

AGREEMENT

AND

DECLARATION OF TRUST OF THE

OPERATING ENGINEERS

VACATION-HOLIDAY

SAVINGS TRUST

Reprinted December, 1981

AGREEMENT AND DECLARATION OF TRUST OF THE OPERATING ENGINEERS VACATION-HOLIDAY SAVINGS TRUST

THIS AGREEMENT, made and entered into in the State of California this 17th day of August, 1979, by and between ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.; BUILDING INDUSTRY ASSOCIATION OF CALIFORNIA, INC.; ENGINEERING CONTRACTORS' ASSOCIATION, INC.; ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC.; SAN DIEGO BUILDING CONTRACTORS ASSOCIATION; ENGINEERING AND GENERAL CONTRACTORS ASSOCIATION; (hereinafter called "Employers"), and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 12, affiliated with the Building and Construction Trades Department of the AFL-CIO (hereinafter called "Union").

That certain Agreement and Declaration of Trust Establishing the Operating Engineers Vacation-Holiday Savings Trust, as amended (hereinafter called "Agreement"), made and entered into on July 10, 1963, by the Employers and the Union is hereby amended as follows:

THIS AGREEMENT made and entered into in the County of Los Angeles, State of California, this 10th day of July, 1963, by and between ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SOUTHERN CALIFORNIA CHAPTER; BUILDING CONTRACTORS ASSOCIATION OF CALIFORNIA, INC.; ENGINEERING AND GRADING CONTRACTORS ASSOCIATION, INC.; HOME BUILDERS ASSOCIATION OF LOS ANGELES, ORANGE & VENTURA COUNTIES; ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER; SAN DIEGO BUILDING CONTRACTORS ASSOCIATION; ENGINEERING AND GRADING CONTRACTORS ASSOCIATION, INC.; SAN DIEGO CHAPTER; (hereinafter called "Employers"), and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 12 (hereinafter called "Union"), recites and provides as follows:

RECITALS

1. WHEREAS, the Employers and the Union are parties to Collective Bargaining Agreements which provide that each contractor covered by such agreements will make contributions to a Vacation-Holiday Savings Fund with respect to each hour worked by each employee or paid for each employee covered by any of such agreements and employed by such Employer; and

2. WHEREAS, it is further provided that the details of such plan shall be negotiated by a Joint Committee on which the Employers and the Union shall be equally represented, with all expenses incurred, including the costs of professional assistance to be paid by the Fund; and

3. WHEREAS, pursuant to said provisions of said Collective Bargaining Agreements, the said Joint Committee was established upon which Employers and Union were

equally represented and said Joint Committee has negotiated the details of the Vacation-Holiday Savings Plan referred to in said agreement and the details of the Trust for which provision is made; and

4. WHEREAS, the Joint Committee has agreed to the establishment of this Trust to be known as the Operating Engineers Vacation-Holiday Savings Trust; and

5. WHEREAS, this Trust is being created, which shall at all times conform to the applicable requirements of the Labor-Management Relations Act of 1947, as amended, and the laws of the State of California; and

6. WHEREAS, the Joint Committee referred to has negotiated the following terms and provisions as the terms and provisions of the Trust Agreement governing the establishment and administration of the Operating Engineers Vacation-Holiday Savings Trust;

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND OF THE MUTUAL PROMISES HEREINAFTER PROVIDED, the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1. The term "Collective Bargaining Agreements" includes:

(a) Any Collective Bargaining Agreement between the Union and any Individual Employer or Employer Association which provides for the making of employer contributions to this Fund and concerning which agreement the Board of Trustees approves, or has approved the sufficiency of any provisions therein purporting to obligate employer contributions to this Fund.

(b) Any extensions, amendments, modifications or renewals of any of the said agreements, or any substitute or successor agreements to them which provide for the making of employer contributions to this Fund.

Section 2. The term "Individual Employer" or "Employer" means any individual employer (including any individual partnership, corporation, contractor, joint venture or other entity) who is required by any of the Collective Bargaining Agreements to make contributions to this Fund or who in fact makes one or more contributions to this Fund.

Section 3. The term "Union" means International Union of Operating Engineers, Local Union No. 12.

Section 4. The term "Signatory Association" means any employer association or organization, other than one of the Individual Employers, which signs any of the Collective Bargaining Agreements and this Trust Agreement, or a counterpart thereof, on behalf of its members or executes on behalf of such members any agreement to be bound by the terms of this Trust Agreement or a written acceptance or authorization of this Trust Agreement and any such Collective Bargaining Agreement; provided, however, with respect to any such writings, the Board of Trustees approves, or has approved, the sufficiency of any provisions therein purporting to obligate

contributions by members of such employer organization to this Fund and approves or has approved any provisions therein purporting to bind members of such employer organization to this Trust Agreement.

Section 5. The term "Trustee" means any natural person designated as Trustee pursuant to Article IV hereof.

Section 6. The terms "Board of Trustees" or "Board" mean the Board of Trustees established by this Trust Agreement.

Section 7. The terms "Vacation Savings Fund" or "Vacation Savings Plan" means the Vacation Savings Plan created and established by this Trust Agreement.

Section 8. The terms "Holiday Savings Plan" or "Holiday Savings Fund" mean the Holiday Savings Plan created and established by this Trust Agreement.

Section 9. The term "Trust Agreement" means this agreement and any modification, amendment, extension or renewal thereof.

Section 10. The term "Plan" means the Vacation Savings Plan and the Holiday Savings Plan referred to in Sections 7 and 8 of this Article.

Section 11. The terms "Contribution" or "Payment" mean the payment made or to be made to the Fund by any Individual Employer under the provisions of any of the Collective Bargaining Agreements.

Section 12. The term "Employee" means any employee of an Individual Employer who performs one or more hours of work covered by any of the Collective Bargaining Agreements.

Section 13. The parties to the Trust Agreement recognize as Trusters to this Agreement and Declaration of Trust, the following: Associated General Contractors of California, Inc., as successor to Associated General Contractors of America, Southern California Chapter; Building Industry Association of California, Inc. as successor to Building Contractors Association of California, Inc., and Home Builders Association of Los Angeles, Orange and Ventura Counties; Engineering Contractors' Association, Inc., as successor to Engineering and Grading Contractors Association, Inc.; Southern California Contractors Association, Inc.; Associated General Contractors of America, San Diego Chapter, Inc., as successor to Associated General Contractors of America, San Diego Chapter; San Diego Building Contractors Association; and Engineering and General Contractors Association, as successor to Engineering and Grading Contractors Association, Inc., San Diego Chapter. The parties to The Trust Agreement further recognize as Trustor to this Agreement and Declaration of Trust the International Union of Operating Engineers, Local Union No. 12.

ARTICLE II TRUST FUND

Section 1. There is hereby created the Operating Engineers Vacation-Holiday Savings Trust, herein called the "Trust" or "Fund", which shall consist of all Contributions required by the Collective Bargaining Agreements to be made for the establishment and maintenance of the Plan, and all interest, income and other returns thereon of any kind whatsoever, and any other property received or held by reason of or pursuant to this Trust.

Section 2. The Fund shall have its principal office in the County of Los Angeles, State of California.

Section 3. No Employee shall be entitled to receive any part of the Contributions made or required to be made to the Fund in lieu of the benefits provided by the Plan.

Section 4. The foregoing shall not preclude the Board of Trustees from segregating a portion of the Contributions received by the Fund on behalf of a particular Employee and paying the segregated amount to the Union as Supplemental Dues owed to the Union by the Employee, and any such payment made by the Trustees as provided in this Trust Agreement shall be regarded as for the exclusive benefit of the Employee.

Section 5. Neither the Employers, any Signatory Association, any Individual Employer, the Union, any Employee, under the Plan, nor any other person shall have any right, title or interest in or to the Fund other than as specifically provided in this Trust Agreement or in the Plan. Neither the Fund nor any contributions to the Fund shall be in any manner liable for or subject to the debts, contracts or liabilities of any of the Employers, any Signatory Association, any Individual Employer, the Union, any Employee, or other beneficiary.

Section 6. Each Employee, or other beneficiary under the Plan is hereby restrained from selling, transferring, anticipating, assigning, hypothecating or otherwise disposing of any right or interest under the Plan, and the Board of Trustees shall not recognize, nor be required to recognize any such sale, transfer, anticipation, assignment, hypothecation or other disposition. Any such right or interest shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permissible by law.

Section 7. Neither the Employers nor any Signatory Association, nor officer, agent, employee or committee member of the Employers or any Signatory Association, shall be liable to make Contributions to the Fund or be under any other liability to the Fund or with respect to the Plan, except to the extent that he or it may be an Individual Employer required to make contributions to the Fund with respect to his or its own individual or joint venture operations, or to the extent he or it may incur liability as a Trustee as hereinafter provided. Except as provided in Article III hereof, the Liability of any Individual Employer to the Fund, or with respect to the Plan, shall be limited to the payments required by the Collective Bargaining Agreements with respect to his or its individual or joint venture operations, and in no event shall he or it be liable or responsible for any portion of the Contributions due from other Individual Employers with respect to the operations of such Individual Employers. The Individual Employers shall not be required to make any further payments or Contributions to the cost of operations of the Fund or Plan, except as may be hereinafter provided in the Collective Bargaining Agreements.

Section 8. Neither the Employers, any Signatory Association, any Individual Employer, the Union, nor any Employee shall be liable or responsible for any debts, liabilities or obligations of the Fund or the Trustees.

ARTICLE III CONTRIBUTIONS

Section 1. Contributions shall be paid into the Trust in such a manner and with such reports as the Board of Trustees may prescribe in the amounts obligated by the Collective Bargaining Agreements.

Section 2. Contributions shall be paid at the principal office of the Trust in the County of Los Angeles, State of California, in regular and continuing monthly payments subject to the provisions of the Collective Bargaining Agreements. Each monthly payment shall be payable on or before the tenth day of the month following the month in which work was performed and shall include all contributions since the last such payment which have accrued for work performed up to the close of the Individual Employer's payroll period ending nearest to the last day of the preceding calendar month.

Section 3. The failure of an Individual Employer's obligation to make payment of his required contributions required by the Trustees shall constitute a violation of such Individual Employer's obligation to make payment of his required contribution as herein provided and shall not relieve any other Individual Employer of his obligation to make payment of his required contribution. The Trustees may take any lawful action necessary to enforce payment of the contributions due hereunder, including the right to sue such Individual Employer in a court of competent jurisdiction; and the delinquent Employer shall be liable to the Trust for all expenses of Collection thereof, including reasonable attorney's fees incurred by the Trustees.

Section 4. (a) If an Individual Employer establishes a record of delinquency, the Trustees, may in their own discretion, require of such Individual Employer a good faith deposit or a performance bond with sufficient surety in an amount not more than the maximum amount of delinquent monies owed by said Individual Employer and outstanding at any given date. For the purposes of this section, a record of delinquency shall be failure to pay contributions timely for any three (3) or more months within any twelve (12) consecutive months.

(b) The Trustees may, in their exclusive discretion, require a good faith deposit or a performance bond with sufficient surety from any Individual Employer where the Trustees find that such Individual Employer is composed of one or more persons, firms or corporations who were, or are, principals or stockholders in any other Individual Employer which owes an indebtedness to the Trust on account of unpaid contributions or liquidated damages, or which at any time had a record of delinquency within the meaning of Section 4 (a) of this Article. The amount of such good faith deposit or bond shall be not more than the maximum amount of delinquent contributions owed by said other Individual Employer.

(c) Notwithstanding any contrary provision of Section 2 of this Article III, the Trustees may, in their exclusive discretion, require an Individual Employer with a record of delinquency to report and pay contributions to the Trust at weekly intervals, or to make weekly deposits with the Trust based upon estimates of hours worked during such week. Such weekly reports and payments or deposits shall be due and payable at the principal office of the Trust in Los Angeles, California, not later than the

second business day of the week following the week in which work was performed.

Section 5. Nothing contained herein shall be deemed to authorize or prevent economic action by the Union against any Individual Employer who is delinquent in his contributions to the Trust. All rights of the Union to refuse to furnish men to any delinquent Individual Employer, or to withdraw employees from the job of any delinquent Individual Employer, or to strike or take other economic action against a delinquent Individual Employer, shall be determined by the provisions of the Collective Bargaining Agreements and by applicable rules of law, and shall not be deemed affected in any way by this Agreement.

Section 6. Upon request in writing from the Board of Trustees, any Individual Employer shall permit a person or persons selected by the Board to enter upon the premises of such Individual Employer during business hours, at a reasonable time or times, and to examine and copy such books, records, papers, or report of such Individual Employer as may be necessary to determine whether the Individual Employer is making full and prompt payment of all sums required to be paid by him or it to the Trust, in addition to such delinquent sums, the full amount of auditing costs incurred by the Trust in connection with such delinquency.

Section 7. The Board of Trustees shall establish and maintain records of the Payments received with respect to the work performed by each Employee and shall credit such Payments to a Vacation Savings and Holiday Savings account for the Employee. The account of each Employee shall be reflected in the records of the Fund but notwithstanding such records, the Board of Trustees shall have the right and authority to commingle such Payments with any or all other Payments received with respect to the work performed by other Employees and any or all other Payments to the Fund, to deposit all or any part of such commingled Payments in one or more bank accounts, to invest and reinvest all or any portion of such Payments as provided in Section 5 (f) of Article V of this Trust Agreement, and to pay and distribute or cause the payment and distribution of such Payments above referred to, in accordance with the provisions of this Trust Agreement. The Board may charge against such Payments the cost of administering the Fund and Vacation and Holiday Savings Plans. However, the Board shall utilize any liquidated damages, interest or other return on the Payments to replenish such Payments to the full amount reflected in each Employee account.

Section 8. Payments to the Fund shall be deemed to be, and shall be, a part of the wages due to the Employees with respect to whose work such Payments are made. The Payments shall be treated and reported as a part of the compensation earned at the time the work to which the Payments pertain is performed, subject to the terms of this Agreement, and shall be deemed to be, and shall be treated as, subject to withholding tax and Social Security and Unemployment taxes, a part of the total compensation payable at the end of the Individual Employer's payroll period during which such work is performed or paid for, but the full per hour Payment shall be transmitted to the Fund. Such Payments shall not be a part of the hourly wage rates for the purpose of computing overtime or part of the "regular rate" or "basic hourly rate" for the

purpose of the Federal Fair Labor Standards Act or the Walsh-Healy Act, or any other "regular rate" or "basic hourly rate" law, ordinance or regulation, except that if, consistent with the foregoing, such Payments can be considered and treated as part of the wages prevailing in the area for the purpose of the Davis-Bacon Act or any other Federal, state or local law, ordinances or regulations relating to prevailing wages, that shall be so considered and treated.

ARTICLE IV BOARD OF TRUSTEES

Section 1. (a) The Fund shall be administered by a Board of Trustees which shall consist of twelve (12) Trustees. Six (6) Trustees shall be appointed by the Union (known as Union Trustees) and Six (6) Trustees shall be appointed by the Employers (known as Employer Trustees).

(b) The six (6) Trustees designated currently by the Union are:

J.H. Seymour
J.J. Regan
William Begley
Wm. A. Cobb, Jr.
Archie Liston
Wesley Olson

(c) The six (6) Trustees designated currently by the Employers are:

Richard W. Spicer
E.J. Strecker
R.A. Alsweet
Leo Majich
Howard C. Dennis
D.W. Asher

(d) After July 15, 1969, in the event that any signatory employer association party to this Trust Agreement merges or amalgamates with another signatory employer association party to this Trust Agreement and one entity remains, the number of employer trustees serving on this Trust shall be reduced by one Trustee and the number of Union Trustees serving on this Trust shall be reduced by one Trustee.

In no event shall the number of trustees be reduced below six trustees, three of whom shall be designated "Employer Trustees" and three of whom shall be designated "Union Trustees."*

Section 2. (a) The Employer Trustees shall be appointed in writing by the respective Employers, which Employers are irrevocably designated by each Individual Employer as his or its attorney-in-fact for the purpose of appointing and removing Trustees and successor Trustees.

(b) The Employer Trustees and their successors, if any, shall be appointed by the respective Signatory Associations, as follows:

- (1) Five Trustees shall be appointed by Associated General Contractors of California, Inc., Building Industry Association of California, Inc., Engineering Contractors' Association, Inc., and Southern California Contractors Association, Inc., acting jointly.
- (2) One Trustee shall be appointed by Associated General Contractors of America, San Diego Chapter, Inc., San

Diego Building Contractors Association, and Engineering and General Contractors Association, acting jointly.

Section 3. The Union Trustees shall be appointed in writing by the Union.

Section 4. Except as provided in Section 7 (b) of this Article, the procedures through which the Union Trustees and Employer Trustees are to be appointed, removed or replaced by the Union and by the Employers are to be determined exclusively by such Union and by such Employers respectively.

Section 5. The Trustees so appointed shall sign this Trust Agreement, or a counterpart thereof, and such signature shall constitute their acceptance of office and their agreement to act under and be subject to all of the terms and conditions of this Trust Agreement.

Section 6. Each original Trustee and each successor Trustee shall serve until his death, incapacity, resignation or removal, as herein provided. Any retiring Trustee shall forthwith turn over to the remaining Trustees any and all records, books, documents, monies and other property in his possession owned by the Trust or incident to the administration of the Trust.

Section 7. (a) Any Employer Trustee may be removed at will, with or without cause, by the Employer Association which appointed him, by an instrument in writing signed by that Employer Association and served on the Trustee, the Chairman of the Board of Trustees and the Union. Any Union Trustee may be removed at will, with or without cause, by the Union by an instrument in writing signed by the Union and served on the Trustee, the Chairman of the Board of Trustees and the Employer Associations.*

(b) If a Trustee shall be absent either from two (2) consecutive scheduled or called meetings of the Board of Trustees or from two (2) consecutive scheduled or called meetings of any Committee of this Board of which he is a regular member without it appearing to the Board that there was just cause for such absences, the Board of Trustees may give written notice of that Trustee's failure to attend such meetings to the party or parties which appointed such Trustee. If thereafter within the period of twelve calendar months following the time of the first of such absences the Trustee concerning whom such notice was given, as aforesaid, shall again be absent either from two (2) consecutive scheduled or called meetings of the Board of Trustees, or from two (2) consecutive scheduled or called meetings of any Committee of this Board of which that Trustee is a regular member, without it appearing to the Board that there was just cause for such absences, the Board of Trustees shall have the right, but shall not be required, to request the removal of such Trustee. In such event, upon written notice of the facts by the Board to the party or parties which appointed such Trustee, the party or parties which so appointed him shall remove him from office and shall appoint a successor Trustee forthwith.

(c) Removal of a Trustee shall be made in writing in the same manner as an appointment of a Trustee.

Section 8. A Trustee may resign and become and remain fully discharged from further duty or responsibility hereunder upon giving thirty (30) days written notice to the Board of Trustees and to the party which shall have

*Ratified Oct. 6, 1970

*Ratified Oct. 6, 1970

appointed or selected such Trustee.

Section 9. Whenever a vacancy shall occur in the Board of Trustees, whether by death, removal, resignation or otherwise, the party possessing the original power to appoint a Trustee to that position shall forthwith designate a successor Trustee. Appointment of a successor Trustee shall be evidenced in the same manner as appointment of original Trustees; and the successor Trustee shall execute a written acceptance of office of Trustee in the same manner as the original Trustees. Any successor Trustee appointed by and in accordance with the foregoing provisions shall, upon his acceptance of such Trusteeship, in writing and filed with the Trustees, become vested with all rights, powers and duties of a Trustee hereunder with like effect as if originally named as a Trustee in this instrument.

Section 10. The powers of the remaining Trustees to act as herein provided shall not be impaired or limited in any way pending the designation of a successor Trustee to fill any vacancy.

Section 11. The following procedure shall govern in the event any one or more of the Employer Associations who had a right to designate a Trustee shall any time fail to ratify and sign a Collective Bargaining Agreement between it and International Union of Operating Engineers, Local No. 12, upon completion of negotiations by the respective joint Contractor Negotiating Committees. These provisions shall supersede any contrary provisions contained elsewhere in this Agreement; provided, however, nothing in this section will permit an Association to withdraw from this Trust Agreement during the term of a Collective Bargaining Agreement which requires any contribution to this fund;*

(a) The term of office of any Trustee who is an appointee of such Employer shall immediately terminate and the office of such Trustee on the Board of Trustees shall be deemed vacant; subject, however, to the right of the Board of Trustees to extend such date of termination and vacancy.

(b) A successor to any office so terminated shall be named by the remaining Employers who shall thereupon be vested with the sole and exclusive powers of appointment and removal of such Trustees, and with all other powers previously vested in all of the original Employers.

(c) Except as otherwise provided in this section, the appointment of successor Trustees shall be in accordance with the provisions of this Article.

Section 12. The officers of the Board of Trustees shall be a Chairman and a Secretary-Treasurer who shall be elected annually by the Trustees from among themselves. One officer shall be an Employer Trustee and the other officer shall be a Union Trustee. The officer shall serve for a period of one year, except that the term of the first officers shall expire on the 31st day of December 1963. Nothing herein shall prohibit any officer or his alternate from being re-elected or succeeding himself.

Section 13. The Chairman shall be responsible for the conduct of meetings of the Board of Trustees. The Secretary-Treasurer shall be responsible for the keeping of minutes or records of all meetings, proceedings and acts of the Trustees; and shall make the same available to all Trustees. Such minutes need not be verbatim. The

Chairman and Secretary-Treasurer shall jointly execute written instruments authorized by the Trustees, and shall jointly sign checks drawn on the Fund. However, the Board of Trustees may designate an alternate for the Chairman and an alternate for the Secretary-Treasurer, which alternate shall be chosen from the same Trustee Group as the officer for whom he serves as alternate. In the event of the absence or disability of such officer, instruments and checks may be signed by his alternate.

ARTICLE V FUNCTIONS AND POWERS OF THE BOARD OF TRUSTEES

Section 1. The Employers, the Individual Employers and the Union irrevocably grant Power of Attorney to the Trustees now in office or subsequently appointed in accordance with the provisions of this trust, to administer said Fund as the representatives of such parties and with full authority to act for the Employers, the Individual Employers and the Union as their representatives in the administration of said Fund.

Section 2. (a) The Board of Trustees shall have the power to interpret this Trust Agreement and administer the Fund and to administer and maintain the Plan in effect, having and performing all powers and duties reasonably necessary to maintain and operate the Plan in such a way as to accomplish its objectives. The detailed basis on which benefits are to be paid shall be as set forth in the Vacation Savings and Holiday Savings rules as hereinafter set forth. The Board of Trustees may at any time, and from time to time, amend or modify such Plan.

(b) All monies received by the Trustees hereunder shall be deposited in a trust account in such bank or banks or trust company or savings and loan association as the Trustees may designate for that purpose.

(c) Consistent with the other provisions of this Trust Agreement, the Board of Trustees shall be governed by and all decisions made shall meet all of the following criteria:

- a. Is there a need?
- b. Can the Trust fund afford it?
- c. Will there be a benefit?
- d. Is it legal?*

Section 3. All Contributions to the Fund shall be due and payable in the County of Los Angeles, California. The acceptance and cashing of any checks for such Contributions, and the disposition of the monies covered thereby in accordance with this Trust Agreement, shall not release or discharge the Individual Employer from his or its obligation under the Collective Bargaining Agreements for hours worked under said Agreements for which no Contribution has actually been received, notwithstanding any statement, restriction or qualification appearing on the check or any attachment thereto.

Section 4. The Trustees shall have the power in their own names or otherwise, as in their discretion may be deemed necessary or desirable, to demand and enforce the prompt payment of contributions to the Fund, including payments due to delinquencies as provided in Article III, and to assert and enforce all priorities, lien rights, and

*Ratified Oct. 6, 1970

*Ratified Oct. 6, 1970

other claims or rights with respect to any Contributions or payments belonging to the Fund, this Trust or any of its beneficiaries, including the rights to file priority and other claims in bankruptcy or other proceedings. If any Individual Employer defaults in the making of such Contributions or payments and if the Board consults or causes to be consulted legal counsel with respect thereto, or files or causes to be filed any suit or claim with respect thereto, there will be added to the obligation of the Individual Employer who is in default, reasonable attorneys' fees, court costs and all other reasonable expenses incurred in connection with such suit or claim, including any and all appellate proceedings therein.

Section 5. Without limitation of the provisions of Section 2 of this Article, the Board of Trustees shall have power:

(a) To pay or cause to be paid out of the Fund the reasonable expenses incurred in the establishment of the Fund and the Plan.

(b) To establish and accumulate such reserve funds as may be adequate in the discretion of the Board to provide for administration expenses and other obligations of the Fund, including the maintenance in effect of the Plan.

(c) To employ, engage or contract with such executive, consultant, actuarial, accounting, investment, administrative, clerical, secretarial and legal personnel and other employees or assistants, whether individual or corporate, as may be necessary in connection with the administration of the Fund and the Plan and to pay or cause to be paid, out of the Fund, the Compensation and necessary expenses of such personnel and assistants and the cost of office space, furnishings and supplies and other essentials required in such administration.

(d) To incur and pay or cause to be paid out of the Fund any other expense reasonably incidental to the administration of the Fund or the Plan.

(e) To compromise, settle or release claims or demands in favor of or against the Fund on such terms and conditions as the Board may deem desirable; provided, however, that this clause shall not excuse any violation of any of the Collective Bargaining Agreements.

(f) To invest and reinvest or cause to be invested and reinvested, the assets of the Fund in such manner as in its judgment may seem beneficial and appropriate for the protection and preservation of the Fund, without being limited or bound by any rule or custom relating to investments by Trustees, except that no investment shall be made in the obligation or property of any individual Employer, any of the Employers or any Signatory Association, nor in any of their securities.

(g) To pay or cause to be paid all or any part of the benefits provided in the Plan, to the persons entitled thereto under the plan, and in accordance with the terms and provisions of the Plan.

(h) To purchase, sell, exchange, lease, convey or otherwise dispose of or to cause to be purchased, sold, exchanged, leased, conveyed or otherwise disposed of, any property of any kind forming a part of the Fund upon such terms, as it may deem proper and to execute and deliver or cause to be executed and delivered, any and all instruments of conveyance or transfer in connection therewith.

(i) To construe the provisions of this Trust Agreement

and the Plan and any such construction adopted by the Board in good faith shall be binding upon any and all parties or persons affected thereby.

(j) To pay or cause to be paid any and all real or personal property taxes, income taxes, or other taxes or assessments of any or all kinds levied or assessed upon or with respect to the Fund or the Plan.

(k) To prepare or cause to be prepared such periodic reports concerning the affairs of the Fund and the Plan, as the Board may deem advisable, and to furnish such reports to such persons as the Board may deem advisable.

(l) To maintain or cause to be maintained such bank account or bank accounts as may be necessary or advisable in the administration of the Fund or the Plan.

(m) To adopt and prescribe reasonable rules and procedures which shall not be inconsistent with the provisions of this Trust Agreement or of the Plan, governing the reporting of Contributions and the entitlement to benefits, the method of applying for benefits, and any and all other matters in connection with the Fund and the Plan.

(n) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or the Plan.

Section 6. The Board of Trustees shall procure bonds for each Trustee or other person authorized to receive, handle, deal with or draw upon the monies in the Fund for any purpose whatsoever, said bonds to be in such amount and to be obtained from such source as the law shall require. The cost of such bonds shall be paid out of the Fund.

Section 7. The Board of Trustees shall maintain suitable and adequate records of and for the administration of the Fund. The Board may require the Employers, and Signatory Association, any Individual Employer, the Union, or any Employee to submit to it any information, data, report or documents reasonably relevant to and suitable for the purposes of such administration; provided, however, that the Union shall not be required to submit lists of membership. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, report or documents.

Upon request in writing from the Board of Trustees, any individual employer shall permit a person or persons, selected by the Board to enter upon the premises of such individual employer during business hours, at a reasonable time or times, and to examine and copy such books, records, paper or reports of such individual employer as may be necessary to determine whether the individual employer is making full and prompt payment of all sums required to be paid by him or it to the Fund.*

Section 8. The books of account and records of the Board of Trustees, including the books of account and records pertaining to the Fund shall be audited at least once a year by a qualified certified public accountant to be selected by the Board. The Board shall also make all other reports required by law. A statement of the results of the annual audit shall be available for inspection by interested persons at the principal office of the Fund and at such other suitable places as the Board may designate from

*Ratified Oct. 6, 1970

time to time. Copies of such statement shall be delivered promptly to the Employers, the Union and each Trustee.

Section 9. Compatible with equitable principles and to the extent that sound accounting principles permit, the Board of Trustees may, subject to any applicable law or regulation, coordinate its activities in the administration of the Fund and the Plan with the administrative activities of the Boards of Trustees of other union-management fringe benefit plans.

Section 10. The Board of Trustees may take actions and adopt procedures solely in the interests and for the benefit of the Employees to pay amounts held on behalf of any Employee to the Union for crediting to the Supplemental Dues account of that Employee; provided, however, that no such payment by the Board of Trustees to the Union shall be made with respect to an Employee unless the Board of Trustees holds a written authorization signed by that Employee in effect on the date of such payment to the Union and on or before the date such amounts would otherwise be distributed to the Employee under the benefits provisions of this Trust Agreement; and, provided further, that the Board of Trustees shall set-off and withhold from the amounts payable to the Union such sums as are adequate to reimburse the Fund for any and all costs and expenses incurred in receiving, recording, computing, accounting for and otherwise handling such payments to the Union on behalf of any Employee, including the anticipated loss of interest on the amount of such payments from the date paid to the Union until the date such amounts would have been payable to the Employee at a rate to be established from time to time by the sole judgment of the Board of Trustees. The written authorization which may be honored by the Board of Trustees upon execution by an Employee may be in form and content substantially as follows:

Assignment and Authorization

I hereby assign to International Union of Operating Engineers, Local Union No. 12, from any Vacation-Holiday Savings contributions paid to the Operating Engineers Vacation-Holiday Savings Trust by my employer on my behalf, the sums that are due from me to said Union as my Supplemental Dues in said Union, I hereby authorize the Board of Trustees of said Trust to deduct such amounts from such contributions and to remit the same to Local Union No. 12 at such intervals as the Board of Trustees may establish.

This assignment, authorization and directive shall be irrevocable for the period of one (1) year, or until the termination of the collective bargaining agreement between my employer and Local Union No. 12, whichever occurs sooner, and shall be automatically renewed and irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable collective bargaining agreement between my employer and Local Union No. 12, whichever shall be shorter, unless written notice is given by me to the Board of Trustees and Local Union No. 12 not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period described above.

Dated: _____

Signature

Name (Print)

Social Security Number

ARTICLE VI

PROCEDURE OF BOARD OF TRUSTEES

Section 1. The Board of Trustees shall determine the time and place for regular periodic meetings of the Board. Either the Chairman or the Secretary-Treasurer, or any two (2) members of the Board, may call special meeting of the Board by giving written notice to all other Trustees of the time and place of such meeting at least five (5) days before the date set for the meeting; provided, however, the notice shall contain an agenda of the items to be discussed and the special meeting shall be confined to the discussion of such items. Any such notice of special meeting shall be sufficient if sent by ordinary mail or by wire addressed to the Trustee at his address as shown in the records of the Board. Any meeting at which all Trustees are present, or concerning which all Trustees have waived notice in writing, shall be a valid meeting without the giving of any notice.

Section 2. To constitute a quorum for the transaction of business not less than three (3) Employer Trustees and three (3) Union Trustees shall be present in person. The Board shall not take any action or make any decision on any matter coming before it or presented to it for consideration or exercise any power or right given or reserved to it or conferred upon it by this Trust Agreement except upon the majority vote, of the Trustees at a meeting of the Board duly and regularly called or excepted by the signed written concurrence of all twelve (12) Trustees without a meeting, as provided in Section 3 of this Article. However, Employer Trustees and Union Trustees shall have the right to cast an equal number of votes whether or not an equal number of Employer and Union Trustees are present. In the event the number of Employer Trustees and Union Trustees present at the meeting is not equal, each Trustee of the smaller group is vested with additional voting power in an amount sufficient to equalize the voting power of the two groups. For example, by way of illustration, if there are present at a meeting three Union Trustees and five Employer Trustees, there will be a total voting power of ten votes, five of which shall be vested in the Employer Trustees, one vote each; and five of which shall be vested in the Union Trustees, one and two-thirds vote each.

Section 3. Upon any matter which may properly come before the Board of Trustees, the Board may act in writing without a meeting, provided such action has the written concurrence of all the Trustees.

Section 4. Compensation of Trustees. Upon authorization by the Board of Trustees, a Trustee may be paid a fee from the Fund not exceeding one hundred dollars (\$100.00) per meeting of the Board of Trustees or of any Committee of the Board of Trustees of which he has been duly appointed a member as and for compensation for his services as Trustee and, in addition, may be reimbursed for expenses properly and actually incurred in the performance of his duties as Trustee; provided, however, that actual personal attendance at such meetings by such Trustee shall be required as a condition of payment of such compensation. Notwithstanding the foregoing, no Trustee who already receives full-time pay from an Employer or an Employer Association, or the Union, shall receive compensation as hereinabove described, except for reimbursement of expenses properly and actually incurred; provided, however, that this limitation shall not

apply until June 30, 1977, as to any Trustee who served in such capacity and received compensation therefor on or before June 30, 1974, and continues in such capacity.

Section 5. In the event the Trustees cannot act with respect to any question or resolution presented to them for decision, including proposed amendments to this Trust, because of a tie vote, either side may submit said dispute within 48 hours to the American Arbitration Association for a list of seven arbitrators, from which list each side shall immediately within 48 hours alternately strike three names. The remaining arbitrator shall be the impartial chairman. In the event the Trustees fail or refuse to refer said dispute to the American Arbitration Association as stipulated above, said dispute shall within 48 hours be automatically referred to the grievance procedures set forth in the Southern California Master Labor Agreement. Any decision of the Labor-Management Adjustment Board or Arbitrator shall be final and binding on the Trustees.

The cost and expenses incidental to arbitration before the American Arbitration Association shall be a proper charge against the Fund, and the Board of Trustees is authorized and directed to pay such charges; provided, however, that each party shall pay any expenses incurred by it in connection with the dispute.*

Section 6. No matter in connection with the interpretation or enforcement of any of the Collective Bargaining Agreements shall be subject to arbitration under this Article. No matter which is subject to arbitration under this Article shall be subject to the grievance procedure or any other arbitration procedure provided in any of the Collective Bargaining Agreements.*

Section 7. The Trustees may delegate fiduciary responsibilities and administrative duties to committees or subcommittees of the Board of Trustees, and may delegate such responsibilities and duties to other individuals as the Trustees may deem appropriate or necessary in their sole discretion and consistent with applicable law.

Section 8. (a) The standing committees of the Board of Trustees may consist of a Finance & Investment Committee, and such other standing committees as to the Trustees may create by resolution.

(b) Each committee shall consist of an equal number of Employer Trustees and Union Trustees. A quorum of any committee meeting shall be at least one Employer Trustee and at least one Union Trustee. Voting at committee meetings shall be in accordance with Article V, Section 12. Officers of the Board of Trustees who are Union Trustees shall designate the Union Trustee members of each committee, and officers of the Board of Trustees who are Employer Trustees shall designate Employer Trustee members of each committee. Any appointed member of a committee may be removed from membership in such committee by the officers of the Board of Trustees appointing him at any time without cause.

(c) The Finance & Investment Committee may review and formulate investment policies, receive and act upon investment advice and legal advice relating to investments, and make appropriate recommendations to the Board of Trustees on any matter relating to investments

and investment policies. The Board of Trustees may delegate to the Finance & Investment Committee the authority to authorize and approve the sale and investment of Trust Fund assets as permitted by this Trust Agreement, subject to pertinent investment policies and guidelines adopted by the Board of Trustees.

(d) The Benefits Committee may formulate rules and procedures relating to benefits. The Benefits Committee may review all applications for benefits with regard to eligibility and amount, and may make appropriate determinations with respect to payment.

(e) The Contributions Committee may formulate policies and procedures in regard to collection of delinquent payments and contributions due the Fund. The Trustees may delegate to the Contributions Committee the authority to initiate legal actions and to exercise the powers of the Trustees to enforce, compromise or otherwise resolve disputes and claims regarding delinquent employer contributions or other obligations owed to the Trust Fund. The Contributions Committee may act jointly with similar committees of related employee benefit trusts entitled to receive Contributions under the Collective Bargaining Agreement.

Section 9. All Trust and Committee meetings shall consist of the Trustees and/or Committee members only, in addition to the Recording Secretary.

All Trust staff members shall be present at all Trust and Committee meetings only during the portion of the agenda which requires their reporting. On the request of any individual Trustee, however, any staff member shall be admitted into all or any part of any meeting. Nothing stated in this provision shall be intended to exclude the Administrative Manager from attendance at any Trust and/or Committee meeting.*

ARTICLE VII

VACATION-HOLIDAY SAVINGS RULES

Section 1. Plan Rules

(a) It is not a requirement under this Plan that any employee covered hereunder who receives any disbursements under this Plan shall be required to take a vacation. The parties signatory hereto contemplate that this Plan shall be in the manner of a savings plan and that the employees covered hereunder are not obligated to use the disbursements received hereunder for vacation or holiday purposes. The employees covered hereunder shall be entitled to disbursements under this Plan whether they are employed or not when receiving said disbursements.

(b) On or about May 1 of each and every year during the continuation of this Trust, an employee entitled to benefits under this Trust shall have the right to receive the monies credited to his account by reason of work performed by him in the last six months of the calendar year immediately preceding each such May 1, subject to the terms and conditions provided in this Article and subject to future terms and conditions as promulgated by the Board of Trustees; provided, however, that any benefit so paid shall not include monies received by the Trust later than March 20 of the year in which such benefit is paid.

*Ratified Oct. 6, 1970.

*Ratified Oct. 6, 1970

(c) On or about December 1 of each and every year during the continuation of this Trust, an employee entitled to benefits under this Trust shall have the right to receive the monies credited to his account by reason of work performed by him in the first six months of the calendar year in which each such December 1 falls, subject to the terms and conditions provided in this Article and subject to future terms and conditions as promulgated by the Board of Trustees; provided, however, that any benefits so paid shall not include monies received by the Trust later than September 20 of the year in which such benefit is paid.

(d) With respect to any benefit check or draft issued by the Trust, in the event the employee fails to cash said check or draft within six months following its issuance, said check or draft shall thereupon be void and ineffective and, in such event, the benefits otherwise credited to said employee's account as represented by said check or draft shall be deemed paid over by him and retained by this Trust for such use as the Trustees may deem appropriate. The Trustees in their discretion and upon good and sufficient reason shown may waive such forfeiture upon such terms and conditions as they may deem desirable.

(e) To the extent of available funds, including interest and other return on contributions, liquidated damages, forfeitures and any other income except contributions, less administrative costs and a reasonable reserve for future administrative costs, the Trust shall utilize such surplus funds first to pay benefits to beneficiaries based upon verified claims of hours worked for which contributions are unpaid; provided, however, that such beneficiary shall not be entitled to receive benefits for such unpaid hours unless and until the Trustees are satisfied that no collusion exists between the beneficiary and the delinquent employer and, further, the beneficiary has provided reasonably sufficient information to identify, locate and describe the jobsites on which unpaid hours were worked. Any additional surplus funds remaining shall be distributed in the manner and at times deemed equitable by the Trustees.

(f) The Trust shall maintain complete and adequate files and records of any Assignment and Authorization furnished by an Employee to the Trust as described in Article V, Section 10, of this Agreement. On or before May 1 and December 1 of each year, the Trust shall review its files and records to identify each Employee whose original, signed Assignment and Authorization is held by the Trust and in effect on that date. The Trust shall then compute the amounts payable to the Union on behalf of each such Employee in accordance with Article V, Section 10, relating to the interval of months for which the Employee will receive payment of benefits on that date and consisting of Supplemental Dues which accrued and became payable to the Union during that period. On the date the benefits would otherwise be payable to the Employees, the Trust shall pay over to the Union the cumulative sum of such computed amounts, less a deduction of such costs and expenses as have been incurred by the Trust in maintaining records, accounting for and making payments, and providing related accounting data to the Union.

(g) An Employee for whom contributions have been paid to the Trust for hours of employment in a month shall be entitled to withdraw from the Trust an amount not exceeding twelve cents (\$.12) per hour of such contributions. Such withdrawals may be made monthly or at such other less frequent

intervals as the Employee may choose, but no withdrawals may be made later than fifteen days before disbursement of amounts in the account of the Employee on May 1 and December 1 as provided under Section 1(b) and 1(c). In making any such withdrawals, an Employee shall file a written application on a form satisfactory to the Trustees and shall provide suitable identification to assure that any payment of benefits is made to the proper person. If one or more Employees have filed with the Trust a written Assignment and Authorization as described in Article V, Section 10, currently authorizing the Trustees to pay such amounts as are available to the Employee under this Section 1(g) to the Union as Supplemental Dues, then on or about the last day of each month the Trust shall compute the total amount payable to the Union on behalf of all such authorizing Employees for the previous month. Promptly after such, on or about the last day of the month, the Trust shall pay over to the Union the cumulative sum of such computed amounts for the previous month, less a deduction of such costs and expenses as have been incurred by the Trust in maintaining records, accounting for and making payments, and providing related accounting data to the Union.

(h) An Employee for whom monies have been contributed to the Trust for hours of employment during a six-month interval described in Section 1(b) shall be entitled to withdraw an amount not exceeding twenty-five percent (25%) of the existing balance in the Employee's account at the time of withdrawal on two occasions before disbursement of the account on May 1. Likewise, an Employee for whom monies have been contributed to the Trust for hours of employment during a six-month interval described in Section 1(c) shall be entitled to withdraw an amount not exceeding twenty-five percent (25%) of the existing balance in the Employee's account at the time of withdrawal on two occasions before disbursement of the account on December 1. Only one such withdrawal may be made on a single day. The permitted number of withdrawals may occur at any time after the first receipt of funds by the Trust for work in the six-month interval described in Section 1(b) or Section 1(c), whichever is applicable, and before fifteen days prior to the date specified for disbursement of all monies credited to the account. In making any such withdrawal, an Employee shall file a written application on a form satisfactory to the Trustees and shall provide suitable identification to assure that any payment of benefits is made to the proper person. An Employee who makes one or more withdrawals under this Section 1(h) from funds on deposit for work in any six-month interval shall not be entitled to participate in any subsequent distribution of reserves accumulated partially or entirely during that interval.

Section 2. Death of Employee; Beneficiary

In the event an Employee entitled to benefits under this Trust dies, as proved by evidence deemed satisfactory to the Board of Trustees, then the monies credited to said employee's account shall be paid to the beneficiary designated by said employee in writing in a form approved by the Board of Trustees. In the event no beneficiary is named or the beneficiary so named is dead or cannot be located within two years from the date of death of the employee, the money shall be paid to the surviving spouse of the employee, if any, and otherwise to the employee's estate if heirs have been identified. In the event distribution of the monies in accordance with the foregoing cannot be made, then such monies shall be

forfeited to the Trust and shall be retained and used by the Trust for the purposes described herein.

Section 3. Incapacity of Employee

In the event a benefit check or draft cannot be negotiated due to the incapacity of the payee, payment shall be made to such persons, or in such manner, for the benefit of the payee, as the Board of Trustees may deem proper.

Section 4. Employee Addresses

The parties signatory hereto agree that the Union will furnish to the Board of Trustees addresses or addressed envelopes in order for the Trustees to make disbursements of benefits as set forth in this Article. The Trustees shall have the right to rely upon the accuracy of the addresses furnished by the Union and the Trustees shall not be obligated to disburse any benefits to any person for whom the Union has failed to furnish an address, and the Trustees shall be discharged and be free from any liability arising from or due to their failure or refusal to disburse benefits to any person for whom the Union has not furnished an address. Any person otherwise entitled to receive benefits and for whom the Union has failed to furnish an address, shall be permitted, within the time in which he is so entitled, to contact the Trustees directly and furnish his own address in order that his benefits may be paid to him.

Section 5. Amendment of Article

This Article VII may be amended or modified by action of the Trustees subject to the terms and conditions of the Collective Bargaining Agreement and Section 4 of Article XI of the Trust Agreement.

Section 6.

In adopting the Amendments to Article VII, effective April 6, 1965, it is the intention of the Board of Trustees to eliminate the distinction between Vacation Savings benefits or accounts and Holiday Savings benefits or accounts as otherwise referred to in this Trust Agreement and to substitute therefor similar semi-annual distributions of benefits without the complexities and expense involved in operation of this Trust under the previous provisions of this Article. Accordingly, references elsewhere in the Trust Agreement to "Vacation Savings" or "Holiday Savings" or words of similar import must be interpreted in the light of the foregoing.*

ARTICLE VIII GENERAL PROVISIONS APPLICABLE TO TRUSTEES

Section 1. No party who has verified that he or it is dealing with the duly appointed Trustees, or any of them, shall be obligated to see to the application of any monies or property of the Fund, or to see that the terms of this Trust Agreement have been complied with, or to inquire as to the necessity or experience of any act of the Trustees. Every instrument executed by the Board of Trustees or by its direction shall be conclusive in favor of every person who relies on it, that (a) at the time of the 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 Board was duly authorized to execute the instrument or direct its execution.

Section 2. The duties, responsibilities, liabilities or disabilities of any Trustee under this Trust Agreement shall be determined solely by the express provisions of this Trust Agreement and no further duties, responsibilities, liabilities or disabilities shall be implied or imposed.

Section 3. The Fund shall protect, indemnify, hold harmless and defend each Trustee from any and every liability, claim and cause of action arising from the affairs of the Fund or his service in the capacity as Trustee to the maximum extent permitted by law; provided, however, that in no event shall the foregoing apply to any Trustee whose willful misconduct and gross negligence gives rise to the liability, claim or cause of action.

Section 4. Neither the Employers, any Signatory Association, any Individual Employer nor the Union shall be liable in any respect for any of the obligation, acts or omissions of the Trustees or any of them because such Trustees are in any way associated with any such Employers, Signatory Association, Individual Employer or Union.

Section 5. The Trustees may, but are not required to secure the advice of legal counsel or other consultant on any matter under consideration. Acting upon such advice shall be full protection and justification to the Trustees for anything suffered, done or admitted to be done in good faith and in accordance with and in reliance on such opinion, and the Trustees shall not be liable therefor.

Section 6. No decision shall be made by the Board of Trustees in the administration of the Fund or Plan which is unreasonably discriminatory under any applicable law or regulation.

Section 7. The name of the Fund may be used to designate the Trustees collectively and all instruments may be effected by the Board of Trustees in such name.

Section 8. Trustee of this Trust may also be a beneficiary hereof if he otherwise qualified as an Employee; and nothing contained herein shall be construed or interpreted to prevent any Trustee, who is also an Employee, from participating in the benefits of the Plan.

ARTICLE IX GENERAL PROVISIONS

Section 1. Subject to the provisions of the Collective Bargaining Agreements, the rights and duties of all parties, including the Employers, the Signatory Associations, the Individual Employers, the Union, the Employees and their beneficiaries, and the Trustees, shall be governed by the provisions of this Trust Agreement and the Plan.

Section 2. No Employee or other beneficiary shall have any right or claim to benefits under the Plan, other than as specified in such Plan. Any dispute as to this Plan shall be resolved by the Board of Trustees under and pursuant to the Plan, and its decision of the dispute shall be final and binding upon all parties thereto. No action may be brought for benefits under the Plan or to enforce any right thereunder until after the claim therefor has

*Ratified Oct. 6, 1970

been submitted to and determined by the Board, and thereafter the only action that may be brought is one to enforce the decision of the Board. Neither the Employers, any Signatory Association, any Individual Employer, the Union nor any of the Trustees shall be liable for the failure or omission for any reason to pay any benefits under the Plan.

Section 3. Any notice required to be given under the terms of this Trust Agreement of the Plan shall be deemed to have been duly served if delivered personally to the person to be notified in writing, or if mailed in a sealed envelope, postage prepaid, to such person at his last known address as shown in the records of the Fund, or if sent by wire to such person at said last known address.

Section 4. This Agreement shall be binding upon and inure to the benefit of all Individual Employers who are now or hereafter may become members of Employers of any Signatory Association or who become in any other way a party to any of the Collective Bargaining Agreements and this Trust Agreement, and upon the heirs, executors, administrators, successors, purchasers and assigns of the Employers, any Signatory Association, any Individual Employer, the Union and the Trustees.

Section 5. This Trust Agreement may be executed in a number of counterparts, each of which shall have the force and effect of an original, and no more than one counterpart need be signed by any party hereto; provided, however, that each of said counterparts shall be filed in the principal office of the Fund.

Section 6. All questions pertaining to this Trust Agreement, the Fund or the Plan, and their validity, administration and construction, shall be determined in accordance with the laws of the State of California and with any pertinent laws of the United States.

Section 7. If any provision of this Trust Agreement, the Plan, the rules and procedures issued pursuant thereto, or any step in the administration of the Fund or the Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of this Trust Agreement, the Plan and the rules and procedures, unless such illegality or invalidity prevents accomplishments of the objective and purpose of this Trust Agreement and the Plan. In the event of any such holding, the parties will immediately commence negotiations to attempt to remedy any such defect.

Section 8. All books, records, papers, reports, documents or other information obtained with respect to the Fund or the Plan shall be confidential, and shall not be made public or used for any other purposes, except to the extent necessary for the proper operation of the Fund or the Plan and for the cooperation with other funds or plans authorized by other provisions of this agreement. Nothing in this section shall prohibit the preparation or publication of statistical data and summary reports with respect to the operations of the Fund and the Plan.

Section 9. In the establishment and maintenance of the Plan, and in execution, amendment and implementation of this Trust Agreement, the Union acts for and on behalf of the Employees and as their collective bargaining representatives and agents, and every agreement or act of the Union in connection with the establishment, maintenance and operations of the Fund or the Plan shall be deemed to be and is the agreement or act of the Employee, or Employees, concerned with or affected by

such agreement or action.

Section 10. In the establishment and maintenance of the Plan, and in the execution, amendment and implementation of this Trust Agreement, the Employers act for and on behalf of the Individual Employers who, at the time of the execution of this Trust Agreement are, or during the term thereof become members of any of the Employers, or of any Signatory Association. Also, in that same regard, said Employers act for and on behalf of any other Individual Employer who is required by any of the Collective Bargaining Agreements to make contributions to the Fund or who in fact makes one or more contributions to the Fund; provided such contribution or obligation to make such was favorably approved by the Board of Trustees. Every agreement or act of the Employers in connection with the establishment, maintenance and operation of the Fund or the Plan shall be deemed to be and is the agreement or act of the Individual Employers, or Individual Employer concerned with or affected by such agreement or action.

Section 11. In any action or proceeding affecting the Fund, the Plan or the Trust hereby established, it shall be necessary to join as the parties only the Trustees, and no Employer, Individual Employer, the Union, Employee, beneficiary or any other person shall be entitled to notice of any such proceeding or to service of process therein. Any final judgment entered in any such action or proceeding shall be binding upon all of the above mentioned parties so long as such judgment does not attempt or purport to impose any personal liability upon or against any party not joined or served in any such action or proceeding.

ARTICLE X

NON-MEMBER EMPLOYERS

Section 1. Any Individual Employer who is not a member of or represented by Employers or a Signatory Association but who is performing work coming within the jurisdiction of the Union may become a party to this Trust Agreement, upon approval of the Board of Trustees, by executing in writing and depositing with the Board of Trustees his or its acceptance of any of the Collective Bargaining Agreements and of this Trust Agreement, in a form acceptable to the Board. The Board may provide that this requirement may be satisfied by depositing such an acceptance with a Board of Trustees of another fund or funds.

Section 2. Any Individual Employer who executes and deposits any such written acceptance, or who in fact makes one or more Contributions to the Fund with the approval of the Board of Trustees assumes and shall be bound by all of the obligations imposed by this Trust Agreement upon the Individual Employer, is entitled to all rights under this Trust Agreement and is otherwise subject to it in all respects.

ARTICLE XI

AMENDMENT AND TERMINATION

Section 1. The provisions of this Trust Agreement may be amended or modified at any time, and from time to time, by mutual agreement of the Employers and the Union subject to the terms and conditions of the Collective Bargaining Agreements, any applicable law or regulation and the provisions of Section 4 of this Article.

Section 2. Subject to the provisions of this Article and Article IX, Section 7 thereof, this Trust is irrevocable and the provisions of this Trust Agreement shall continue in effect during the term of the Collective Bargaining Agreements, and any amendments, modifications, renewals or extensions thereof with respect to such Collective Bargaining Agreements as provide for the continuation of payments into the Fund and of the Plan.

Section 3. This Trust Agreement and the Trust herein provided may be terminated by the Employers and the Union by an instrument in writing executed by mutual consent at any time, subject to the provisions of Section 4 of this Article. Upon the termination of such Trust, any monies remaining in the Fund after the payment of all expenses and obligations of the Trust shall be paid or used for the continuance of the benefits in accordance with the provisions of the Plan, until such Fund is exhausted.

Section 4. In no event shall any amendment or modification of this Trust Agreement, or the termination of this Trust Agreement, cause or result in any portion of the Fund reverting to, or being recoverable by, any of the Employers, any Signatory Association, any Individual Employer, or the Union, or cause or result in the diversion of any portion of the Fund to any purpose other than the exclusive benefit of Employees, or their beneficiaries under the Plan and payment of the administrative expenses of the Fund and Plan, or the refund of erroneous payments.

Section 5. In no event shall the Trust established by this Agreement continue for a longer period than is permitted by law.

EXECUTED as of the day and year first above written.

EMPLOYERS

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SOUTHERN CALIFORNIA CHAPTER
By W. D. Shaw

BUILDING CONTRACTORS ASSOCIATION OF CALIFORNIA, INC.
By Edward S. Sills

ENGINEERING AND GRADING CONTRACTORS ASSOCIATION, INC.
By Edward R. Siple

HOME BUILDERS ASSOCIATION LOS ANGELES ORANGE & VENTURA COUNTIES
By R. A. Alsweet

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER
By Glenn A. Dowdy

SAN DIEGO BUILDING CONTRACTORS ASSOCIATION
By Charles A. Taylor

ENGINEERING AND GRADING CONTRACTORS ASSOCIATION, INC., SAN DIEGO CHAPTER
By Wm. Burke

UNION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 12
By J. H. Seymour
By Wm. A. Cobb, Jr.
By J. J. Regan

EACH OF THOSE SIGNING AS "EMPLOYERS" ABOVE EXPRESSLY WARRANTS THAT IT IS AUTHORIZED TO EXECUTE THIS AGREEMENT, WARRANTS THAT ALL OF THE MEMBERS OF SAID "EMPLOYER" WHO HAVE AUTHORIZED IT SO TO DO THEREBY BECOME AND ARE PARTIES TO AND BOUND BY THE TERMS AND PROVISIONS OF THIS AGREEMENT FOR ITS DURATION; AND FURTHER WARRANTS THAT ANY EMPLOYER WHO SHALL BECOME A MEMBER OF SAID "EMPLOYER" ON AND AFTER THIS DATE AND DURING THE TERM OF THIS AGREEMENT AND WHO SHALL HAVE SO AUTHORIZED IT TO BIND HIM TO THIS AGREEMENT SHALL AUTOMATICALLY BECOME SUBJECT TO AND BOUND BY THIS AGREEMENT FOR ITS DURATION.

ACCEPTANCE OF OFFICE BY TRUSTEES

The undersigned hereby accepts office as original Trustees appointed pursuant to the foregoing agreement and agree to act under and be subject to all of the terms and conditions of said Agreement. The undersigned hereby declare that they hold the Fund created by said Agreement in trust for the uses and purposes set forth in said Agreement.

DATED this 10th day of July, 1963.

By Richard W. Spicer
By E. J. Strecker
By R. A. Alsweet
By Leo A. Majich
By Howard C. Dennis
By D. W. Asher
By J. H. Seymour
By Wm. A. Cobb, Jr.
By Arch Liston
By Wm. S. Begley
By Weslie L. Olson
By J. J. Regan

This Amendment shall become effective on January 1, 1979.
EXECUTED on the day and year first above written.

EMPLOYERS:

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.
By Richard B. Munn

BUILDING INDUSTRY ASSOCIATION OF CALIFORNIA, INC.
By G. C. Galvin

ENGINEERING CONTRACTORS' ASSOCIATION, INC.
By Richard Chapman

SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.
By A. H. Atwood

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC.
By C. W. Burke

SAN DIEGO BUILDING CONTRACTORS ASSOCIATION
By John D. Read

ENGINEERING AND GENERAL CONTRACTORS ASSOCIATION
By B. Lee Bonar

UNION:

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 12
By William C. Waggoner