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**RESTATED AND AMENDED  
AGREEMENT AND DECLARATION OF TRUST**

**FOR THE**

**OPERATIVE PLASTERERS AND CEMENT MASONS  
INTERNATIONAL ASSOCIATION LOCAL 797  
APPRENTICE AND JOURNEYMAN TRAINING TRUST**

(Restated 4/16/98, 1997)

THIS RESTATED AND AMENDED AGREEMENT AND DECLARATION OF TRUST ("Agreement" or "Trust Agreement") is made and entered into in the State of Nevada this 16<sup>TH</sup> day of APRIL 1998, 1997, by and between undersigned employers or Signatory Association(s) and Operative Plasterers and Cement Masons International Association, Local 797 (hereafter "Union").

IN CONSIDERATION OF the mutual covenants herein contained, the parties hereto agree as follows:

**RECITALS**

1. The Employers and the Union are parties to Collective Bargaining Agreement(s) which provide that each employer covered by such Agreements shall make contributions to an Apprentice and Journeyman Training Trust for each employee covered by such Agreements and employed by such employer.

2. The Employers and the Union have established of this Trust known as the Operative Plasterers and Cement Masons International Association, Local 797, Apprentice and Journeyman Training Trust for Southern Nevada.

3. This Trust is created, established and organized in compliance with 29 U.S.C.A. Section 186(c)(6) as a Joint Labor-Management Trust.

4. Consistent with § 501(c) of the Internal Revenue Code (the "Code."), this Trust is a non-profit organization created through a collective bargaining agreement, and shall at all times be operated to be consistent with and to preserve and maintain its tax exempt status under the Internal Revenue Code or other laws.

5. Consistent with Rev. Rul. 72-101, 1972-1 C.B. 144, the limited purpose of this Trust is to train and provide continuing training to individuals working or desiring to work in the cement masons and plasterers trades in the construction industry. There are no restrictions against admissions based on race and the organization has a racially non-discriminatory policy as to students within the meaning of Rev. Rul. 71-447, 1971-2 C.B. 230.

6. Consistent with applicable law, the Trust and its apprentice and journeyman training programs shall be operated and conducted without regard to race, color, gender, age, religion, creed, national origin, ancestry, marital status or disability.

## ARTICLE I

### DEFINITIONS

Section 1. The term "*Agreement*" or "*Trust Agreement*" means this Agreement and any modification, amendment, extension or renewal thereof.

Section 2. The term "*Alternate Trustee*" means any natural person designated as an Alternate Trustee pursuant to this Agreement.

Section 3. The terms "*Apprenticeship Program*," "*Training Program*," "*Program*" mean any arrangement, agreement or plan established, supported or maintained, or any or all of them, by the Board of Trustees in the accomplishment of the purposes of this Trust which provides for the education or training of persons who are or are to become cement masons or plasterers or trainees (including apprentices and journeymen, and any modification, amendment, extension or renewal of the same.

Section 4. The terms "*Board of Trustees*" or "*Board*" mean Board of Trustees under this Trust Agreement.

Section 5. The term "*Collective Bargaining Agreement*" or "*Collective Bargaining Agreements*" include:

- a. The Master Labor Agreement between the Employers or Signatory Association (s) and the Union.
- b. Any other collective bargaining agreement between the Union and any Individual Employer, or any other association of employers which provide for the

making of employer contributions to the Fund, subject to approval of the Board of Trustees as herein provided.

c. Any extensions, amendments, modifications or renewals of any of the above described agreements, or any substitute or successor agreements which provide for the making of employer contributions to this Fund.

Section 6. The term "*Contribution*" means the payment made or to be made to the Fund by any Individual Employer under the provisions of any Collective Bargaining Agreement.

Section 7. The term "*Employee*" means any employee of an Individual Employer who performs one or more hours of work covered by any Collective Bargaining Agreement. The term shall also include employees of Union(s) on whose behalf Contributions are made to the Fund pursuant to regulations adopted by the Board of Trustees, provided the inclusion of said employees is not a violation of any existing law or regulation, including without limitation the Internal Revenue Code.

Section 8. The term "*Employer*" or "*Individual Employer*" means any employer which is required by any Collective Bargaining Agreement to make contributions to the Fund or which in fact makes one or more contributions to the Fund. The term shall also include any Local Union which makes Contributions to the Fund on behalf of its employees pursuant to regulations adopted by the Board of Trustees; provided the inclusion of said Union as an Employer is not a violation of any existing law or regulation; and provided further, that any such labor organization shall be an employer solely for the purpose of making contributions for its employees and shall have no other rights or privileges under this Trust as an employer.

Section 9. The term "*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended.

Section 10. The term "*JATC*" or "*Joint Apprentice and Journeyman Training Committee*" or "*Joint Committee*" means the Board of Trustees or any committee as may be established by the Board. If the Board does not create any such committee, the Board of Trustees and the Joint Apprentice and Journeyman Training Committee will be the same body and the terms "Board" "Joint Committee" and "JATC" may be used interchangeably.

Section 11. The term "*Signatory Association*" means any employer association which signs any Collective Bargaining Agreement and this Trust Agreement 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 of this Trust Agreement and any such Collective Bargaining Agreement, subject to the approval of the Board of Trustees as herein provided.

Section 12. The term "*Trust*," "*Trust Fund*," or "*Fund*" means the Trust Fund created and established by this Trust Agreement and its predecessor(s).

Section 13. The term "*Trustee*" means any natural person designated as Trustee pursuant to this Trust Agreement.

Section 14. The term "*Union*" means the Operative Plasterers and Cement Masons International Association, Local 797.

## **ARTICLE II TRUST FUND**

Section 1. There is created the Operative Plasterers and Cement Masons International Association, Local 797 Apprentice and Journeyman Training Trust Fund for Southern Nevada which shall consist of all contributions made into the Fund and all interest, income and other returns thereon of any kind whatsoever, together with all property and assets of the Fund.

- a. Such amounts are held in trust for the purpose of paying either from principal or income or both, for the expenses of a Program in the geographic area covered by the Collective Bargaining Agreements referred to in this Trust Agreement.
- b. The Fund shall have its principal office in the County of Clark, State of Nevada.
- c. Contributions to the Fund shall not constitute nor be deemed to be sums due to the employees with respect to whose work such payments are made, and no Employee shall be entitled to receive any part of the contributions made or required to be made to the Fund.
- d. Neither the Employers, any Individual Employer, any Employee, any Signatory Association nor any other person or organization shall have any right, title

or interest in the Fund other than as specifically provided in this Agreement, and no part of the Fund shall revert to the Employers, or any Individual Employer. Neither the Fund nor any contributions to the Fund shall be in any manner liable for or subject to the debts, taxes, contracts or liabilities of any Employer, any Individual Employer, any Employee, any Signatory Association or any other person.

e. Neither the Employers, nor any officer, agent, employee or committee member of the Employers shall be liable to make contributions to the Fund or be under any other liability to make contributions to the Fund or be under any other liability to the Fund, except to the extent that he or she may be an Individual Employer required to make contributions to the Fund with respect to his, her or its own individual or joint venture business operations, or to the extent he, she or it may incur liability as a Trustee as hereinafter provided. The contract based liability of any Individual Employer to the Fund shall be limited to the payments required by the Collective Bargaining Agreements and by this Agreement with respect to his, her or its individual or joint venture business operations and shall not be liable or responsible for any portion of the contributions due from other Individual Employers. The Individual Employer shall not be required to make any further payments or contributions to the cost of operations of the Fund, except as may be herein provided or in the Collective Bargaining Agreements.

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

### **ARTICLE III**

#### **CONTRIBUTIONS TO THE FUND AND COLLECTIONS**

##### **Section 2.**

a. Contributions shall be made to the Trust Fund by each Individual Employer, pursuant to the Collective Bargaining Agreement, in such manner and with such reports as the Board of Trustees shall prescribe. Contributions shall not be subject to set-off or counterclaim.

b. Contributions to the Fund shall be paid to the Trustees, or to such depository as they may designate, only by check, money order, or other recognized method of transmitting money or its equivalent, made payable to the order of the Operative Plasterers and Cement Masons International Association, Local 797 Apprentice and Journeyman and Training Trust Fund for Southern Nevada, or as otherwise designated by the Board of Trustees.

c. Each Employer shall be responsible only for the contributions payable by it for employees covered by it, except as may be otherwise provided by law.

d. Contributions and the reports supporting them shall be due in the office of the administrator appointed by the Board of Trustees, or at the office of the Board of Trustees, as prescribed in the Collective Bargaining Agreement or, in the absence of such date, as prescribed by the Trustees. Any report not completed and filed, and any contribution not tendered in full by the prescribed date shall be delinquent. The parties to this Trust Agreement declare that timely payment of contributions and the filing of reports is essential to the well being of efficient operation of the Trust, and they hereby stipulate that the actual damages and increase in operating expense sustained by the Trust Fund by reason of such delinquencies are extremely difficult, if not impossible, to determine, and they agree that the amount of such expenses and damages for each delinquency shall be Twenty (\$20.00) Dollars or ten percent (10%) of each delinquent contribution, whichever is greater, which sum shall be due and payable to the Trust as liquidated damages, not as a penalty, together with the delinquent contribution(s) and interest thereon at fourteen percent (14%) per annum. The Board may waive or reduce payment of liquidated damages or interest for good cause shown to its satisfaction.

e. Upon demand, an Employer shall promptly furnish to the Trustees or administrator the names of its Employees as defined in Section 2 hereof, their Social Security numbers, the hours worked by each for any period of time specified, and such other information as the Trustees may reasonably require for the administration of this Trust and the Trust Fund. The Trustees, or anyone appointed by them, shall be

entitled to examine the books and records of any Employer at such times and places as may be reasonable as determined by the Trustees, whenever such examination is deemed necessary or advisable by the Trustees in connection with the administration of this Trust. The Union shall, upon request of the Trustees, promptly furnish information with regard to any Employee's employment status or other information deemed necessary or advisable by the Trustees in connection with the administration of this Trust.

f. Each Employer is required to keep and maintain proper records which are adequate and sufficient to readily identify all types and hours of work performed by all of its employees in order to determine, among other things, whether the employer has properly reported and paid all monies due the Trust.

If an Employer does not keep and maintain records adequate and sufficient to readily identify all types and hours of work performed by all its employees, then a presumption shall arise that all hours worked by any of its employees concerning whom adequate and sufficient records are not kept or maintained, were in work covered by a Collective Bargaining Agreement and this Trust Agreement.

#### **ARTICLE IV BOARD OF TRUSTEES**

Section 1. The Trust shall be administered by a Board of Trustees which shall consist of eight (8) Trustees. Four (4) Trustees shall be appointed by the Union (known as Union Trustees) and four (4) Trustees shall be appointed by the Employer(s) or Signatory Association(s) (known as Employer Trustees). Each side may have one Alternate Trustee, appointed in accordance with Section 2 hereof.

Section 2. The Employer Trustees shall be appointed in writing by the Employer(s) or Signatory Association(s). The Union Trustees shall be appointed in writing by the Union. The Union Trustees may but are not obligated to appoint or designate one (1) Alternate Trustee known as "Alternate Union Trustee" and the Employer Trustees may but are not obligated to appoint or designate one (1) Alternate Trustee known as "Alternate Employer Trustee."

Section 3. Subject to the applicable law, and this Agreement, the procedures through which the Union Trustees and Employer Trustees are selected and appointed are to be determined by such Union and by such Employer(s) or Signatory Association(s) respectively.

Section 4. The Trustees or Alternate Trustees so appointed shall sign this Trust Agreement, a counterpart thereof or an Acceptance of this Trust Agreement, 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 5. Subject to the applicable law, and this Agreement, each Trustee shall serve until his death, resignation, removal, or replacement from office. Replacement of a Trustee shall be made in writing in the same manner as an appointment of a Trustee.

Section 6.

a. Subject to the applicable law, and this Agreement, any Employer Trustee may be removed or replaced at will, with or without cause, by the Employer or Signatory Association which appointed him or her, by an instrument in writing signed by that Employer or Signatory Association and served on the Trustee, the Chairman of the Board of Trustees and the Union. Subject to the applicable law, and this Agreement, any Union Trustee may be removed or replaced 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 Signatory Associations.

b. Subject to the applicable law, and this Agreement, 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 Board appointed Committee of which he is a regular member, without it appearing to the Board that there was just cause for such absence, 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 and request the removal of such Trustee and the appointment of a successor trustee.

Section 7. 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 appointed or selected such Trustee.

Section 8. Whenever a vacancy shall occur in the Board of Trustees, whether by death, removal, replacement, resignation or otherwise, the party possessing the power to appoint that Trustee to that position shall forthwith designate a successor Trustee, subject to the applicable law, and this Agreement. Appointment of a successor Trustee shall be done and 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 forgoing provisions shall, upon his acceptance of such Trusteeship in a writing filed with the Trustees, become vested with all rights, powers and duties of a Trustee hereunder.

Section 9. 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 10. The following procedure shall govern in the event any one or more of the Signatory Associations or Employers who had a right to designate a Trustee shall at any time fail to ratify and sign or be bound to a Collective Bargaining Agreement between it and the Union. These provisions shall supersede any contrary provision contained elsewhere in this Agreement; provided, however, nothing in this section will permit any Signatory Association to withdraw from this Trust Agreement during the term of a Collective Bargaining Agreement which requires any contributions to this Trust.

a. The term of office of any Trustee who is an appointee of such Signatory Association or Individual 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 or Signatory Association(s) 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 11. The qualifications of any person to serve as a Trustee shall be consistent with and governed by the applicable law including 28 U.S.C. § 1111 and related sections of the Code of Federal Regulations (28 C.F.R. 54), and this Agreement.

Section 12. The officers of the Board of Trustees shall be a Chairman and a Co-Chairman 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 officers shall serve for a period of one year, or until their successors are elected and take office, whichever is longer. Nothing herein shall prohibit any officer from being re-elected or succeeding himself.

Section 13. The Chairman shall be responsible for the conduct of the meetings of the Board of Trustees. The Co-Chairman or his designee 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 Co-Chairman shall have authority to jointly sign instruments, obligations and checks drawn on the Trust as authorized by the Board of Trustees. The Board of Trustees may designate an alternate for the Chairman and an alternate for the Co-Chairman 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, obligations, and checks may be signed by his alternate. Further, the Board of Trustees may authorize the use of facsimile signatures of the Chairman and Co-Chairman for the execution of checks under circumstances which reasonably safeguard the assets of the Trust, or may authorize specific employees or designees including third party administrators of the Trust to execute checks approved or ratified by the Board of Trustees.

## ARTICLE V

### FUNCTIONS AND POWERS OF THE BOARD OF TRUSTEES

Section 1. The Board of Trustees shall have the power to control and manage the assets, operation and administration of the Trust and any Programs as fiduciaries, which power and duty is expressly accepted by each of the Trustees and shall be exercised with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; provided, however, the Trustees may:

a. appoint an investment manager or managers (as defined in ERISA) to manage (including the power to acquire and dispose of) any assets of the Fund; the Board of Trustees shall interpret and apply the terms of the Trust Agreement, Rules and Regulations thereunder, and Plan Documents affecting the Trust in their sole and absolute discretion consistent with the purposes of the Trust;

b. enter into an agreement allocating among Trustees such specific responsibilities, obligations or duties as the Board shall determine by vote may be properly so allocated;

c. designate pursuant to the same procedure persons other than named fiduciaries to carry out fiduciary responsibilities (other than Trustee responsibilities) under this Trust Agreement or the Program and create committees or subcommittees, including a JATC, comprised of Trustees or others;

d. employ one or more persons to render advice with regard to any responsibilities the Board has under this Trust Agreement or Program, including Attorneys, Consultants, Accountants or Auditors;

e. provide programs and curricula for the education, instruction and advancement of apprentices and journeymen of the Cement Masons and Plasterers Trades, including without limitation providing and paying for coordinators, instructors, teachers, classrooms, buildings, books, gear, machinery, equipment and materials;

f. do any one or more of the foregoing.

Section 2. The Board of Trustees shall collect and receive all monies due to the Fund, and shall promptly deposit such monies in a special trust fund account or accounts established in a reputable bank or banks located in such locality as determined by the Board of Trustees. All Contributions to the Fund shall be due and payable in the County of Clark, Nevada. 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 Employer from its obligation under any Collective Bargaining Agreements for hours worked or to be paid under any Collective Bargaining Agreement for which no contribution has actually been received, notwithstanding any statement, restriction or qualification appearing on the check or any attachment thereto.

Section 3. The Board of Trustees shall have power to demand and enforce the prompt payment of Contributions to the Fund and the payments due to delinquencies as provided in Article III. If any Individual Employer defaults in the making of such contributions or payments and if the Board consults, retains or uses its auditor or legal counsel with respect thereto or files any suit or claim with respect thereto, there shall be added to the obligation of the Individual Employer who is in default attorneys' fees, audit fees, court costs and all other reasonable expenses incurred by the Board of Trustees in connection with such suit or claim, including any and all appellate proceedings therein, and such Individual Employer is obligated to pay such fees, costs and expenses to the Trust.

Section 4. The Board of Trustees shall collect and receive any and all dividends, interest or other credits or benefits due from any person which the Fund is entitled to receive and shall deposit the same in the fund or credit the same to the Fund and all such deposits and credits shall become part of the Fund and shall be used for the purposes stated in this agreement.

Section 5. Subject to the other provisions of this Trust Agreement the entire Fund shall be held in trust to be used for Apprentice and Training purposes.

Section 6. Without limitation of the provisions of Section 1 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 any Program.

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 of any training programs for apprentices or journeymen.

c. To establish and maintain a funding policy for any Programs and benefits provided for thereunder; and to designate and appoint an independent qualified public accountant and a qualified enrolled consultant-actuary, each of whom shall assist the Trustees in establishing and reviewing at least annually the funding policy consistent with the Funds objectives and the applicable provisions of law and the basis upon which payments are made and to be made pursuant to the Fund and applicable law. The accounting personnel employed pursuant to this paragraph shall include an independent qualified public accountant engaged on behalf of the Fund participants as required by ERISA.

d. To employ, engage or contract with, such executive, consulting, accounting, auditing, investment, administrative, clerical, secretarial and legal personnel and other employees, including a coordinator, assistants and instructors, as may be necessary in connection with the administration of the Fund and any Program 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.

e. 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 any Program and to make payment of refunds as permitted by law.

f. 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.

g. If no investment manager is designated and appointed by the Trustees, to invest and reinvest or cause to be invested and reinvested the assets of the Trust Fund, as prudent Trustees and in accordance with all applicable laws. Investments may be made with a bank or other fiduciary to the fullest extent permitted by law.

h. To enter into contracts and procure insurance policies in its own name or in the name of the Fund, to terminate, modify or renew any such contracts or policies and to exercise and claim all rights and benefits granted to the Board or the Fund by any such contracts or policies.

i. 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.

j. To construe the provisions of this Trust Agreement and any Program in their sole discretion and any such construction adopted by the Board in good faith shall be binding upon any and all parties or persons affected thereby.

k. To pay or cause to be paid or such exemptions for 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 any training program.

l. To prepare or cause to be prepared such reports, descriptions, summaries and other information as are or may be required by law or as the Trustees in their discretion deem necessary or advisable and to file and furnish such reports, descriptions, summaries and information to participants and their beneficiaries, the Union, Individual Employers, the Trustees, or other persons or entities, including government agencies, required by law.

m. To maintain or cause to be maintained such bank accountant or bank accounts as may be necessary or advisable in the administration of the Fund or any Program, and to designate the person or persons authorized to sign checks and withdrawal orders on any such accounts.

n. To amend, modify, or supplement this Agreement, the Trust's rules, regulations, policies or procedures, or take action thereunder, by a majority vote of the Trustees.

o. To adopt and prescribe reasonable rules and procedures, which shall not be inconsistent with the provision of this Trust Agreement, governing the reporting of contributions, participation in any Program, and any and all other matters in connection with the Fund and any Program.

p. To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or Training Program.

Section 7. Compatible with equitable principles and to the extent that sound accounting principles permit, the Board of Trustees may, by majority vote and subject to any applicable law or regulation, coordinate its activities in the administration of the Fund and any Program with the administrative activities of the boards of trustees of other training programs or plans established for the benefit of building tradesmen in Nevada or in other areas to such extent and upon such terms as may be deemed necessary or desirable by the Board.

The authority granted by this section shall include, without limitation, the authority to enter into agreements or other arrangements with any other board of trustees or administrative board providing for a joint administrative office, or for the performance of services by one board or plan for another board or plan.

The cost involved in the execution of any such agreement or arrangements shall be shared by the participating plans in proportion to the benefits received therefrom by the respective plans, and, as near as may be practicable, such agreement or arrangement shall be operated without profit or loss to any of the participating plans.

Any sums received pursuant to any such agreement or arrangement shall be paid into and become a part of the Fund.

If any such agreement or arrangement is found to be or becomes inconsistent with the continuance of an tax exempt status for the Fund, or for the existing tax exemptions for contributions to the Fund and any Program, the provision or provisions of this Trust Agreement or arrangement causing such inconsistency shall be inoperative.

Section 8. The Board of Trustees shall provide and procure at the expense of the Trust to the extent permissible or required by applicable law, insurance and bonding protection for the Trust and each of the Trustees and with the prior approval of the Trustees for all other persons whom they may authorize to handle, deal with, or draw upon monies of the Trust Fund for any purpose whatsoever. The protection shall be established and maintained in such reasonable amounts and from such companies as the Trustees shall determine.

Section 9. All checks, drafts, voucher or other withdrawals of money from the Fund shall be authorized in writing or countersigned by at least two Trustees, one of whom shall be an Employer Trustee and one of whom shall be a Union Trustee. The Trustees may delegate this responsibility to a coordinator or Administrator. In emergencies and upon agreement of an absent or unavailable Trustee in a particular case (by phone, fax or other method of communication), both Trustees signing such checks, drafts, vouchers or other withdrawals may be Union Trustees or Employer Trustees, provided that when an absent or unavailable Trustee becomes available, the signing Trustees shall deliver to him a copy of the signed check, draft, voucher or other withdrawal together with any backup documentation, the absent or unavailable Trustee will ratify the action and the matter will be noted in the minutes of the next Trust meeting.

Section 10. The Board of Trustees shall maintain suitable and adequate records of and for the administration of the Fund and any program. The Board may require any Individual Employer, any Employee or any other person related to the Fund or any program to submit to it any information, data, report or documents reasonably relevant to and suitable for the purposes of such administration. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board of Trustees for any such information, data, report or documents. Upon request in writing from the Board of Trustees any Individual Employer will permit an accountant or auditor selected by the Board of Trustees, to enter upon the premises of such Individual Employer or at such other place(s) designated by the Trustees, during business hours, or at other reasonable time or times, and to examine and copy such books, records, papers or reports of such Individual Employer as

may be necessary to determine whether the Individual Employer is making full, accurate and prompt payment of all sums required to be paid by it to the Fund.

Section 11. The books of account and records of the Board of Trustees, including the books of the 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 of Trustees 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 place as the Board of Trustees may designate from time to time.

## ARTICLE VI

### PROTECTION OF TRUSTEES

Section 1. The provisions of this Article are subject to and qualified by the provisions of ERISA to the extent that such provisions are constitutionally applicable. In order to induce experienced, competent and qualified persons and entities to serve as fiduciaries, to deal with the Fund and the Board of Trustees and to participate in other ways in the administration and operation of the Fund and thus to further the interests of the participants and beneficiaries, it is the intent and purpose of the parties to provide herein for the maximum permissible protection and indemnification of such persons or entities from and against personal liability, loss, cost or expense as a result of such service, dealing or participation, and the provisions of this Article shall be liberally construed and applied to accomplish this objective.

#### Section 2.

a. Subject to the applicable law and this Agreement and except as otherwise provided in subsection (b) of this Section, upon request of a Trustee or former Trustee, the Board of Trustees shall provide for the defense of any civil action or proceeding brought against him in his capacity as such Trustee or former Trustee or in his individual capacity or in both, on account of any act or omission in the scope of his service or duties as a Trustee of the Fund. For the purpose of this Section, a cross-action, counterclaim, cross-complaint or administrative or arbitration proceeding

against a Trustee or former Trustee shall be deemed to be a civil action or proceeding brought against him.

b. The Board of Trustees may refuse to provide for the defense of a civil action or proceeding brought against a Trustee or former Trustee if the Board determines that:

i. The act or omission was not within the scope of his service or duties as a Trustee of the Fund; or

ii. He acted or failed to act because of willful misconduct or gross negligence; or

iii. The defense of the action or proceeding by the Board would create a conflict of interest between the Board or Fund and the Trustee or former Trustee.

c. Subject to the applicable law, the Board of Trustees may provide for the defense of a criminal action brought against a Trustee or former Trustee if the Board determines that such defense would be in the best interests of the Fund and its participants and beneficiaries and that the Trustee or former Trustee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the Fund and its participants and beneficiaries.

d. Subject to the applicable law, the Board may provide for a defense pursuant to this Section by the Fund Counsel or by employing other counsel for such purpose or by purchasing insurance which requires that the insurer provide the defense. All of the expenses of providing a defense pursuant to this" Section are proper charges against the Fund. The Fund shall have no right to recover such expenses from the Trustee or former Trustee.

e. If after request the Board fails or refuses to provide a Trustee or former Trustee with a defense against a civil action or proceeding brought against him and the Trustee or former Trustee retains his own counsel to defend the action or proceeding, he shall be entitled to recover from the Fund such reasonable attorneys' fees, costs and expenses as are necessarily incurred by him in defending the action or proceeding if

the action or proceeding arose out of an act or omission in the scope of his service or duties as a Trustee of the Fund, unless the Board establishes that he acted or failed to act because of willful misconduct or gross negligence, and in all cases, subject to the applicable law.

Section 3. The duties, responsibilities, liabilities and disabilities of any Trustee under this Trust Agreement shall be determined solely by the express provisions of the Trust Agreement and no further duties, responsibilities, liabilities or disabilities shall be implied or imposed.

Section 4. The Trustees shall incur no liability, either collectively or individually, in acting upon any papers, documents, data or information believed by them to be genuine and accurate and to have been made, executed, delivered or assembled by the proper parties. The Trustees may delegate any of their ministerial powers or duties to any of their agents or employees. No Trustee shall incur any liability for simple negligence, oversight or carelessness in connection with the performance of his duties as such Trustee. No Trustee shall be liable for the act or omission of any other Trustee. The Fund shall exonerate, reimburse and save harmless the Trustees, individually and collectively, against any and all liabilities and reasonable expenses arising out of their trusteeship, except (as to the individual Trustee or Trustees directly involved) for expenses and liabilities arising out of willful misconduct or gross negligence. No expense shall be deemed reasonable under this section unless and until approved by the Board of Trustees. All rights, liabilities and obligations under this Section are subject to the applicable law.

## **ARTICLE VII**

### **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 Co-Chairman, or any three (3) members of the Board, may call a 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

notice of special meeting shall be sufficient if sent by ordinary mail, fax, e-mail, wire, or other recognized means 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 hereunder.

Section 2. To constitute a quorum for the transaction of business not less than three (3) Employer Trustees and three (3) Union Trustees or their designated Alternate Trustee, if any, 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 except by the signed written concurrence of all eight (8) Trustees without a meeting, as provided in Section 3 of this Article. Notwithstanding the foregoing, any decision or action of the Board at a meeting lacking a quorum is still valid, binding and enforceable if all Trustees signify their approval of such action or decision by signing the minutes of such meeting. 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 the meeting three (3) Union Trustees and four (4) Employer Trustees, the Union Trustees have four (4) votes to equal the four (4) of the Employer Trustees.

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. In the event the Trustees cannot act with respect to any questions or resolutions 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 arbitration as set forth in Article XI of this Trust Agreement.

Section 5. No matter in connection with the interpretation or enforcement of any of the Collective Bargaining Agreements shall be subject to arbitration under Article XI.

## **ARTICLE VIII**

### **GENERAL PROVISIONS APPLICABLE TO TRUSTEES**

Section 1. Every instrument executed by the Board of Trustees or by its specific direction shall be conclusive in favor of any person who relies on it and signifies 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, liability or disabilities of any Trustee under this Trust Agreement shall be determined solely by the express provisions of this Trust Agreement and the applicable law 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 of Trustee to the maximum extent permitted by law; provided however, that in no event shall the foregoing apply to any Trustee whose willful misconduct or gross negligence gives rise to the liability, claim or cause of action.

Section 4. Neither the Employees, any Signatory Association, any Individual Employer nor the Union shall be liable in any respect for any of the obligations, acts or omissions of the Trustees or any of them because such Trustees are in any way associated with any such Employees, 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 omitted to be done in good faith and in accordance with and in reliance on such opinion, and the Trustees shall not be liable therefore.

Section 6. No decision shall be made by the Board of Trustees in the administration of the Trust which is discriminatory under or contrary to any applicable law or regulation, or the terms of this Agreement.

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

## ARTICLE IX

### OTHER GENERAL PROVISIONS

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

Section 2. Any notice required to be given under the terms of this Trust Agreement shall be deemed to have been duly serviced 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 trust, or if sent by wire to such person at said last known address.

Section 3. This Trust Agreement shall be binding upon and inure to the benefit of all Individual Employers who are now or hereafter may become members of any Signatory Association or who become in any way a party to any of the Collective Bargaining Agreements or this Trust Agreement, and upon the heirs, executors, administrators, successors, purchasers and assignees, of any Signatory Association, any Individual Employer, the Union, the Employees, and the Trustees.

Section 4. 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 Trust.

Section 5. All questions pertaining to this Trust Agreement, the Trust and their validity, administration and construction, shall be determined in accordance with the laws of the State of Nevada and the United States of America.

Section 6. If any provision of this Trust Agreement, the rules and procedures issued pursuant thereto, or any step in the administration of the Trust is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of this Trust Agreement and any rules and procedures, unless such illegality or invalidity prevents accomplishment of the objectives and purposes of this Trust Agreement. In the event of any such holding, the parties will immediately commence negotiations to attempt to remedy any such defect.

Section 7. All books, records, papers, reports, documents, or other information obtained with respect to the Trust shall be confidential, and shall not be made public or used for any other purposes, except to the extent necessary to comply with any applicable law, for the proper operation of the Trust and for the cooperation with other trusts or plans authorized by other provisions of this Agreement, and may be made available to the Individual Employers and Signatory Associations or the Union for such purposes upon written request to and at the discretion of the Trustees. Nothing in this section shall prohibit the preparation or publication of statistical data and summary reports with respect to the operations of the Trust or delinquent employers.

Section 8. In the establishment and maintenance of the Trust, and in the execution, amendment and implementation of this Trust Agreement, the Union acts in its own behalf and for and on behalf of the Employees and as their collective bargaining representative and agent, and every agreement or act of the Union in connection with the establishment, maintenance and operation of the Trust shall be deemed also to be and is the agreement or act of the Employee, or Employees, concerned with or affected by such agreement or action.

Section 9. In the establishment and maintenance of the Trust, and in the execution, amendment and implementation of this Trust Agreement, the Employers and their Signatory Association(s) act for and on behalf of the Individual Employers. Also, in that same regard, said Employers or Signatory Association(s) 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 Trust or who in fact makes one or more contributions to the Trust.

Section 10. In any action or proceeding affecting the Trust, it shall be necessary to join as the parties, only the Trustees, and no Employer, Signatory Association, Individual Employer, the Union, Employee, 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 to purport to impose any personal liability upon or against any party not joined or served in any such action or proceeding.

Section 11. No Employee or other beneficiary or person shall have any right or claim to benefits under the Programs other than as specified in the Programs. Any and every claim to benefits from the Fund, any claim or right asserted under the Programs or against the Fund, regardless of the basis asserted for the claim and regardless of when the act or omission upon which the claim is based occurred, shall be resolved in the discretion of the Board of Trustees under and pursuant to the Programs and its decision with regard to the claim or right shall be final and binding upon all persons affected by the decision. No action may be brought for benefits under the Programs or to enforce any right or claim under the Programs or against the Fund until after the claim for benefits or other claim has been submitted to and determined by the Board and thereafter the only action which may be brought is one to enforce the decision of the Board or to clarify the rights of the claimant under such decision. Neither the Employers, Employees, any Individual Employer, any Signatory Association, the Union, nor any of the Trustees shall be liable for the failure or omission for any reason to pay any benefits under the Program.

## **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 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 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 the Board of Trustees of another trust or trusts.

Section 2. Any Individual Employer who executes and deposits any such written acceptance, or who in fact makes one or more contributions to the Trust 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 respect.

## ARTICLE XI ARBITRATION

Section 1. In the event the Trustees deadlock on any matter arising in connection with the administration of the Fund or the Training Program, they shall agree upon a neutral person to serve as an impartial umpire to decide the dispute. The decision of the impartial umpire shall be final and binding upon the Trustees, the parties, the Employees and recipients under any Program. Any matter in dispute and to be arbitrated shall be submitted to the impartial umpire in writing, and in making his decision, the umpire shall be bound by the provisions of this Trust Agreement, any Program and the Collective Bargaining Agreements and shall have no authority to alter or amend the terms of any thereof. If the Trustees cannot jointly agree upon a statement submitting said matter to arbitration, each group shall prepare and state in writing its version of the dispute and the question or questions involved. The decision of the impartial umpire shall be rendered in writing within ten (10) days (or within such further time as the Trustees may allow by mutual agreement) after the submission of the dispute.

Section 2. If no agreement on an impartial umpire is reached within fifteen (15) days or within such further time as the Trustees may allow for such purpose by mutual agreement, such umpire shall, on petition of either the majority of the Employer Trustees or the majority of the Union Trustees, be appointed by the United States District Court for Nevada.

Section 3. The cost and expenses incidental to any appointment of an umpire, and the holding of proceedings before him, including the fee, bonding or insurance if necessary,

for such umpire, 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 for attorneys' fees, consultants, witnesses, travel expenses and all similar expense.

Section 4. 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.

## **ARTICLE XII**

### **ERISA**

Section 1. The following have been designated by the Trustees, subject to removal or replacement by the Trustees at any time and from time to time in the future:

- a. A qualified independent public accountant,
- b. A Coordinator,
- c. A director of the training program,
- d. A third party administrator,
- e. Legal counsel.

## **ARTICLE XIII**

### **AMENDMENT AND TERMINATION**

Section 1. Amendment: This Trust Agreement shall be amended from time to time by the Trustees to conform it to ERISA or other applicable law. Otherwise, it may be amended only in the following manner:

- a. The proposal to amend shall be presented and discussed at a meeting of the Board of Trustees, but it shall not be voted on at that time.
- b. The proposed amendment shall be put in writing thereafter and mailed or delivered to each Trustee not less than fifteen (15) days prior to the trust meeting at which it is to be voted on, together with a notice stating the time and place of such meeting. Any amendment adopted shall be in writing and attached to this Agreement.

c. No amendment shall be adopted which will change the purpose of this Trust or which would conflict with any Collective Bargaining Agreement.

d. A copy of each amendment shall be mailed or delivered by the Administrator to each Trustee as soon as practicable after adoption.

Section 2. *Termination:*

a. *Causes of Termination:* The Trust created by this Agreement shall terminate upon the happening of following events:

i. The Trust Fund becomes inadequate to make or fund payments or under any Program adopted by the Trustees.

ii. There are no employees.

b. *Procedure in Event of Termination:* In the event of termination, the Trustees shall, to the extent possible:

i. pay all expenses of the trust, including termination expenses, to the date of termination;

ii. prepare a final audit and report of their transactions and accounts to the date of termination;

iii. give any notices and prepare and file any reports which may be required by ERISA and any other applicable law: and

iv. upon the dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of competent jurisdiction of the county in which the principal office of the organization is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

EACH PARTY SIGNING BELOW EXPRESSLY REPRESENTS AND WARRANTS THAT IT IS AUTHORIZED TO EXECUTE THIS AGREEMENT. EACH SIGNATORY ASSOCIATION REPRESENTS AND WARRANTS THAT ALL OF THE MEMBERS OF SAID EMPLOYER WHO HAVE AUTHORIZED IT TO DO SO HEREBY 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 ANY SIGNATORY ASSOCIATION 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.

UNIONS:

OPERATIVE PLASTERERS AND  
CEMENT MASONS INTERNATIONAL  
ASSOCIATION, LOCAL 797

By Sheel Sheen

SIGNATORY ASSOCIATIONS:

ASSOCIATED GENERAL  
CONTRACTORS ASSOCIATION

By Dana Wiggins

Its \_\_\_\_\_

NEVADA CONTRACTORS  
ASSOCIATION

By Uelbroune Joseph  
Its Vice-President

**ACCEPTANCE OF OFFICE BY TRUSTEES**

The undersigned hereby accept office as trustees appointed pursuant to the foregoing Trust Agreement and agree to act under and be subjected to all 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 16<sup>th</sup> day of APRIL, 1998.

UNION TRUSTEES:

EMPLOYER TRUSTEES:

Shelley

Dana Wiggins

Frankie Reil

Albaine Joseph

Ray Britia

\_\_\_\_\_

Michael Defto

**AMENDMENT NO. 1  
TO THE  
RESTATED AND AMENDED AGREEMENT  
AND DECLARATION OF TRUST  
FOR THE  
OPERATIVE PLASTERERS AND CEMENT MASONS  
INTERNATIONAL ASSOCIATION LOCAL 797  
APPRENTICE AND JOURNEYMAN TRAINING TRUST**

WHEREAS, the O.P.C.M.I.A. ("Union") and signatory Employer Associations established a jointly administered labor-management cooperation safety committee known as the Plasterers' Safety Program; and

WHEREAS, the Union and the Signatory Employers, along with the Board of Trustees believe that the purposes of the Plasterers' Safety Program are compatible with the purposes of the Trust Fund and would be best served as part of the Trust Fund;

THEREFORE, the Trust Agreement is amended as follows:

The following definitions are added to Article 1:

Section 15. *Plasterers' Safety Program Committee* means the Committee established by the Agreement for the Plasterers' Safety Program and which is succeeded by the Board of Trustees under this Agreement.

Section 16. *Safety Program, or Plasterers' Safety Program* means any arrangement, agreement or plan established, supported or maintained, or any or all of them, by the Board of Trustees or previously by the Plasterers' Safety Program Committee in the accomplishment of the purposes of this Trust, but more specifically which provides for the education or training of plasterers or trainees (including apprentices and journeymen) on issues of safety and any modification, amendment, extension or renewal of the same and which is being merged into this Agreement.

Section 17. *Safety Fund, or Plasterers' Safety Fund* means those funds which were collected by the Plasterers Safety Program prior to this Agreement and which are transferred to this Trust but which are maintained separately from other assets of the Trust as well as those contributions received specifically for the Plasterers' Safety Program from employers signatory to the Master Labor Agreements.

Article II, Section 1 (a) is completely replaced as follows:

a. Such amounts are held in trust for the purpose of paying either from principal or income or both, for the expenses of a Program or Safety Program in the geographic area covered by the Collective Bargaining Agreements referred to in this Trust Agreement.

Article III, Section 2 (b) is completely replaced as follows:

b. Contributions to the Fund, including the Safety Fund, shall be paid to the Trustees, or to such depository as they may designate, only by check, money order, or other recognized method of transmitting money or its equivalent, made payable to the order of the Operative Plasterers and Cement Masons International Association Local 797 Apprentice and Journeyman and Training Trust Fund for Southern Nevada, or as otherwise designated by the Board of Trustees.

Article V, Section 2 is completely replaced as follows:

Section 2. The Board of Trustees shall collect and receive all monies due to the Fund and Safety Fund, and shall promptly deposit such monies in special trust fund accounts established in a reputable bank or banks located in such locality as determined by the Board of Trustees, including a separate account for the Plasterers' Safety Fund. All Contributions to the Fund shall be due and payable in the County of Clark, Nevada. 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 Employer from its obligation under any Collective Bargaining Agreements for hours worked or to be paid under any Collective Bargaining Agreement for which no contribution has actually been received, notwithstanding any statement, restriction or qualification appearing on the check or any attachment thereto.

Article V, Section 5 is replaced entirely as follows:

Section 5.

a. Subject to the other provisions of this Trust Agreement the entire Fund, except those monies in the Safety Fund, shall be held in trust to be used for Apprentice and Training Purposes.

b. Subject to the other provisions of this Trust Agreement the entire Safety Fund shall be held in trust to be used for Plasterers' Safety purposes.

Dated this 28<sup>th</sup> day of January, 1999.

UNION TRUSTEES:

[Signature]  
[Signature]  
[Signature]  
[Signature]

EMPLOYER TRUSTEES:

[Signature]  
[Signature]  
[Signature]  
[Signature]

**AMENDMENT NO. 2  
TO THE  
RESTATED AND AMENDED AGREEMENT  
AND DECLARATION OF TRUST  
FOR THE  
OPERATIVE PLASTERERS AND CEMENT MASONS  
INTERNATIONAL ASSOCIATION LOCAL 797  
APPRENTICE AND JOURNEYMAN TRAINING TRUST**

WHEREAS, the Trustees have determined that it would be in the best interests of the Trust to be able to borrow money from time to time as deemed appropriate;

THEREFORE, the Trust Agreement is amended as follows:

Article V, Section 6 which reads, "Without limitation of the provisions of Section 1 of this Article, the Board of Trustees shall have power: . . ." is amended by the addition of the following paragraph:

q. To borrow money and incur indebtedness on behalf of the Trust, to execute and deliver promissory notes, deeds of trust, mortgages, bonds, debentures, and pledges, and to repay such debts including interest.

Dated this 30<sup>TH</sup> day of DECEMBER, 1998.

UNION TRUSTEES:

Shelley Thomas  
Ray D. Brito  
Michael DeFina  
Frankie Rupp

EMPLOYER TRUSTEES:

Dana L. Wegman  
John W. [unclear]  
[unclear]  
Ullrich [unclear]

**AMENDMENT NO. 3  
TO THE  
RESTATED AND AMENDED AGREEMENT  
AND DECLARATION OF TRUST  
FOR THE  
OPERATIVE PLASTERERS AND CEMENT MASONS  
INTERNATIONAL ASSOCIATION LOCAL 797  
APPRENTICE AND JOURNEYMAN TRAINING TRUST**

Article VII, Section 2, the first sentence, is hereby amended to provide for a quorum of two (2) employer Trustees and two (2) Union Trustees, as follows:

To constitute a quorum for the transaction of business, not less than two (2) Employer Trustees and two (2) Union Trustees, or their designated Alternate Trustee, if any, shall be present in person.

Dated this 25 day of March, 1999.

UNION TRUSTEES:

Shelton Herman  
Ray Abertin  
Michael DeLeo  
\_\_\_\_\_  
\_\_\_\_\_

EMPLOYER TRUSTEES:

William Joseph  
Dana Luby  
J. S. S.  
\_\_\_\_\_  
\_\_\_\_\_

**AMENDMENT NO. 4  
TO THE RESTATED AND AMENDED  
AGREEMENT AND DECLARATION OF TRUST  
FOR THE  
OPERATIVE PLASTERERS AND CEMENT MASONS  
INTERNATIONAL ASSOCIATION LOCAL 797  
APPRENTICE AND JOURNEYMAN TRAINING TRUST**

Pursuant to Article XIII, entitled Amendment and Termination, Section 1:

1. Article IV, entitled Board of Trustees, Section 6(a), is hereby amended as follows:

Wherever the word "Chairman" appears in this Section 6(a), it shall be deleted and replaced with the word "Co-Chairmen".

2. Article IV, entitled Board of Trustees, Section 12, is hereby deleted and replaced with the following:

The officers of the Board of Trustees shall be two (2) Co-Chairmen who shall be elected annually by the Trustees from among themselves. One Co-Chairman shall be an Employer Trustee and the other Co-Chairman shall be a Union Trustee. The officers shall serve for a period of one year, or until their successors are elected and take office, whichever is longer. Nothing herein shall prohibit any officer from being re-elected or succeeding himself.

3. Article IV, entitled Board of Trustees, Section 13, is hereby deleted and replaced with the following:

The Co-Chairmen shall be responsible for the conduct of the meetings of the Board of Trustees and for the keeping of minutes and 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 Co-Chairmen shall have authority to jointly sign instruments, obligations and checks drawn on the Trust as authorized by the Board of Trustees. The Board of Trustees may designate an alternate for each of the Co-Chairmen, which alternates 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,

obligations and checks may be signed by his alternate. Further, the Board of Trustees may authorize use of facsimile signatures of the Co-Chairmen for the execution of checks under circumstances which reasonably safeguard the assets of the Trust or may authorize specific employees or designees including third party administrators of the Trust to execute checks approved or ratified by the Board of Trustees.

4. Article VII, entitled Procedure of Board of Trustees, is hereby amended as follows: The second sentence of Section 1 is deleted in its entirety and replaced with the following:

Either Co-Chairmen, or any three (3) members of the Board, may call a 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.

Effective and dated this 27<sup>th</sup> day of JAN, 1999.

UNION TRUSTEES:

Michael Dejes  
Ray Abitia  
Joseph Rich  
Shelley

EMPLOYER TRUSTEES:

[Signature]  
[Signature]  
Walter L. Higgins  
Urbane Joseph

**AMENDMENT NO. 5  
TO THE RESTATED AND AMENDED  
AGREEMENT AND DECLARATION OF TRUST  
FOR THE OPERATIVE PLASTERERS AND CEMENT MASONS  
APPRENTICESHIP AND JOURNEYMAN TRAINING TRUST**

Pursuant to Article XIII, entitled Amendment and Termination, Section 1:

Article III, entitled Contributions to the Fund and Collections, Section 2(f), is hereby amended in its entirety as follows:

Each Employer is required to keep and maintain proper records which are adequate and sufficient to readily identify all types and hours of work performed by all of its employees in order to determine, among other things, whether the employer has properly reported and paid all monies due to the Trust.

If the employer either refuses to provide all or part of the records requested, or if the employer's records are incomplete, inaccurate or unclear to readily identify all types and hours of work performed by all its employees, then a presumption shall arise that all of the employer's employees were engaged in work for which Trust Fund contributions are due and apply such conversion and assumptions as the Trust Fund deems appropriate to determine this amount due. The Trustees may also presume any other related matter, including but not limited to, converting subcontractor payments to contributions due and allocating delinquencies by project.

The Employer is required to maintain such records for no less than six years.

All attorneys' fees and costs shall be paid by the Employer for whom legal action was required, including fees and costs expended securing audit cooperation and without regard to whether the audit resulted in a delinquency finding.

Effective and dated this 22 day of August, 2002.

UNION TRUSTEES:

Todd Linn  
Ray Altitia  
Margie J. Johnson  
Ronald Nelson  
\_\_\_\_\_

EMPLOYER TRUSTEES:

[Signature]  
\_\_\_\_\_  
[Signature]  
Arthur S. Joseph  
\_\_\_\_\_

**AMENDMENT NO. 6  
TO THE RESTATED AND AMENDED  
AGREEMENT AND DECLARATION OF TRUST  
FOR THE  
CEMENT MASONS AND PLASTERERS  
JOINT APPRENTICESHIP TRAINING TRUST**

In accordance to Article XIII, entitled "Amendment and Termination," the Restated and Amended Agreement and Declaration of Trust for the Operative Plasterers and Cement Masons International Association Local 797 Apprentice and Journeyman Training Trust (Restated April 16, 1998), Article V, Section 12, is newly added as follows:

Section 12: The Trustees have the exclusive right power and authority in their sole and absolute discretion, to administer, apply and interpret the Trust Agreement, any Plan, rules, regulations or policies they adopt. The Trustees may decide all matters arising in connection with the operation or administration of the Trust or any Plan. All determinations made by the Trustees with respect to any such matter will be final and binding on all concerned. Any judicial review of any Trustee decision must be done in deference to the Trustees' decision.

Effective and dated this 18<sup>th</sup> day of NOVEMBER 2004.

  
\_\_\_\_\_  
Co-Chairman

  
\_\_\_\_\_  
Co-Chairman