHIGAN OF THE BRICKLAYERS AND
ALLIED CRAFTWORKERS INTERNATIONAL UNION, AFL-CIO

By: Daryl Hollerbock

Its: _____

SECOND AMENDMENT

OF

MICHIGAN BAC PENSION FUND

AGREEMENT AND DECLARATION OF TRUST

WHEREAS, the Michigan BAC Pension Fund Agreement and Declaration of Trust was effective May 1, 1989, by agreement among the Michigan Chapter of the Associated General Contractors of America, Inc. (hereinafter referred to as the "Association") and Locals Nos. 7 and 31 of Michigan of the Bricklayers and Allied Craftsmen International Union, A.F.L. - C.I.O. (hereinafter referred to individually as a "Participating Local" and collectively as the "Union");

WHEREAS, the original parties to said Agreement and Declaration of Trust are desirous of amending same to substitute, in place of Locals Nos. 7 and 31, as a principal party to the Agreement and Declaration of Trust; and

WHEREAS, the original parties to said agreement and declaration of trust are also desirous of amending same to expand the complement of the board of trustees and the manner in which, and the terms for which, Trustees are appointed; and

WHEREAS, the provisions of said Agreement and Declaration of Trust permit the addition of other Local Unions as Participating Locals; and

WHEREAS, Local Union No. 17 of Michigan has manifested an interest in becoming a Participating Local and the other parties to the Agreement and Declaration of Trust are willing to amend said Agreement to accommodate the addition of Local 17 as a Participating Local;

NOW, THEREFORE, by virtue of the power reserved to them in said Agreement and Declaration of Trust the parties thereto do hereby amend said Agreement in the following particulars effective _____ 1, 19____:

1. The Preamble to the Agreement which reflects, inter alia, the identity of the parties thereto, is changes to read:

WHEREAS, the Michigan BAC Pension Fund Agreement and Declaration of Trust as effective May 1, 1989, by agreement between the "Labor Relations Division Michigan Chapter, Associated General Contractors of America, Inc. (hereinafter referred to as the "Association") and "Central Michigan Administrative District Council, IUBAC (hereinafter referred to as the "Union)";

2. Section of Article I is amended † add the following sentence to the end thereof:

As of _____ 1, 19_____,
the Participating Locals are Locals
7, 17, 31, and 40.

3. Add the following paragraph to the Article I:

SECTION 16 - ADVISORY COMMITTEE:

The term "Advisory Committee" shall mean a committee composed of one representative from each Participating Local. The number of members of the committee shall at all times be equal to the number of Participating Locals. Each Participating Local shall select its own representative and shall notify the Board of Trustees, in writing, of such selection.

4. Section 1 of Article III is amended to read:

SECTION 1 - APPOINTMENT OF TRUSTEES

There shall be twelve (12) Trustees under this Agreement and Declaration of Trust who shall be the Trustees of the Trust Fund created and established hereunder and who shall be the named fiduciaries with respect to the Trust Fund as required under ERISA.

The Association shall appoint six (6) Trustees to serve hereunder. The Trustees appointed by the Employers shall be called "Employer Trustees".

The Union shall appoint six (6) Trustees to serve hereunder. The Trustees appointed by the Union shall be called "Union Trustees".

The Board of Trustees may be expanded to a maximum of sixteen (16) under this Agreement and Declaration of Trust as the result of future mergers. Thereafter, the Fund shall be administered by a board of ten (10) Trustees. Five (5) Trustees shall be Employer

TRY
and shall be appointed by the Association. Five (5) shall be Union Trustees appointed by the Union and advised by the Advisory Committee.

No person shall be appointed by the Association or the Union to serve as a Trustee who is prohibited from serving as a fiduciary by virtue of the provisions of ERISA.

IN WITNESS WHEREOF, the Participating Locals and the Association have executed this Second Amendment of the Agreement and Declaration of Trust on this _____ day of _____, 1993, to be effective as of _____, 1993.

MICHIGAN CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

LOCAL NO. 7 (MICHIGAN) OF THE BRICKLAYERS AND ALLIED CRAFTSMEN INTERNATIONAL UNION, A.F.L. - C.I.O.

By _____

By _____

Its _____

Its _____

LOCAL NO. 31 (MICHIGAN) OF THE BRICKLAYERS AND ALLIED CRAFTSMEN INTERNATIONAL UNION, A.F.L. - C.I.O.

LOCAL NO. 40 (MICHIGAN) OF THE BRICKLAYERS AND ALLIED CRAFTSMEN INTERNATIONAL UNION, A.F.L. - C.I.O.

By _____

By _____

Its _____

Its _____

FIRST AMENDMENT
OF
MICHIGAN BAC PENSION FUND
AGREEMENT AND DECLARATION OF TRUST

WHEREAS, the Michigan BAC Pension Fund Agreement and Declaration of Trust was effective May 1, 1989, by agreement among the Michigan Chapter of the Associated General Contractors of America, Inc. (hereinafter referred to as the "Association") and Locals Nos. 7 and 31 of Michigan of the Bricklayers and Allied Craftsmen International Union, A.F.L. - C.I.O. (hereinafter referred to individually as a "Participating Local" and collectively as the "Union");

WHEREAS, the provisions of said Agreement and Declaration of Trust permit the addition of other Local Unions as Participating Locals; and

WHEREAS, Local Union No. 40 of Michigan has manifested an interest in becoming a Participating Local and the other parties to the Agreement and Declaration of Trust are willing to amend said Agreement to accommodate the addition of Local 40 as a Participating Local;

NOW, THEREFORE, by virtue of the power reserved to them in said Agreement and Declaration of Trust the parties thereto do hereby amend said Agreement in the following particulars effective October 1, 1991:

1. Section 7 of Article I is amended to add the following sentence to the end thereof:

"As of October 1, 1991, the Participating
Locals are Locals 7, 31, and 40. "

2. Section 1 of Article III is amended to read:

"SECTION 1 - APPOINTMENT OF TRUSTEES

There shall be ten (10) Trustees under this Agreement and Declaration of Trust who shall be the Trustees of the Trust Fund created and established hereunder and who shall be the named fiduciaries with respect to the Trust Fund as required under ERISA.

Local No. 7 and Local No. 31 shall each appoint two (2) Trustees to serve hereunder. Local No. 40 shall appoint one (1) Trustee to serve hereunder. The Trustees appointed by the Participating Locals shall be called "Union Trustees".

The Association shall appoint five (5) Trustees to serve hereunder. The Trustees appointed by the Employers shall be called "Employer Trustees".

No person shall be appointed by the Association or by a Participating Local to serve as a Trustee who is prohibited from serving as a fiduciary by virtue of the provisions of ERISA. "

IN WITNESS WHEREOF, the Participating Locals and the Association have executed this First Amendment of the Agreement and Declaration of Trust on this 30th day of September, 1991, to be effective as of October 1, 1991.

MICHIGAN CHAPTER OF THE
ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.

By Rant Canigan
Its Executive Director

LOCAL NO. 40 (MICHIGAN) OF
THE BRICKLAYERS AND ALLIED
CRAFTSMEN INTERNATIONAL UNION,
A.F.L. - C.I.O.

By Louis W. Walter Jr.
Its Business Manager

LOCAL NO. 7 (MICHIGAN) OF
THE BRICKLAYERS AND ALLIED
CRAFTSMEN INTERNATIONAL UNION,
A.F.L. - C.I.O.

By Ward L. Blake
Its Business Manager

LOCAL NO. 31 (MICHIGAN) OF
THE BRICKLAYERS AND ALLIED
CRAFTSMEN INTERNATIONAL UNION,
A.F.L. - C.I.O.

By Ray H. Hollerbach
Its Business Manager

MICHIGAN BAC PENSION FUND

AGREEMENT AND DECLARATION OF TRUST

(Effective May 1, 1989)

AGREEMENT AND DECLARATION OF TRUST

This Agreement and Declaration of Trust which is effective May 1, 1989, is a new Trust resulting from a merger of the Construction Masons' Local No. 31 Lansing, Michigan Pension Fund and the Saginaw Valley Bricklayers' Pension Fund (which merger is effective coincident with the effective date of this Agreement and Declaration of Trust) and is by and between

MICHIGAN CHAPTER OF THE ASSOCIATED
GENERAL CONTRACTORS OF AMERICA, INC.
(hereinafter referred to as the "Association")

and

LOCALS NOS. 7 AND 31 OF MICHIGAN OF THE
BRICKLAYERS AND ALLIED CRAFTSMEN INTER-
NATIONAL UNION, A.F.L. - C.I.O. (herein-
after referred to individually as a
"Participating Local" and collectively
as the "Union")

WITNESSETH:

WHEREAS, the Saginaw Valley Bricklayers' Pension Fund covering employees working under the jurisdiction of Local No. 7 became effective as of May 1, 1970; and the Construction Masons' Local No. 31 Lansing, Michigan Pension Fund covering employees working under the jurisdiction of Local No. 31 became effective as of May 1, 1965; and

WHEREAS, the employees covered under said Funds perform the same type of work which is covered under the jurisdiction of the Bricklayers and Allied Craftsmen International Union; and

WHEREAS, many employers contribute to both Funds and the same employer Association is the parent body to each of the two Trust Agreements establishing said Funds; and

WHEREAS, because of the foregoing similarities, a common fiscal year, similar eligibility rules and benefit provisions, as well as many common interests and purposes, the Trustees of the two Funds and the respective parent bodies to the Trust Agreements establishing said Funds believe that certain economies can be realized by a merger of the two Funds, that the combined Funds can obtain better diversification of investments, and that the interest of participants can best be served by a merger of the two Funds; and

WHEREAS, such belief is concurred in by the actuary and consultant who are employed by both Funds;

NOW, THEREFORE, the Association and the Union hereby adopt the following Agreement and Declaration of Trust to evidence the provisions under which the merged Fund to be known as the "MICHIGAN BAC PENSION FUND" shall be operated retroactive to May 1, 1989, as soon as the aforesaid merger is approved by the appropriate Federal agencies, it being understood that until such approval is received the Trust Agreements under which the two Funds are currently being operated will remain in effect.

ARTICLE I - DEFINITIONS

SECTION 1 - DEFINITIONS IN GENERAL

Wherever the following words and/or phrases appear in this Agreement and Declaration of Trust, they shall have the respective meanings set forth in this Article unless the context clearly indicates to the contrary. The initial letter of each defined word and the initial letter of each word of a defined phrase shall be capitalized wherever used herein to denote its being a defined word or term.

SECTION 2 - TRUST AGREEMENT

The term "Trust Agreement" shall mean the Agreement and Declaration of Trust described in this instrument which establishes the MICHIGAN BAC PENSION FUND effective May 1, 1989, as said instrument may, from time to time, be amended.

SECTION 3 - TRUST FUND or FUND

The term "Trust Fund" or "Fund" shall mean the MICHIGAN BAC PENSION FUND and all of the assets thereof.

SECTION 4 - TRUSTEES

The term "Trustees" shall mean the Trustees appointed by the Association and identified as "Employer Trustees" and the Trustees appointed by the Union and identified as "Union Trustees" who are appointed pursuant to the provisions of this Trust Agreement and who are the named fiduciaries of the Fund as described in ERISA.

SECTION 5 - ERISA

The term "ERISA" shall mean the Employee Retirement Income Security Act and the rules and regulations promulgated thereunder, as said Act and said rules and regulations may, from time to time, be amended or interpreted by courts of competent jurisdiction.

SECTION 6 - UNION

The term "Union" shall mean collectively the Local Unions of the Bricklayers and Allied Craftsmen International Union, A.F.L. - C.I.O. which are domiciled in Michigan and which are participating in the Fund at any time of reference.

SECTION 7 - PARTICIPATING LOCAL

The term "Participating Local" shall, at any time of reference, mean a Local of the Union which is participating in the Fund. As of May 1, 1989, the Participating Locals are Locals No. 7 and No. 31.

SECTION 8 - ASSOCIATION

The term "Association" shall mean the Michigan Chapter of the Associated General Contractors of America, Inc.

SECTION 9 - EMPLOYER

The term "Employer" shall mean

- (a) any member of an Employer Association who is bound by the terms of a Collective Bargaining Agreement between a Participating Local and his Association to make contributions to the Trust Fund,
- (b) any other Employer engaged in work coming within the jurisdiction of one of the Participating Locals who is obliged, by a Collective Bargaining Agreement or other written agreement if approved by the Board of Trustees, to make contributions to the Trust Fund,
- (c) the Participating Locals to the extent, and solely to the extent, that they act in the capacity of an Employer of their business representatives or other Employees in whose behalf they make contributions to the Trust Fund, and
- (d) any Board of Trustees, Committee or other agency established to administer or be responsible for employee benefit funds, educational or other programs established through collective bargaining by one or more Participating Locals and the Association shall be considered an Employer solely for the purpose of making contributions to the Trust Fund on behalf of Employees employed by such Board of Trustees, Committee or other Agency.

SECTION 10 - EMPLOYEE

The term "Employee" shall mean any person on whose account an Employer has been required to make contributions to the Trust Fund, or who is eligible for benefits as provided by the Pension Plan, including business representatives and other employees of a Participating Local while employed in a paid capacity by a Participating Local and employees of any Board of Trustees, Committee or other Agency established to administer or be responsible for fringe benefits funds, educational or other programs established through collective bargaining by one or more Participating Locals and the Association.

SECTION 11 - PENSION PLAN or PLAN

The term "Pension Plan" or "Plan" shall mean the Pension Plan adopted

by the Trustees pursuant to which eligibility rules, benefits, and rights of Participants and their Beneficiaries are determined.

SECTION 12 - PARTICIPANT

The term "Participant" shall mean an Employee who has acquired or is acquiring eligibility to receive benefits pursuant to the provisions of the Pension Plan.

SECTION 13 - BENEFICIARY

The term "Beneficiary" shall mean any person who, because of relationship to, or designation by, a Participant may be entitled to benefits from the Fund.

SECTION 14 - PENSION AGREEMENT

The term "Pension Agreement" shall mean any collective bargaining agreement or article thereof or other written agreement which provides for Employer contributions to the Trust Fund (or adopts, expressly or implicitly, a written agreement which so provides) and details the basis upon which such contributions are to be made.

SECTION 15 - OTHER DEFINITIONS AND TERMS

Other definitions and terms as required may appear in the text of other provisions of this instrument.

Wherever used herein, a masculine noun or pronoun shall be deemed to include the feminine and a singular noun or pronoun shall be deemed to include the plural unless the text of the provision clearly indicates the contrary.

ARTICLE II - CREATION AND PURPOSE

SECTION 1 - CREATION

There is hereby created a Trust Fund known as the MICHIGAN BAC PENSION FUND.

SECTION 2 - PURPOSE

The Trust Fund is created and maintained for the purpose of providing retirement and related benefits to Participants and their Beneficiaries who meet the eligibility requirements therefor under the provisions of a Pension Plan to be adopted and maintained by the Trustees and to defray the costs of administration of said Pension Plan.

ARTICLE III - TRUSTEES

SECTION 1 - APPOINTMENT OF TRUSTEES

There shall be eight (8) Trustees under this Agreement and Declaration of Trust who shall be the Trustees of the Trust Fund created and established hereunder and who shall be the named fiduciaries with respect to the Trust Fund as required under ERISA.

Each Participating Local shall appoint two (2) Trustees to serve hereunder. The Trustees appointed by the Participating Locals shall be called "Union Trustees".

The Association shall appoint four (4) Trustees to serve hereunder. The Trustees appointed by the Employers shall be called "Employer Trustees".

No person shall be appointed by the Association or by a Participating Local to serve as a Trustee who is prohibited from serving as a fiduciary by virtue of the provisions of ERISA.

SECTION 2 - OFFICERS

The Trustees shall elect two officers, one a Chairman and the other a Secretary, to serve for the period of one (1) year and until their successors shall be elected. The Chairman shall be the first officer elected and, if the Chairman elected is an Employer Trustee, the Secretary shall be a Union Trustee and vice versa. The officers shall be elected annually at the first regular meeting held during each Plan year, or when a vacancy is created by death, resignation, or removal of an officer. There shall be no prohibition against an officer succeeding himself.

SECTION 3 - ACCEPTANCE OF THE TRUST BY TRUSTEES

A Trustee, by signing this Agreement and Declaration of Trust, or, in the case of any successor Trustee, upon filing a written Acceptance of Trusteeship, shall hereby accept the Trust created and established by this Agreement and Declaration of Trust and consent to act as Trustee and agree to administer the Trust Fund as provided herein. Such Trustee shall, upon termination of his Trusteeship, surrender to the remaining Trustees at the office of the Fund any and all records, books, documents, moneys and other property in his possession and owned by the Fund or required by his successor to properly administer the Fund.

SECTION 4 - TERM OF TRUSTEESHIP

Each Trustee shall continue to serve at the pleasure of the party which appointed him, subject to his death, incapacity, resignation, or removal as provided herein.

SECTION 5 - RESIGNATION OF TRUSTEE

A Trustee may resign and remain fully discharged from all future duty or responsibility hereunder by giving notice, in writing, to his appointive

body and the remaining Trustees, which notice shall state the date on which such resignation shall take effect and such resignation shall take effect on the said date unless a successor Trustee shall have been appointed at an earlier date, in which event such resignation shall take effect on the date of appointment of the successor.

SECTION 6 - SUCCESSOR TRUSTEES

If any Trustee shall die, become incapable of acting, resign, or be removed, a successor Trustee may be designated by the party which appointed him to replace him. Upon filing of an Acceptance of Trusteeship by the designated successor Trustee, such designation shall be effective and binding in all respects.

Any successor Trustee, immediately upon his Acceptance of Trusteeship in writing and filed with the Trustees, shall become vested with all of the property, rights, powers and duties of a Trustee hereunder with the like effect as if he had been originally named as a Trustee.

SECTION 7 - REMOVAL OF TRUSTEES

Any Trustee may be removed at any time by the party which appointed him. Subject to the provisions of ERISA, such removed Trustee shall be fully discharged from all future duty or responsibility hereunder.

SECTION 8 - COMPENSATION OF TRUSTEES

No Employer Trustee and no Union Trustee who is an employee of one of the Participating Locals or of a parent body of a Participating Local shall receive any compensation for services rendered by him as a Trustee; but the Trustees may reimburse a Union Trustee who is not employed by a Participating Local or a parent body thereof for wages lost while attending meetings of the Trustees or educational meetings hereinafter described if such attendance is authorized by the Trustees. The Trustees may establish reasonable expense allowances for reimbursement of actual and proper expenses incurred by a Trustee for attendance at meetings of the Trustees or Committees of the Trustees or special educational, instructive, or training meetings, classes, courses, or seminars relating generally or particularly to his function, duties, or responsibility as a Trustee.

SECTION 9 - QUORUM REQUIREMENTS

~~Three~~ ~~three Employer Trustees and three Union Trustees~~ shall be present at any meeting to constitute a quorum. No voting by proxy shall be permitted.

Any action by the Trustees may be taken either at a meeting at which a quorum is present or, in writing, without a meeting. All actions at a meeting at which a quorum is present shall be by majority rule and all Trustees must cast their votes in person. All actions taken without a meeting shall be by unanimous written concurrence of all Trustees.

At any time any vote or other action is taken by the Trustees, the number of Union Trustees and Employer Trustees authorized to vote, or act,

shall always be equal. The vote of any absent Employer Trustee shall be divided equally between the Employer Trustees and the vote of any absent Union Trustee shall be divided equally between the Union Trustees present.

SECTION 10 - MEETINGS

The Trustees shall meet no less frequently than semiannually. The Chairman or Secretary may call a meeting of the Trustees at any time by giving at least five days prior written notice of the time and place thereof to the other Trustees. A meeting so called shall be adjourned for a reasonable period, upon the request of a Trustee showing a justifiable cause therefor to the other Trustees. Meetings of the Trustees may also be held at any time without prior written notice if all the Trustees consent thereto.

A written record, a copy of which shall be furnished to each Trustee, shall be kept of all business transacted and of all matters upon which voting shall have occurred.

SECTION 11 - DEADLOCKS

A deadlock shall be deemed to exist (1) whenever a proposal, nomination, motion, or resolution made by a Trustee is not adopted by a vote (unless the same has been defeated by a vote) and the supporters of the proposal, nomination, motion, or resolution notify the other Trustees, in writing, that a deadlock exists; or (2) whenever a quorum is lacking at a meeting duly called, and at least two Trustees, from either group of Trustees, notify the other Trustees, in writing, that a deadlock exists by reason of such lack of quorum. In the event of such deadlock arising, the Employer Trustees and the Union 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 Employer Trustees and the Union Trustees to agree upon the selection of such impartial umpire, then on the petition of any Trustee, the District Court of the United States in the Eastern District of Michigan, Southern Division, shall be empowered to make such an appointment.

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 and the reasonable compensation for such umpire shall be paid from the Fund.

Any impartial umpire chosen or designated to break a deadlock shall be required to enter his decision within a reasonable time, unless a specified time is fixed by the Trustees or by the Court. The scope of any arbitration proceeding before such impartial umpire shall be limited to the provisions of this Agreement and Declaration of Trust and shall not involve the collective bargaining agreements, nor shall such impartial umpire have the power or authority to change or modify any provisions of such collective bargaining agreements, and/or of this Agreement and Declaration of Trust.

SECTION 12 - BY-LAWS

The Trustees may adopt By-Laws, rules or regulations to govern

themselves, which are not inconsistent with any provision of this Agreement and Declaration of Trust.

SECTION 13 - VACANCY

In no event shall the functioning of the Trustees be impaired by a vacancy among either the Employer Trustees or the Union Trustees occasioned by the death, incapacity, resignation, or removal of one or more Trustees provided the quorum requirements and the equal voting provisions described in Section 9 of this Article are maintained.

ARTICLE IV - POWERS AND DUTIES OF TRUSTEES

SECTION 1 - ADMINISTRATION

The Fund shall be administered, controlled, operated and supervised by the Trustees pursuant and subject to this Trust Agreement. The specific enumeration hereafter of powers and duties of the Trustees shall be construed as illustrative and not as limitations upon their power and duty to perform all acts, whether or not expressly authorized herein, necessary in their judgment to the proper functioning of the Fund.

SECTION 2 - PENSION PLAN

The Trustees shall develop and publish a Plan to carry out the purposes of the Fund, which shall set out the rules and regulations governing eligibility, benefit structure, vesting, benefit accrual, participation, and related matters and which shall satisfy the applicable rules and regulations of applicable law so that a favorable Ruling on the tax-exempt status of the Fund may be obtained from the Internal Revenue Service. The Trustees shall also be empowered to amend said Pension Plan, from time to time, if, in their discretion, such amendment is required by law or desirable.

SECTION 3 - EMPLOYMENT OF PERSONNEL

The Trustees may employ or contract for the services of such professional, clerical or other individuals or companies as they, in their discretion, consider appropriate in the operation of the Fund.

SECTION 4 - COLLECTION OF CONTRIBUTIONS

The Trustees shall have the power to demand, collect and receive contributions due to the Fund from Employers pursuant to a Pension Agreement and to impose a uniform schedule of assessments, as liquidated damages, for late payment of contributions by any Employer. The Trustees may also designate a depository to which Employer contributions are to be paid, require use of uniform contribution report forms by Employers and determine all other matters relating to time, place and manner of payment of Employer contributions. If an Employer fails to make contributions or refuses to make a correct report (either initially or after being notified of a mistake or discrepancy in a report or contribution), the Trustees may terminate the Employer's status as an Employer hereunder by sending a notice of termination to the Employer's address as it appears in the records of the Fund. Such notice shall state the cause of termination and the effective date. The obligation to contribute amounts, including any assessments, due under the Pension Agreement of that Employer shall not be affected by termination.

SECTION 5 - CONTRACTUAL POWERS

The Trustees shall have the power to enter into contracts and agreements in carrying out the purposes of the Trust Fund, including, in their discretion, agreements to secure administrative management of the Pension Plan established hereunder.

SECTION 6 - RECORDS

The Trustees shall provide for the maintenance of such records as are necessary to achieve the purpose of the Trust Fund and the orderly operation of the Pension Plan.

SECTION 7 - ANNUAL AUDIT

The Trustees shall provide for an audit of the Fund to be made annually by an independent certified public accountant. Such audit reports shall be made available to the Trustees and copies thereof, along with copies of the Annual Report required to be filed with the Internal Revenue Service, shall be made available at the Fund's administration office during normal business hours by Participants, the Association, the Union, Employers, and all interested parties.

SECTION 8 - LEASE OR PURCHASE OF PREMISES AND/OR MATERIAL

The Trustees shall have the power to lease such premises and to purchase or lease such materials, supplies, services and equipment and to employ one or more persons to render such advice with regard to any responsibility the Trustees have as in their discretion the Trustees may find necessary or appropriate in carrying out the purposes of the Trust Fund and in the performance of their duties.

SECTION 9 - WITHDRAWAL OF FUNDS

All withdrawals of funds from any depository in which Fund assets are deposited shall be by check signed by at least one Union Trustee and at least one Employer Trustee, who Trustee shall have been previously designated by the Trustees, provided that, for purposes of administrative convenience, the Trustees may open subsidiary checking accounts for the purpose of paying benefits, routine bills and expenses, salaries, etc., and, for these purposes, may authorize a Plan Manager or other responsible individual or firm to sign checks against such accounts pursuant to a Resolution duly adopted by the Trustees. The Trustees may also designate one or more persons to make corrections to depository accounts and to authorize transfers to and from the accounts of the Trust Fund. For purposes of effecting disbursement of benefit payments, the Trustees may authorize the use of a facsimile signature plate with one or more signatures appearing thereon and may authorize the use of a signature other than one of a Trustee.

SECTION 10 - BONDING

The Trustees shall provide and procure, at the expense of the Trust Fund, surety bonds, in the amount and form required by law, for each Trustee and for all other persons employed by them whom they authorize to handle monies of the Trust Fund for any purpose whatsoever.

SECTION 11 - INVESTMENT POWERS

The Trustees shall have the power to invest and reinvest the assets of the Trust Fund in such securities as the Trustees determine to be

investments which would be made by a reasonably prudent person, which investments may include bonds, notes and securities of private corporations, the United States or other governmental entities; contracts with any insurance company authorized to do business in Michigan; deposits or pooled investment funds of any bank or other savings institution which is insured by or through the Federal Deposit Insurance Corporation or a comparable agency of the United States government; real estate, real estate mortgage loans and construction loans. The Trustees shall diversify the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. The Trustees may, pursuant to Section 402 (c)(3) of the Employee Retirement Income Security Act of 1974, appoint an investment manager or managers to manage, acquire, and dispose of assets of the Fund, in which event, pursuant to Section 405 (d)(1) of the Employee Retirement Income Security Act of 1974, no Trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the Fund which is subject to the management of such investment manager or managers. Property and securities of the Fund, whether held pursuant to management of the assets by the Trustees themselves or an investment manager, may be kept in the name of the Trustees or in the name of a nominee or nominees or in unregistered or bearer form as the circumstances require or warrant. The Trustees, however, shall not be under a duty to invest and shall not be chargeable with interest for their failure to so invest.

SECTION 12 - INSURANCE POLICIES

The Trustees may procure from an insurance company or companies authorized to do business in the State of Michigan a group insurance policy or policies or contracts to provide some or all of the benefits set out in the Pension Plan to Participants and/or Beneficiaries. In respect to any such contract or policy of insurance, the Trustees may exercise all rights and privileges granted to the policyholder by the contract or policy and may agree with the insurance carrier to any alteration, modification or amendment of any contract or policy and may take any action respecting each contract or policy and the insurance provided thereunder, including termination, which they, in their sole discretion, deem necessary or advisable. No insurance carrier shall be required to inquire into the authority of the Trustees with regard to any dealings in connection with any contract or policy. No insurance company or carrier shall be deemed a party to the Trust Fund or be responsible for any omission or act of the Trustees as a result of any such contract or policy; its sole responsibility shall be that which is set forth in the contract or policy of insurance.

SECTION 13 - PAYROLL AUDITS

The Trustees may employ an auditor or auditors, either directly or by agreement with a firm or individual providing such services, to examine payroll and related records of the Employers. The Trustees or their designated representative may examine the pertinent records of any Employer at the Employer's place of business whenever such estimation is deemed necessary or advisable by the Trustees in connection with the proper administration of the Fund. The Trustees shall take such action as they deem necessary or advisable to collect Employer contributions, without prejudice, however, to the rights of the Union to take those steps it deems

necessary for such purpose, including litigation in behalf of the Fund, at the Fund's reasonable expense, to enforce such contributions.

SECTION 14 - LEGAL EXPENSES

The costs and expenses, including legal fees, in any action, suit or proceeding relating to the Trust Fund, which is brought by or against the Trustees or against any of them or any agent, employee or representative of the Trustees, shall be paid as a general expense of administration; provided, however, that such costs or expenses shall not be paid from the Trust Fund if it is adjudged in the action, suit or proceeding that the Trustees were guilty of gross negligence or willful misconduct.

SECTION 15 - SETTLEMENT OF CLAIMS

The Trustees may in their sole discretion compromise or settle any claim or controversy in such manner as they think best, and any decision made by the Trustees in compromise or settlement of a claim or controversy or any compromise entered into by the Trustees shall be conclusive and binding on all parties interested in this Trust Fund, as set out in Section 19 below.

SECTION 16 - RELIANCE ON PROFESSIONAL ADVICE

The Trustees shall have the right to rely and act upon and in accordance with the opinion and advice of any actuary, certified public accountant, legal counsel or other agent or consultant selected by the Trustees with reasonable care, and shall suffer no liability in the event such opinion and advice should thereafter be determined to be unsound or incorrect.

SECTION 17 - RELIANCE ON GENUINENESS

The Trustees shall have the right to assume that any paper, record, instrument, certificate or other document submitted to them is genuine and to have been made, executed and delivered by the person, governmental agency, firm or corporation purporting to have made, executed and delivered the document and shall be under no duty to make any investigation or inquiry as to any document reasonably believed by them to be genuine. The Trustees shall be fully protected in accepting as true and accurate any statements or data contained in any such document.

SECTION 18 - EXECUTION OF INSTRUMENTS

The Trustees may authorize by resolution one or more of the Trustees to execute any instrument in writing on behalf of the Trust Fund and all interested persons, governmental agencies, firms or corporations may rely thereupon that the instrument has been duly authorized.

SECTION 19 - POWER TO CONSTRUE

The Trustees shall have the power to construe the provisions of this Trust Agreement and any Pension Plan developed and published hereunder and any construction adopted by them in good faith shall be conclusive and binding upon all parties interested in this Trust Fund, including, but not

limited to, Participants, Beneficiaries, persons claiming rights as Participants or Beneficiaries, the Union, the Employers, the Association, any Employee of any Employer and any person claiming rights through or on behalf of any of the foregoing.

SECTION 20 - REQUIREMENT OF PRUDENCE

The Trustees shall discharge their duties with the care, skill and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In the exercise of their discretionary authority, the Trustees may prudently act solely upon their own best judgment and upon the facts brought to their attention. Insofar as permitted by the Employee Retirement Income Security Act of 1974, no Trustee shall be liable to the Trust Fund or any of the parties interested in this Trust Fund as set out in Section 19 above for any decision or act in good faith taken, performed or omitted or for any decision or act taken, performed or omitted by any employee or agent of the Trust Fund, by any employee or agent of any firm or person with whom the Trustees have contracted for services, by any co-Trustee, or by any actuary, certified public accountant, attorney, or other professional consultant, without reasonable care, unless the Trustee knowingly approved or ratified the specific decision or act taken, performed or omitted.

SECTION 21 - LIABILITY INSURANCE

The Trustees may acquire insurance coverage at Fund expense protecting themselves and the Fund against liability or losses occurring by reason of the decisions, acts or omissions of themselves, or their agents or representatives, if such insurance permits recourse against a fiduciary in the case of a breach of fiduciary obligation by such fiduciary. The Trustees or the parties which designated each of them may purchase insurance to cover the Trustees for potential personal liability under the recourse provision for such breach, but in no event shall the cost of such recourse insurance protection be paid by the Trust Fund.

SECTION 22 - EDUCATION OF TRUSTEES

The Trustees may sponsor participation of themselves, their employees and advisors in educational conferences, seminars or programs dealing with one or more aspects of the operation and administration of employee pension benefit plans and may, in that regard, incur, advance or reimburse reasonable expenses for registration, travel, lodging, food or other expenses.

SECTION 23 - TAXES

The Trustees shall pay out of the Trust Fund any real and personal property taxes, income taxes or other taxes of any and all kinds, properly and appropriately levied or assessed, under existing or future laws, upon or in respect to the Trust Fund or any money, property, securities or other assets forming a part thereof.

SECTION 24 - DELEGATION OF RESPONSIBILITIES

To the extent permitted by the Employee Retirement Income Security Act of 1974, the Trustees may delegate other persons, including subcommittees of the Trustees, to carry out fiduciary responsibilities hereunder. In such event, the Trustees, other than any Trustee to whom a fiduciary responsibility is allocated, shall not be liable for any loss resulting to the Fund arising from acts or omissions of the Trustee, Trustees, person or person to whom the responsibility has been allocated.

SECTION 25 - RECIPROCITY AGREEMENT

The Trustees may enter into agreements with Trustees of other pension funds for the exchange of credit and/or contributions to assure, insofar as possible, the protection of Employees who may periodically work in other areas and the protection of Employees from other areas who may periodically work within the area covered by this Fund.

ARTICLE V - TITLE AND RIGHTS TO FUND

SECTION 1 - TITLE TO ASSETS

Title to the Trust Fund and its assets shall be vested in and remain exclusively in the Trustees and exclusively for the purposes of the Trust Fund. No Employer, Union, Association, Employee or former Employee of any Employer, Participant, Beneficiary or any other person, governmental agency, firm or corporation shall have any right, title or interest in or to the Trust Fund except as specifically provided by the Pension Plan adopted by the Trustees and the rules, regulations and decisions of the Trustees implementing this Trust Agreement and the Pension Plan.

SECTION 2 - NON-ALIENATION PROVISIONS

Except as may be required to comply with a Qualified Domestic Relations Order as provided for under the Retirement Equity Act, no asset of the Trust Fund and no benefit payable or to become payable therefrom shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, lien or charge of any kind by the Association, the Union, any Employer, Employee or former Employee of any Employer, Participant, Beneficiary or any other person, governmental agency, firm or corporation and any attempt to cause any asset or benefit payable or to become payable to be subject thereto shall be null and void. This provision shall not act to prohibit the Trustees from recapturing from benefits payable or to become payable amounts owed to the Fund by the Participant to whom or to whose Beneficiary the benefit is or will become payable.

ARTICLE VI - MISCELLANEOUS PROVISIONS

SECTION 1 - LIMITATION OF LIABILITY

Nothing in this Agreement and Declaration of Trust shall be construed as making the Union or the Association liable for any debts, liabilities or obligations of the Trust Fund. Each Employer shall be liable for the contributions to which it (or its predecessor Employer or its alter ego) is obliged to pay to the Fund pursuant to a Pension Agreement, but shall not be liable for contributions required to be made by any other wholly separate and distinct Employer.

SECTION 2 - NO LIABILITY FOR BENEFITS

No Employer shall be liable for the failure of the Trustees to secure the benefits contemplated herein or in the Pension Plan for any Participant or Beneficiary or for any default or neglect of the Trustees. The obligation of an Employer shall be limited solely to the payment of contributions required to be made by it under the provisions of a Pension Agreement and/or for any liability which might be imposed upon them by exercise of the provisions of ERISA and/or the Multi-Employer Pension Plan Amendments Act of 1980.

SECTION 3 - VALIDITY OF INSTRUMENTS

No person, governmental agency, firm or corporation dealing with the Trustees shall be obligated to see to the application of any money, property or other asset of the Fund or to see that the terms of this Trust Agreement have been complied with or be obliged to inquire into the necessity or expediency of any decision or act of the Trustees. In respect to every instrument executed by the Trustees, every person, governmental agency, firm or corporation relying thereon shall be entitled exclusively to assume that (a) at the time of delivery of the instrument this Trust Agreement was in full force and effect, (b) the instrument was executed in accordance with the terms and conditions of this Trust Agreement, and (c) the Trustees were duly authorized and empowered to execute such instrument.

SECTION 4 - NOTICES

Notice given to a Trustee, Union, Association, Employer, Employee or former Employee of an Employer, Participant, Beneficiary or any other person, shall, unless otherwise specified herein or in any Pension Plan adopted by the Trustees, be sufficient if in writing and delivered or sent by postpaid first-class mail or prepaid telegram to the last address of that person or organization as shown on the records of the Fund.

ARTICLE VII - CONSTRUCTION, AMENDMENT, AND TERMINATION OF TRUST

SECTION 1 - CONTROLLING LAW

The validity of this Agreement and Declaration of Trust or any of its provisions shall be determined under and construed according to the laws of the State of Michigan and any applicable or paramount Federal statutes.

SECTION 2 - SEPARABILITY

In the event any provision of this Agreement and Declaration of Trust shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Agreement, but it shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein provided the basic purposes hereof can be effectuated through the remaining valid provisions.

SECTION 3 - TITLES

Titles of Articles and Sections are for general information only and this Agreement is not to be construed by reference thereto.

SECTION 4 - COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall have the force of an original and said counterparts shall constitute but one and the same instrument.

SECTION 5 - METHOD OF AMENDMENT

This Agreement and Declaration of Trust may be amended in any respect from time to time by written agreement between the Union and the Association, except that no amendment shall divert the Trust Fund as constituted immediately prior thereto or any part thereof to a purpose other than as set forth herein, nor shall there be any amendments which will eliminate the requirement of an annual audit, provide for the Fund to be held in trust other than by an equal number of Union Trustees and Employer Trustees, or be inconsistent with the provisions of applicable Collective Bargaining Agreements.

In order for a Local Union of the Bricklayers and Allied Craftsmen International Union, A.F.L. - C.I.O. to become a Participating Local hereunder, it shall be sufficient to amend this Agreement and Declaration of Trust to permit such participation by the Local Union involved executing a statement accepting this Agreement and Declaration of Trust and agreeing to be bound by its terms and provisions, provided the Association and the Participating Locals at the time also evidence their approval, in writing, of extension of participation to such Local.

SECTION 6 - WHEN TERMINATION OCCURS

This Agreement and Declaration of Trust shall remain in full force and effect unless and until:

- (a) Effective action is taken by the Union and the Association which results in its termination,
- (b) No funds be left for administration in the Trust, or
- (c) No individuals remain alive who can qualify for benefits hereunder.

SECTION 7 - PROCEDURES UPON TERMINATION

In the event of termination, the Trustees shall:

- (a) make provision from the Trust Fund for the payment of expenses to date of termination and the expenses incident to such termination,
- (b) arrange for a final audit and report of their transactions and accounts for the purpose of termination of their Trusteeship, and
- (c) apply the Trust Fund to pay any and all obligations of the Trust and Pension Plan to the extent possible and distribute and apply any remaining surplus in such manner as will, in their opinion, best effectuate the purposes of the Trust.

IN WITNESS WHEREOF, the Participating Locals and the Association have executed this Agreement and Declaration of Trust on this 15th day of May, 1989, to be effective as of May 1, 1989.

MICHIGAN CHAPTER OF THE
ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.

By Rout Canjan
Its Secretary - Manager

LOCAL NO. 7 (MICHIGAN) OF
THE BRICKLAYERS AND ALLIED
CRAFTSMEN INTERNATIONAL UNION,
A.F.L. - C.I.O.

By Clester Latty
Its Business Manager

LOCAL NO. 31 (MICHIGAN) OF
THE BRICKLAYERS AND ALLIED
CRAFTSMEN INTERNATIONAL UNION,
A.F.L. - C.I.O.

By Doug Hollenbock
Its Business Manager



Pension Benefit Guaranty Corporation

2020 K Street, N.W., Washington, D.C. 20006-1806

Office of the Executive Director

SEP 18 1989

Mr. Martin J. Gallagher
Martin J. Gallagher & Company
P.O. Box 5265
Orchard Lake, Michigan 48033

Dear Mr. Gallagher:

This is in response to your request for a determination by the Pension Benefit Guaranty Corporation ("PBGC") that the merger of the Construction Masons' Local No. 31 Lansing, Michigan Pension Fund ("Construction Masons' Fund") and the Saginaw Valley Bricklayers' Pension Fund ("Bricklayers' Fund") complies with the requirements of section 4231(b) of the Employee Retirement Income Security Act, as amended ("ERISA"), and 29 CFR Part 2672 (the PBGC's regulation on mergers and transfers involving multiemployer plans). Our case number for this request is 116076.

Under section 4231 of ERISA and 29 CFR Part 2672, a merger of multiemployer plans must comply with the following four requirements:

- (1) Section 4231(b)(1) of ERISA and 29 CFR §2672.7, dealing with advance notice to the PBGC;
- (2) Section 4231(b)(2) of ERISA and 29 CFR §2672.3, dealing with preservation of accrued benefits;
- (3) Section 4231(b)(3) of ERISA and 29 CFR §2672.5, dealing with plan solvency; and
- (4) Section 4231(b)(4) of ERISA and 29 CFR §2672.4, dealing with actuarial valuations.

By letter dated August 17, 1989, which was received by the PBGC on August 18, 1989, you notified the PBGC of the merger, which is to be effective January 1, 1990. Your correspondence contained the following material:

- o A copy of the provision preserving the accrued benefits of participants.

o A-certification by an enrolled actuary that the merger satisfies the plan solvency requirement of 29 CFR 2672.5(b)(1).

o The Actuarial Valuation of the Construction Masons' Fund as of May 1, 1988, and the Actuarial Valuation of the Bricklayers' Fund as of May 1, 1988.

On the basis of the material submitted, the PBGC has determined that the merger satisfies the requirements of section 4231 of ERISA and 29 CFR Part 2672. Therefore, under section 4231(c) of ERISA, the merger is deemed not to constitute a violation of section 406(a) and (b)(2) of ERISA.

If you have any questions on this matter, you may contact Vincent Cicconi of the PBGC at (202) 778-8851.

Sincerely,


James B. Lockhart III
Executive Director