SECOND RESTATED
AGREEMENT AND DECLARATION OF TRUST

FLORIDA WEST COAST OPERATING ENGINEERS
APPRENTICESHIP TRUST FUND

Date Prepared: October, 2011

TABLE OF CONTENTS

		Page

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AGREEMENT AND DECLARATION OF TRUST

FLORIDA WEST COAST OPERATING ENGINEERS APPRENTICESHIP TRUST FUND

WHEREAS, on the 13th day of November, 1970, an Agreement and Declaration of Trust was entered into by, between and among **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 925 , FLORIDA WEST COAST CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.** and certain other Employers and certain named Trustees; and

WHEREAS, the said Agreement and Declaration of Trust has heretofore been amended and/or restated on effective December 31, 1975

WHEREAS, Article IX of the Trust Agreement authorize the Trustees to amend such Trust Agreement, and

WHEREAS, it is the desire of the Trustees to amend and restate the Trust Agreement.

NOW, THEREFORE, the Trustees, designated and in office as such, have executed this Second Restated Agreement and Declaration of Trust as indicating their acceptance of the respective duties imposed upon them as Trustees under the terms of this Restated Agreement to read as follows:

W I T N E S S E T H

WHEREAS, there is in existence a collective bargaining agreement entered into by and between the Association and the Union, in which agreement the Employers' signature thereto or bound thereby, have agreed to the establishment of an Apprenticeship Trust Fund; and

WHEREAS, an Apprenticeship Trust Fund has heretofore been created.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained and other good and valuable consideration it is agreed as follows:

ARTICLE I

Definitions

Section 1.1 **Act.** The term "Act" as used herein shall mean the Employee Retirement Income Security Act of 1974, as amended and any amendments as may from time to time be made and any regulations promulgated pursuant to the provisions of the Act.

Section 1.2 **Administrative Manager.** The term "Administrative Manager" as used herein shall mean that person or company defined in Section 5.7 of this Agreement and Declaration of Trust.

Section 1.3 **Administrator.** The term "Administrator" as used herein shall mean the Board of Trustees.

Section 1.4 **Association.** The term "Association" shall mean the Union Contractors and Subcontractors Association, Inc., its successors and assigns.

Section 1.5 **Collective Bargaining Agreement.** The term "Collective Bargaining Agreement" as used herein shall mean any collective bargaining agreement between an employer and the Union and any extension, amendment, modification, renewal or successor thereof, which requires employers to make payments to this Trust.

Section 1.6 **Consultant.** The term "Consultant" as used herein shall mean any person or entity who, for compensation, advises, represents or provides other assistance to the Trustees concerning the establishment, maintenance, modification or operation of the Plan.

Section 1.7 **Contributions.** The term "Contributions" shall mean payments made or required of any Employer by a collective bargaining agreement or other agreement to this Fund or payment made on behalf of Participants.

Section 1.8 **Custodian.** The term "Custodian" as used herein shall mean one who is officially entrusted with guarding and keeping records and documents of the Trust Fund.

Section 1.9 **Delinquent Contributions.** The term "Delinquent Contributions" or "Delinquencies" as used herein shall mean contributions not received by the Trustees or their designee on the date provided in the Collective Bargaining Agreement or other written document.

Section 1.10 **Employee.** The term "Employee" as used herein shall mean:

(a) Any employee working for an Employer as defined herein, and with respect to whose employment an Employer is required to make contributions into the Trust Fund.

(b) Employees, if any, of this Trust Fund who are not employed by an Employer as defined in Section 1.11, but as shall be proposed and accepted for such benefits by the Trustees. As to such personnel as are employees of the Trust Fund, the Trustees shall be deemed to be an Employer within the meaning of this Trust Agreement and shall provide benefits for said Employees out of said Trust Fund, on the same basis as for other Employees.

(c) A person, represented by or under the jurisdiction of the Union, who shall be employed by a governmental unit or agency, and on whose behalf payment of contributions shall be made at the times in accordance with a written agreement, ordinance or resolution.

Section 1.11 **Employer.** The term "Employer" as used herein shall mean.

(a) An employer who is a member of, or is represented in collective bargaining by the Association and who is bound by a collective bargaining agreement with the Union providing for the making of payments to the Trust Fund with respect to employees represented by the Union.

(b) An employer who is not a member of, nor represented in collective bargaining by the Association, but who has duly executed or is bound by a collective bargaining agreement with the Union providing for the making of payments to the Trust Fund with respect to employees represented by the Union.

(c) The Union, which, for the purpose of making the required contributions into the Trust Fund, shall be considered as the Employer of the Employees of the Union for whom the Union contributes to the Trust Fund.

(d) An Employer who, while not generally recognizing the Union as the representative of its employees, is bound to make contributions on behalf of some or all of its employees.

(e) Employers as described in this Section shall, by the making of payments to the Trust Fund pursuant to such collective bargaining or other written agreements, be deemed to have accepted and be bound by this Trust Agreement.

Section 1.12 **Named Fiduciary.** The term "Named Fiduciary" as used herein shall mean the Board of Trustees.

Section 1.13 **Participant.** The term "Participant" as used herein shall mean any person receiving benefits or entitled to receive benefits under the plan or under any program promulgated by the Trustees.

Section 1.14 **Plan.** The term "Plan" as used herein shall mean the plan, program, method, rules and procedures for the payment of benefits from the Trust Fund established by the Agreement and Declaration of Trust and amendments thereto.

Section 1.15 **Trust Agreement.** The term "Trust Agreement" or "Agreement and Declaration of Trust" or "Restated Agreement and Declaration of Trust" as used herein shall mean this instrument, including all amendments, restatements and modifications as may from time to time be made.

Section 1.16 **Trust Fund.** The terms "Trust", "Trust Fund" and "Fund" as used herein shall mean the entire trust estate of the **FLORIDA WEST COAST OPERATING ENGINEERS APPRENTICESHIP TRUST FUND,** as it may from time to time be constituted, including investments and the income from any and all investments, employer contributions and any and all other assets, property or money received by or held by the Trustees for the uses and purposes of this Trust.

Section 1.17 **Trustees.** The term "Trustees" as used herein shall mean the Trustees designed in this Trust Agreement, together with their successors, designated and appointed in accordance with the terms of this Trust Agreement.

(a) The term "Employer Trustee" as used herein shall mean a Trustee appointed by the Association.

(b) The term "Union Trustees" or "Employee Trustees" shall mean the Trustees appointed by the Union.

(c) The Trustees collectively shall be the "Administrator" of this Fund as that term is used in the Act.

(d) The Trustees collectively shall be the Joint Apprenticeship Committee of **FLORIDA WEST COAST OPERATING ENGINEERS APPRENTICESHIP TRUST FUND**.

The respective Trustees shall serve without compensation but they shall be reimbursed for all reasonable and necessary expenses properly and accurately incurred by them in connection with the performance of their official duties as such.

A vacancy shall occur whenever a Trustee resigns or when a Trustee is removed by the party which appointed him, or by reason of death, incapacity or because the Employer Trustee is no longer an Employer Trustee as defined in Section 1.6(a) above.

Section 1.18 **Union.** The term "Union", as used herein, shall mean **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 925,** its successors and assigns, and such other union or unions as may from time to time be accepted for participation hereunder under such terms and conditions as may be required by the Trustees.

ARTICLE II

CREATION AND PURPOSES OF FUND

Fiscal Year

Section 2.1 This Trust Fund is created, established and maintained and the Trustees agree to receive, hold and administer the Trust Fund, for the purpose of providing apprenticeship and training benefits as now are or hereafter may be authorized or permitted by law and by the Collective Bargaining Agreement for participants and in accordance with provisions herein set forth. It is understood that contributions received are for the purpose of providing apprenticeship and training including, but not limited to, training of apprentices, preapprentices and journeymen.

Section 2.2 The Fiscal Year of the Fund shall end on March 31.

ARTICLE III

BOARD OF TRUSTEES

Section 3.1 **Number, Appointment and Term.** The Fund shall be administered by six (6) Trustees, three (3) of whom shall be appointed by the Union and shall act as Employee Trustees, and three (3) of whom shall be appointed by the Association and shall act as Employer Trustees.

The respective Trustees shall serve without compensation but they may be reimbursed for all reasonable and necessary expenses properly and accurately incurred by them in connection with the performance of their official duties as such.

A vacancy shall occur whenever a Trustee resigns or when a Trustee is removed by the party which appointed him, or by reason of death, or incapacity.

Section 3.2 **Resignation and Removal.** If any Employer Trustee shall die, become incapable of acting hereunder, resign, or be removed, a Successor Employer Trustee shall be immediately appointed by the Association such appointment to be in writing and to be delivered to the Chairman and Secretary-Treasurer of the Trustees serving at that time. If any Employee Trustee shall die, become incapable of acting hereunder, or resign, a Successor Employee Trustee shall immediately be appointed by the Union, such appointment to be in writing and to be delivered to the Chairman and Secretary-Treasurer of the Trustee serving at that time.

Section 3.3 **Successor Trustees, Appointment.**

(a) If any Employer Trustee shall die, become incapable of acting hereunder, resign, or be removed, a Successor Employer Trustee shall be immediately appointed by the Association or, if the Association fails to appoint within 60 days of notification of a vacancy, by the remaining Employer Trustees(s). Such appointment to be in writing and to be delivered to the Chairman and Secretary-Treasurer of the Trustees serving at that time. If any Employee Trustee shall die, become incapable of acting hereunder, or resign, a Successor Employee Trustee shall immediately be appointed by the Union, such appointment to be in writing and to be delivered to the Chairman and Secretary-Treasurer of the Trustee serving at that time.

(b) It is the intention hereof that the Fund shall at all times be administered by a full complement of Trustees.

(c) Upon the failure of the proper party to appoint such Successor Trustee, then any Trustee may petition the local United States District Court for an Order appointing such Successor Trustee to serve until a Successor Trustee has been appointed by the proper party. The expenses incidental to any such proceedings shall be paid by the Trust Fund.

Section 3.4 **Successor Trustee, Assumption of Office.** Any Successor Trustee immediately upon his appointment as a Successor Trustee and his acceptance of the Trusteeship in writing, and upon becoming bonded as required by law, shall become vested with all the property rights, powers and duties of a Trustee hereunder with the like effect as if originally named a Trustee without the necessity of any formal conveyance or other instrument of title.

Section 3.5 **Acceptance of the Trust by Trustees.** A Trustee shall execute a written acceptance in a form satisfactory to the Trustees and consistent with the Act and thereby shall be deemed to have accepted the Trust created and established by this Trust Agreement and to have consented to act as Trustee and to have agreed to administer the Trust Fund as provided herein. Such written acceptance shall be filed with the Fund records and the remaining Trustees shall be notified of the receipt of such acceptance.

Section 3.6 Limitation of Liability of Trustees. No Successor Trustees shall in any way be liable or responsible for anything done or committed in the administration of the Trust prior to the date they became a Trustee. No Trustee shall be liable for the acts or omissions of any investment manager, attorney, administrative manager, consultant, accountant, agent, or assistants engaged by them in pursuance of this Agreement, if such investment manager, attorney, administrative manager, consultant, accountant, agent or assistant was selected pursuant to this Trust Agreement and such person's performance was periodically reviewed by the Trustees who found such performance to be satisfactory. To the extent permitted by law, no Trustee shall be liable for the acts or omissions of another Trustee to whom certain responsibilities, obligations or duties have been delegated by this Trust Agreement.

Section 3.7 Office of the Fund. The principal office of the Trust Fund shall be located and maintained in Florida, or at such other location as the Trustees may determine. The location of the principal office shall be made known to the parties interested in the Trust Fund. At such office, and at such other places as may be required by law, there shall be maintained the books and records pertaining to the Trust Fund and its administration.

Section 3.8 Officers. At the June meeting (or the first meeting after June if there is no June meeting) of each year, the Trustees shall elect from among themselves a Chairman, a Vice-Chairman, a Secretary-Treasurer and an Assistant Secretary-Treasurer to serve for a term of one (1) year commencing on date of election or until his or their successors have been elected. When the Chairman and Vice-Chairman are elected from the Employer Trustees, then the Secretary-Treasurer and Assistant Secretary-Treasurer shall be elected from the Employee Trustees, and when the Secretary-Treasurer and Assistant Secretary-Treasurer shall be elected from the Employer Trustees, then the Chairman and Vice-Chairman shall be elected from the Employee Trustees. The Chairmanship shall alternate, insofar as practicable or desirable, between the Employer Trustees and the Employee Trustees. The Secretary-Treasurer or Assistant Secretary-Treasurer or such other person as the Trustees may designate, shall keep minutes and records of all meetings, proceedings and acts of the Trustees and shall, with reasonable promptness, send copies of such minutes and records to all Trustees. The Chairman, and in his absence, the Vice-Chairman, shall preside at all meetings of the Trustees.

Section 3.9 Power to Act in Case of Vacancy. No vacancy or vacancies on the Board of Trustees, less than all of the Trustees appointed by the Union or all of the

Trustees appointed by the Association shall impair the power of the remaining Trustees, acting in the manner provided by this Trust Agreement, to administer the affairs of the Trust Fund notwithstanding the existence of such vacancy or vacancies.

Section 3.10 **Meetings; Notices; Attendance.** The Trustees shall meet quarterly and at such times as they deem it necessary to transact their business. The Chairman or the Secretary-Treasurer of the Board of Trustees, may, and upon the written request of any two (2) Trustees, shall call a meeting of the Trustees at any time by giving at least five (5) days written notice of the time and place thereof to the remaining Trustees. The Trustees may meet in person provided, however, one or more Trustees may be considered to be present at such meeting during such periods as there is electronic communication established among the Trustees. A meeting of the Trustees may be held at any time without notice if all the Trustees consent thereto in writing.

The meetings of the Board of Trustees shall not be opened to the public and shall be attended only by the Trustees and such other persons as may be designated or invited by the Trustees.

Section 3.11 **Minutes.** Written minutes, a copy of which shall be furnished with reasonable promptness to each Trustee, shall be kept of all business transacted and of all matters upon which voting shall have occurred and the vote shall be recorded. Such minutes shall bear the signature of the Secretary or Assistant Secretary or Acting Secretary and shall be approved at the succeeding meeting.

Section 3.12 **Quorum, Voting, Action Without Meeting.**

(a) A quorum shall consist of at least two of the Trustees, provided, however, such number shall include at least one (1) Trustee appointed by the Association and one (1) Trustee appointed by the Union. If at any meeting the number of Employer and Employee Trustees present shall be unequal, then the group of Trustees lesser in number shall be entitled to cast the same number of votes as the other group of Trustees. In the event there shall be present at any meeting less than all of the Trustees of a group, the votes of the group shall be cast by the Trustees of the group who are present on a pro rata basis based upon the number of Trustees of the group who are present at the meeting.

(b) A quorum of a committee of the Board of Trustees, established in accordance with Section 5.6 of this Trust Agreement or otherwise, shall be a majority of the members of the committee, except as may be provided otherwise by the committee.

(c) Any action taken by the Trustees, except as herein otherwise provided, shall be by affirmative vote of a majority of the votes cast at a meeting. The

Trustees must cast their votes in person, except as provided in subsection (a) of Section 3.12 and Section 3.10 hereof.

(d) Action by the Trustees on any proposition may also be taken without a meeting if all of the Trustees agree thereon in writing.

Section 3.13 Manner of Acting in the Event of Deadlock

(a) A deadlock shall be deemed to exist whenever a proposal, nomination, motion, or resolution made or proposed by any one of the Trustees is not adopted or rejected by a majority vote and the maker of the proposal, nomination, motion or resolution notifies the remaining Trustees in writing that a deadlock exists.

(b) In the event of such deadlock arising, the Trustees shall meet for the purpose of agreeing upon an impartial umpire to break such deadlock by deciding the dispute in question. In the event of the inability of the Trustees to agree upon the selection of such impartial umpire within a reasonable time, then, any Trustee may petition the local United States District Court for an Order appointing an impartial umpire. Such impartial umpire shall immediately proceed to hear the dispute between the Trustees and decide such dispute, and the decision and award of such umpire shall be final and binding upon the parties. The reasonable compensation of such umpire and the costs and expenses (including, without limitation, attorney's and reporter fees) incidental to any proceedings instituted to break a deadlock shall be paid by the Trust Fund.

(c) Any impartial umpire selected or designated to break a deadlock shall be required to enter his decision within a reasonable time fixed by the Trustees. The scope of any such proceeding before such impartial umpire shall be limited to the provisions of this Trust Agreement and to the provisions of the rules, regulations and by-laws adopted by the Trustees and to the plan of benefits established by them. The impartial umpire shall have no jurisdiction or authority to change or modify the provisions of this Trust Agreement or to decide any issue arising under or involving the interpretation of any collective bargaining agreements between the Union, the Association and other Employers, except those issues which arise both under the Trust Agreement and such collective bargaining agreement, and such impartial umpire shall have no power or authority to change or modify any provisions of any such collective bargaining agreement.

Section 3.14 Removal of Trustees (Violation of Act). The Board of Trustees shall initiate action to cause the removal of any fellow member Trustee who may be serving as a Trustee in violation of the Act. The vacancy or vacancies caused by such a removal shall be filled in accordance with Section 3.3 of this Article.

ARTICLE IV

CONTRIBUTIONS AND COLLECTIONS

Section 4.1 Employer Contributions.

(a) Each Employer shall make prompt contributions or payments to the Trust Fund is such amount and under the terms as are provided for in the applicable collective bargaining agreement. An Employer may also be required to make contributions in such amount and under such terms as such Employer may be obligated, in writing, to make, provided that such contributions shall be subject to acceptance by the Trustees. The Employer agrees that such contributions shall constitute an absolute obligation to the Trust Fund, and such obligation shall not be subject to set-off or counterclaim which the Employer may have for erroneous contributions to this or any other Fund for any liability of the Union or of an Employee or any other person.

(b) Contributions to the Fund shall be paid to the Trustees or to such depository as the Trustees shall designate, only by check, bank draft, money order or other recognized written method of transmitting money or its equivalent, made payable to the **FLORIDA WEST COAST OPERATING ENGINEERS APPRENTICESHIP TRUST FUND** or as provided in the Collective Bargaining Agreement. The payment of contributions shall be made periodically at such times as the Trustees shall specify by rules and regulations or as may be provided in the applicable collective bargaining agreement.

(c) Each Employer shall be responsible only for the contributions payable by him pursuant to a collective bargaining agreement or other agreement except as may be otherwise provided by law or this Trust Agreement. Neither the association or any other employer or association or group shall be responsible for the contributions, payments or other obligations of any other Employer except as may be provided by law.

(d) Work Outside Jurisdiction. In the event an Employee employed by an Employer, as defined herein, shall perform work outside of the geographical jurisdiction of the Union, the Employer may continue to make payments to the Trust Fund and the Trustees may accept such payments.

(e) Upon the expiration of the Employer's collective bargaining agreement, the Employer shall continue to make contributions to this Trust Fund as if the Employer's collective bargaining agreement had not expired until such time:

(1) as the Employer and the Union have bargained to impasse over the terms of a replacement collective bargaining agreement and the Employer

has notified the Trustees in writing that such impasse exists, or

(2) if the Employer is free under applicable law to repudiate its bargaining relationship with the Union, the Employer notifies the Union and the Trustees in writing that the Employer has repudiated its bargaining relationship with the Union.

(3) Contributions shall be required to be made hereunder for all hours worked prior to the receipt of the written notice required herein.

Section 4.2 Receipt of Payment and Other Property of Trust. The Trustees or such other person or entity designated or appointed by the Trustees are hereby designated as the persons to received the payments heretofore or hereafter made to the Trust Fund by the Employers. The Trustees are hereby vested with all right, title, and interest in and to such monies and all interest which may be accrued thereon and are authorized to receive and be paid the same.

Section 4.3 Collection and Enforcement of Payments. The Trustees, or such committee of the Trustees as the Board of Trustees shall appoint, or the Administrative Manager if one has been appointed and when directed by such committee or by the Board of Trustees, shall have the power to demand, collect and receive Employer payments and all other money and property to which the Trustees may be entitled, and the Trustees or Committee of Trustees shall hold the same until applied to the purposes provided in this Trust Agreement. They shall take such steps, including the institution and prosecution of, or the intervention in, such legal or administrative proceedings as the Trustees in their sole discretion determine to be in the best interest of the Trust Fund for the purpose of collecting such payments, money, and property, without prejudice, however, to the rights of the Union to take whatever steps it deems necessary and wishes to undertake for such purposes.

Section 4.4 Production of Records. Each Employer shall promptly furnish for inspection to the Trustees or their designee, on demand, all payroll records relating to all employees (not only those employees conceded by the employer to be covered by a collective bargaining agreement requiring contributions to the Fund). The payroll records required to be produced shall include but not be limited to: (1) IRS Form 941; (2) Unemployment Compensation Tax Form UCT-6; (3) payroll journal, disbursements journal, payroll subsidiary; (4) time and job record cards; (5) listing or schedule of subcontractors; (6) all other payroll records.

Each Employer shall promptly furnish to the Trustees, on demand, the names of his Employees, Social Security numbers, the hours worked by each Employee and such other information as the Trustees may reasonable require in connection with the administration of the Trust Fund and for no other purpose. The Trustees may, by their representatives, examine the pertinent employment and payroll records of each

Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust Fund. The union shall, upon the request of the Trustees, promptly furnish information available to it in respect to an Employee's employment status.

Section 4.5 Costs of Collection. In the event of a delinquency, the Trustees may require the payment by Employers of liquidated damages of twenty (20%) percent of the delinquent amount, interest as set forth herein and of other costs and expenses including cost of an audit and a reasonable attorney's fee (of not less than 20% of the delinquency) arising out of the verification and collection of such employers delinquent contributions.

In any action under 29 USC §1132 to enforce 29 USC §1145, the employer shall be required to pay interest at the rate of 15% per annum plus an amount equal to the greater of interest on the delinquent contributions at the rate of 15% per annum or liquidated damages of 20% of delinquent amount pursuant to 29 USC §1132.

In the event of a delinquency with respect to which the above statute does not apply, the employer shall be obligated to pay in addition to the delinquent amount, the following: (1) rate of 15% per annum, plus (2) liquidated damages according to the following schedule:

Delinquent Amount	Less than 60 days delinquent	60 or more days delinquent
$ 0.01 - $ 999.00	10%	20%
1,000.00 - 4,999.99	10%	18%
5,000.00 - 9,999,99	10%	15%
10,000.00 - 19,999.99	8%	12%
over $20,000.00	5%	10%

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

Section 4.7 Employer Reports. Each Employer shall, with each remittance, submit a statement on such form or forms as shall be prescribed by the Trustees showing the basis of the contribution and setting forth:

(a) The names of all employees who have received wages during the period covered by said report and their Social Security numbers;

(b) The respective total number of hours in each pay period covered by the report, together with the total number of hours worked in that period by all employees for which contributions are required to be made, together with such other information as the Trustees may, from time to time, require.

(c) That the detailed basis on which such payments are made is specified in a written agreement with the Employer.

ARTICLE V

POWERS AND DUTIES OF TRUSTEES

Section 5.1 Conduct of Trust Business. The Trustees shall have general supervision of the operation of this Trust Fund and shall conduct the business and activities of the Trust Fund in accordance with this Trust Agreement and applicable law. The Trustees shall hold, manage and protect the Trust Fund and collect the income therefrom and contributions thereto. The Trustees may, in the course of conducting the business of the Trust, execute all instruments in the name of **FLORIDA WEST COAST OPERATING ENGINEERS APPRENTICESHIP TRUST FUND** which instruments shall be signed by at least one Employer Trustee and one Employee Trustee; except that the Trustees may designate its Administrative Manager or other agent to make payments hereunder and further provided, however, any one Trustee, when authorized by the Board of Trustees, may execute legal documents to commence and process law suits and enforce trust collections on behalf of the Trustees.

Section 5.2 Use of Fund. The Trustees shall have the power and authority to use and apply the Trust Fund for the following purposes:

(a) To pay or provide for the payment of all reasonable and necessary expenses (i) of verifying and/or collecting the Employer contributions and payments and other monies and property to which they may be entitled and (ii) of administering the affairs of this Trust, including the employment of such administrative, legal, expert and clerical assistance, the purchase or lease of premises, materials, supplies and equipment and the performance of such other acts as the Trustees, in their sole discretion, find necessary or appropriate in the performance of their duties.

(b) To provide apprenticeship or training benefits to eligible participants.

(c) To establish and accumulate such reserve funds as the Trustees deem necessary and desirable for the proper execution of the Trust herein created.

(d) To pay all other proper and necessary expenses incurred by any Trustee not specified above, including the cost of defense in litigation arising out of the Trusteeship of this Trust Funds, to the extent permitted by law.

(e) To establish and carry out a funding policy and method consistent with the objectives of the Plan and the Act.

Section 5.3 **Investments.**

(a) The Trustees shall have the power and authority, in their sole discretion, to invest and reinvest such funds as are not necessary for current expenditures or liquid reserves, as they may from time to time determine, in such investments as are legal investments under applicable State and Federal law relating to the investments of the employees benefit trust funds, not limited, however, by any limitation restricting investments in common stocks to a percentage of the Fund or to a percentage of the total market value of the Fund. The Trustees may sell, exchange or otherwise dispose of such investments at any time and from time to time, as provided in Section 5.9(e) hereof. The Trustees shall also have power and authority (in addition to, and not in limitation of, common law and statutory authority) to invest in any stocks, bonds, or other property, real or personal, including improved or unimproved real estate and equity interest in real estate, where such an investment appears to the Trustees, in their discretion and consistent with their fiduciary obligations, to be in the best interest of the Trust Fund and its Participants, judged by then prevailing business conditions and standards. The Trustees shall have the authority, in respect to any stocks, bonds, or other property, real and personal, held by them as Trustees, to exercise all such rights, power and privileges as might be lawfully exercised by any person owning similar stocks, bonds, or other property in his own right.

(b) Delegation and Allocation of Investment Functions.

1. The Trustees are authorized, in their discretion, to allocate to the Finance Committee such duties and responsibilities to invest and reinvest such Fund assets as they shall specify in such allocation in accordance with Section 5.6(g).

2. The Trustees shall have the power and authority to appoint one or more investment managers (as defined in Section 3 (38) of the Act) who shall be responsible for the management, acquisition, disposition, investing and reinvesting of such of the assets of the Trust Fund as the Trustees shall specify. Any such appointment may be terminated by the Trustees upon thirty (30) days written notice. The fees of such investment manager, and its expenses to the extent permitted by law, shall be paid out of the Trust Fund. The Trustees shall require that the investment manager acknowledge in writing that he is a fiduciary with respect to the Fund.

3. In connection with any allocation or delegations of investment functions under paragraphs (1) and (2) of this subsection (b), the Trustees shall, from time to time, adopt appropriate investment policies or guidelines.

<u>Section 5.4</u> <u>Deposits and Disbursements.</u> All Trust Funds not invested shall be deposited by the Trustees in such appropriate depository or depositories as the Trustees shall from time to time select, and any such deposit or deposits, or disbursements therefrom, shall be made in the name of the Trust in the manner designated and authorized by the Trustees or by the Investment Manager appointed in accordance with Section 5.3(b) (2) of this Article.

<u>Section 5.5</u> <u>Allocation and Delegation of Fiduciary Responsibilities.</u> The Trustees may, by resolution or by-law or by provisions of this Trust Agreement, or otherwise allocate fiduciary responsibilities and various administrative duties to committees or subcommittees of the Board of Trustees, and they may delegate such responsibilities and duties to other individuals as they may deem appropriate or necessary in their sole discretion and consistent with the Act.

<u>Section 5.6</u> <u>Committee of the Board of Trustees.</u>

(a) The standing committee of the Board of Trustees may consist of an Executive Committee, an Eligibility Committee, a Finance Committee, an Employer Accounts Committee, and such other standing committees as the Trustees may wish to create by by-law or resolution.

(b) <u>Appointment of Committee Members.</u> Each Committee shall consist of equal representatives of Employer and Employee Trustees. A quorum of a committee shall be as provided in Section 3.12(b). If the Employee Trustee group and/or the Employer Trustee group, respectively, nominate a Trustee of their group for membership on any committee, the Chairman shall appoint such nominee in filling any vacancy. Appointment as a member of any committee shall be communicated to the appointee by the Administrative Manager in writing. Any resignation of a Trustee as a committee member shall be submitted, in writing, to the Administrative Manager who shall promptly notify the Executive Committee thereof.

(c) <u>Removal of Committee Members.</u> Any appointed member of any committee may be removed from membership in such committee by the group of Trustees appointing him at any time for any reason.

(d) <u>Committee Reports.</u> Except as otherwise provided herein, each committee of the Board of Trustees shall maintain and file with the custodian reports, signed by the Chairman of the Committee, of all actions taken by the Committee.

(e) <u>Executive Committee.</u> The Trustees may appoint an Executive Committee which shall supervise the operation of the Trust Fund between meetings of the Board of Trustees. The Executive Committee shall formulate general or specific policies of submission to and consideration by the Board of Trustees. It shall advise the officers in matters of policy and administration not inconsistent with the Trust

Agreement or with any policy or decision heretofore adopted or made by the Board of Trustees. Pending the convening of a meeting of the Board of Trustees, it shall decide and pass upon matters requiring immediate action, subject to ratification at the next meeting of the Board of Trustees to whom a report shall be made of any such immediate action, as well as of its recommendations. The Executive Committee shall also perform such other functions, duties, and responsibilities as may be delegated or assigned to it by the Board of Trustees under the Trust Agreement and applicable laws or as may be allocated to it pursuant to Sections 5.3(b) and 5.5 of this Article; and any actions taken or duties performed under such allocation shall not be subject to ratification by the full Board of Trustees, unless such allocation expressly provides otherwise.

(f) Finance Committee. The Finance Committee shall review the investment policies of the Trustees and the activities of any investment managers which may have been appointed by the Trustees. It shall make appropriate recommendations to the full Board of Trustees on any matter entrusted to it. With respect to assets of the Trust Fund which the Trustees have not specified to be managed by an investment manager appointed pursuant to Section 5.3(b) (2) of this Article, and subject to such limitations and requirements as may be contained in this Trust Agreement or in the Act, the Trustees may allocate to the Finance Committee the authority to authorize and approve the investment of Trust Fund assets in investments permitted under Section 5.3(a), subject to pertinent investment policies and guidelines adopted by the Board of Trustees and any action taken pursuant to such authorization shall not be subject to ratification by the full Board of Trustees unless such authorization expressly provides otherwise.

(g) Employer Accounts Committee. The Trustees may appoint an Employer Accounts Committee which shall formulate policies and procedures in regard to the collection of delinquent payments and contributions due the Fund. It shall collaborate with the Administrative Manager and with counsel in the administration of such policies and procedures and make appropriate reports and recommendations to the Trustees. The Trustees may allocate to the Employer Accounts Committee authority to initiate legal actions to collect any delinquent employer contributions or other obligations owed to the Trust Fund, and any action taken pursuant to such allocation shall not be subject to ratification by the full Board of Trustees unless such allocation expressly provides otherwise.

Section 5.7 Administrative Manager. The Trustees may employ or contract for the services of an individual, firm or corporation, to be known as "Administrative Manager", who shall, under the direction of any appropriate committee of the Trustees, administer the office or offices of the Trust Fund and of the Trustees, coordinate and administer the accounting, bookkeeping and clerical services, prepare (in cooperation where appropriate with the independent auditor) all reports and other documents to be prepared, filed or disseminated by or on behalf of the Trust in accordance with law, assist in the collection of contributions required to be paid to the Trust Fund by Employers and perform such other duties and furnish such other services as may be assigned, delegated or directed or as may be contracted by or on behalf of the Trustees for purposes of the Act. The Administrative Manager may be designated the custodian on behalf of the Trustees of all documents and other records of the Trustees and of the Trust Fund.

<u>Section 5.8</u> <u>By-Laws, Rules and Regulations.</u>

(a) The Trustees are hereby empowered and authorized to adopt by-laws and to promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust Fund, provided the same are not inconsistent with the terms of this Trust Agreement. All by-laws, rules and regulations adopted by action of the Trustees shall be binding upon all parties hereto, all parties dealing with the Trust Fund and all persons claiming any benefits hereunder.

(b) No by-laws, regulations, rule, action or determination made or adopted by the Trustees, nor any decision or determination made by an impartial umpire appointed pursuant to Section 3.13 of this Agreement, shall in any manner conflict or be inconsistent (i) with this Trust Agreement, (ii) with any applicable Federal, State or local law, or (iii) to the extent consistent with the duties of the Trustees under applicable law and this Trust, with the applicable collective bargaining agreement.

<u>Section 5.9</u> <u>Additional Authority.</u> The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law:

(a) To enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration of the Trust Fund, and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the Participants involved;

(b) To keep property and securities registered in the names of the Trustees or of the Fund;

(c) To establish and accumulate as part of the Trust Fund such reasonable reserve funds as the Trustees, in their sole discretion, deem necessary or desirable to carry out the purposes of such Trust Fund;

(d) To pay out of the Trust Fund all real and personal property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund, or any money, property, or securities forming a part thereof;

(e) To sell, exchange, lease, convey, mortgage, or dispose of any property, whether real or personal, at any time forming a part of the Trust Fund upon such terms as they may deem proper, and to execute and deliver any and all instruments of conveyance, lease, mortgage and transfer in connection therewith; and

(f) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

(g) To establish and maintain apprenticeship standards and/or training plan.

(h) To establish and maintain disciplinary rules which disciplinary rules which may include such rules as may be deemed appropriate to establish and maintain a drug free work place and drug free apprenticeship and training program.

(i) To provide safety training including, but not limited to, training related to hazardous chemicals, OSHA, mine safety or such other training and assistance as may be necessary or appropriate in order to provide apprentices or journeyman with the skills and certifications necessary or appropriate to meet the needs of the Employers employing such apprentices or journeymen.

(j) The Trustees are authorized to provide the benefits herein pursuant to the terms of an Apprenticeship Scholarship Loan Agreement and the Trustees are authorized to enter into such agreement with apprentices and to enforce the terms of such agreement.

Section 5.10 Bonds. The Trustees shall obtain from an authorized surety company such bonds as may be required by law, covering such persons and in such amounts (but not less than required by law) as the Trustees, in their discretion, may determine. The cost of premiums for such bonds shall be paid out of the Trust Fund.

Section 5.11 Insurance. The Trustees may in their discretion obtain and maintain policies of insurance, to the extent permitted by law, to insure themselves, the Trust Fund as such, as well as employees or agents of the Trustees and of the Trust Fund, while engaged in business and related activities for and on behalf of the Trust Fund (i) with respect to liability to others as a result of acts, errors or omissions of such Trustee or Trustees, employees or agents, respectively, provided such insurance policy shall provide recourse by the insurer against Trustees as may be required by law and (ii) with respect to injuries received or property damage suffered by them. The cost of the premiums for such policies of insurance shall be paid out of the Trust Fund.

Section 5.12 **Information to Participants.** The Trustee shall provide Participants such information as may be required by law.

Section 5.13 **Accountants.** The Trustees shall engage one or more independent qualified public accountants to perform all services as may be required by applicable law and such other services as the Trustees deem necessary. The cost incurred under this section shall be paid out of the Trust Fund.

Section 5.14 **Trustees to Act Without Compensation.** The Trustees shall act in such capacity without compensation, but they shall be entitled to reimbursement for the expenses properly and actually incurred in the performance of their duties with the Trust Funds, including, without limitation, attendance at meetings and other functions of the Board of Trustees, attendance at institutes, seminars, conferences or workshops for or on behalf of the Trust Fund. A Trustee may be paid directly from the Fund by way of reimbursement for the amount of actual wages that he has lost by reason of his attendance at Trustee meetings, other functions of the Board of Trustees, attendance at institutes, seminars, conferences or workshops for or on behalf of the Trust Fund. No reimbursement of wages shall be paid to a Trustee who is an employer, a salaried employee of an employer or a salaried employee of the Union. Provided, however, the Trustees may reimburse an employer, association or union for expenses properly and actually incurred by it in connection with their employee's performance of duties for or with the Trust Fund including but not limited to reimbursement of gross cost of its employee in connection with their performance of duties for or with the Trust Fund.

Section 5.15 **Reports.** All reports required by law to be signed by one or more Trustees may be signed by all of the Trustees, or the Trustees may appoint one or more of their members to sign such report on behalf of the Trustees.

Section 5.16 **Records of Trustee Transactions.** The Trustees shall keep true and accurate books of account and a record of all of their transactions and meetings (including actions taken at such meeting and by informal action of the Trustees), which records and books shall be audited at least annually by a certified public accountant. A copy of each audit report shall be available for inspection at the principal office of the Trustees at reasonable times and after reasonable notice.

Section 5.17 **Construction and Determination by Trustees.** Subject to the stated purposes of the Fund and the provisions of this Agreement, the Trustees shall have full and exclusive authority to determine all questions of coverage and eligibility, methods of providing or arranging for benefits and all other related matters. They shall have full power to construe the provisions of this Agreement, the terms used herein and the by-laws and regulations issued thereunder. Any such determination and any such construction adopted by the Trustees in good faith shall be binding upon all of the parties hereto. No matter respecting the foregoing or any difference arising thereunder or any matter involved in or arising under this Trust Agreement shall be subject to the grievance or arbitration procedure established in any collective bargaining agreement between the Association and the Union, provided, however, that this clause shall not affect the rights and liabilities of any of the parties under any of such collective bargaining agreement.

Section 5.18 **Liability.** The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person.

Section 5.19 **Reliance on Written Instruments.**

(a) By Trustees. Any Trustee, to the extent permitted by applicable law, may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument. In any controversy, claim, demand, suit at law or other proceeding between any participant or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Union, the Association or with any Employer, any facts certified to the Trustees by the Union or the Employers, any facts which are of public record and any other evidence pertinent to the issue involved.

(b) By Others. No party dealing with the Trustees shall be obligated.

(1) To see the application to the stated Trust purposes of any funds or property of the Trust Fund; or

(2) To see that the terms of this Trust Agreement have been complied with; or

(3) To inquire into the necessity or expediency of any act of the Trustees.

Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon;

(a) That at the time of execution of said instrument the Trust was in full force and effect;

(b) That the instrument was executed in accordance with the terms and conditions of this Trust Agreement; and

(c) That the signing Trustees were duly authorized and empowered to execute the instrument.

Section 5.20 Discharge of Liability. The receipt by the Trustees for any money or property or checks (after such checks are honored at the bank and paid to the Trust Fund) shall discharge the person or persons paying or transferring the same to the extent of such payment or transfer.

Section 5.21 Use of Trust Fund to Provide Benefits. The Board of Trustees shall have the power and authority to use and apply the Trust Fund to pay or provide apprenticeship, training and related benefits to employees of employers on whose behalf contributions have been to this Trust Fund. Trust assets are not to be used provide training or other benefits for individuals who are not subject to collective bargaining agreements providing for contributions to this Trust Fund. The Trustees are empowered to develop and implement programs to protect and preserve Trust Fund assets, and to prevent unnecessary expenditures, including expenditures to train individuals who are working in the operating engineer but not for employers who have an obligation to contribute to this Trust Fund.

ARTICLE VI

CONTROVERSIES AND DISPUTES

Section 6.1 Submission to Trustees. All questions, disputes, claims appeals or controversies of whatever character, arising in any manner between any persons in connection with the Trust Fund, the plan of benefits or the operation thereof, whether related to;

(a) Any claim for any benefit by any participant or any other person; or

(b) The construction of the language or meaning of this Trust Agreement, by-laws, or rules and regulations adopted by the Trustees; or

(c) Construction of the language or meaning of any writings, decision, instrument or accounts in connection with the operation of the Trust Fund; or

(d) Any other matter.

shall, pursuant to Rules and Regulations adopted by the Trustees, be submitted to the Trustees or a Committee of the Trustees, and the decision of the Trustees shall be final and binding upon all persons dealing with the Trust Fund or claiming benefits thereunder. In reaching its decisions, the Trustees shall have full and complete discretionary authority to make eligibility determination or to construe the Plan's term.

Section 6.2 Settling Disputes. The Trustees may, in their sole discretion, compromise or settle any claim or controversy in such manner as they think best, and any majority decision made by the Trustees in compromise or settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all parties involved in this Trust.

ARTICLE VII

BENEFICIAL RIGHTS

Section 7.1 No Right, Title, or Interest. No Employer, Union, Employee, Participant shall have any vested right, title or interest in or to the Trust Fund or any part thereof.

(a) provided, however, that any Participant who shall be covered by the plan, shall be entitled to the benefits in the forms and amounts and subject to the terms and conditions of such plan and of this Trust;

(b) Provided, further, however, that the benefits shall be free from the interference and control of any creditor, and no benefits shall be subject to any assignment or any control of any creditor, and no benefits shall be subject to seizure or sale under any legal, equitable, or any other process, and in the event that any claim or benefit shall, because of any debt incurred by or resulting from any other claim or liability against any Participant, by reason of any sale, assignment, transfer, encumbrance, anticipation or other disposition made or attempted sale under any legal, equitable or other process, or in any suit or proceeding, become payable, or be liable to become payable, to any person other than the Participant for whom the same is intended, as provided herein pursuant hereto, the Trustees shall have power to withhold payment of such benefit to such Participant until such assignment, transfer, encumbrance, anticipation or other disposition, writ or legal process is canceled or withdrawn in such manner as shall be satisfactory to the Trustees. Until so canceled or withdrawn, the Trustees shall have the right to use and apply the benefits, as the Trustees may deem best, directly for the support and maintenance of such Participant.

Section 7.2 Optional Benefits Prohibited. No Employee shall have the right, privilege or option to receive, instead of the benefits provided hereunder,

(a) Any part of the contributions payable by Employers under this Trust Agreement;

(b) A cash consideration either upon termination of the plan of benefits provided hereunder or upon such Employee's or Participant's withdrawal from coverage under this Fund, either voluntarily or through severance of employment with any particular Employer.

ARTICLE VIII

TERMINATION OF TRUST

Section 8.1 **Conditions of Termination.** This Trust Agreement shall cease and terminate upon the happening of any one or more of the following events:

(a) In the Event the Trust Fund shall, in the opinion of the Trustees, be inadequate to carry out the intent and purpose of this Trust Agreement, or be inadequate to meet the payments due or to become due under this Trust Agreement and under the plan of benefits to Participants already drawing benefits;

(b) In the event there are no individuals living who can qualify as Employees hereunder;

(c) In the event of termination by action of the Union and the Association;

(d) In the event of termination as may be otherwise provided by law.

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

(a) Make provision out of the Trust Fund for the payment of expenses incurred up to the date of termination of the Trust and the expenses incidental to such termination;

(b) Arrange for a final audit and report of their transactions and accounts, for the purpose of termination of their Trusteeship;

(c) Apply the Trust Fund to pay any and all obligations of the Trust to devise a plan to distribute and apply any remaining surplus in such manner as will best effectuate the purposes of the Trust and requirements of law, best effectuate the purposes of the Trust and requirements of law, provided however, the assets shall be distributed for one or more exempt purposes within the meaning of the Internal Revenue Code Section 501(c)(3) or corresponding Section any future Federal Tax Code;

(d) Give any notice and prepare and file any reports which may be required by law.

ARTICLE IX

MISCELLANEOUS

Section 9.1 **Law Applicable.** This Trust is created and accepted in the State of Florida and all questions pertaining to the validity or construction of this Trust Agreement and of the acts and transactions of the parties hereto shall be determined in accordance with the laws of the State of Florida except as to matters governed by Federal Law.

Section 9.2 **Savings Clause.** Should any provisions of this Agreement and Declaration of Trust be held to be unlawful, or unlawful as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of said provisions to any other person or instance, unless such illegality shall make impossible the functioning of this Fund.

Section 9.3 **Coverage of Additional Bargaining Units.**

(a) Extension of Coverage. The Trustees shall have the power to extend the coverage of this Trust Agreement to additional employers or associations of employers (herein called "Additional Associations") and their employees represented by labor organizations other than the Union (herein called "Additional Unions"), subject to the conditions stated in subsection (b) of this Section. Any one such group of employees represented by an Additional Union shall be referred to herein as "additional collective bargaining unit". Such additional employers, Additional Associations and Additional Unions shall have no right to participate in the appointment, removal or replacement of Trustees.

(b) Termination of Coverage.

1. The Trustees may, by resolution, terminate coverage by and under this Trust Agreement of any such additional collective bargaining unit, effective as of the last day of any calendar month not earlier than four (4) months after the adoption of such resolution, (i) if the Trustees in their sole discretion determine that continued coverage would be a detriment to the Employees and Participants represented by the Union for whose benefit this Trust was originally created, or (ii) if the Trustees determine that contributions are not being made by such additional collective bargaining unit employers timely and in accordance with the requirements of this Trust Agreement.

2. An Additional Union may, on behalf of the Employees and Participants, in an additional collective bargaining unit represented by it, terminate coverage by and under this Trust Agreement of any such additional collective bargaining unit, effective as of the last day of any calendar month not earlier than four (4) months after the Additional Union serves written notice of such termination on the Trustees, the Association and the Union.

3. Upon such termination, eligibility for benefit for Participants shall continue to be in accordance with the rules and regulations of the Plan. No union, employer or successor trusts of the additional union shall have any right to any monies, including any reserve established hereunder.

Section 9.4 Reciprocity Agreements. The Trustees may, in their sole discretion, enter into such reciprocity agreement or agreements with other apprenticeship training funds as they determine to be in the best interest of the Trust Fund, provided that any such reciprocity agreement or agreements shall not be inconsistent with the terms of this Trust Agreement or the collective bargaining agreements under which this Trust Agreement is maintained.

Section 9.5 Merger. The Trustees shall have the power to merge with any other fund established for similar purposes as this Trust Fund (provided such purposes are exempt within the meaning of the Internal Revenue Code Section 501(c)(3)) under terms and conditions mutually agreeable to the respective Board of Trustees, subject to the approval of the Union and the Association.

Section 9.6 Refund of Contributions. In no event shall any employer, directly or indirectly, receive any refund on contributions made by them to the Trust (except in case of a bona fide erroneous payment or overpayment of contributions, to the extent permitted by law) nor shall an Employer directly or indirectly participate in the disposition of the Trust Fund, or receive any benefits from the Trust Fund except as a qualified participant under the Plan. Upon payment of contributions to the Trustees, all responsibilities of the Employer for each contribution shall cease and the Employer shall have no responsibilities for the acts of the Trustees, nor shall an Employer be obliged to see to the application of any funds or property of the Trust or to see that the terms of the Trust have been complied with.

Section 9.7 Accounting and Judicial Settlements.

(a) Accounting. The Union, the Association or an Employer may, at any time, demand of the Trustees an accounting with respect to any and all accounts, provided that the party demanding such accounting agrees to pay the necessary expenses thereof.

(b) Judicial Settlements and Action by the Trustees. The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts, to seek judicial protection by any action or proceeding they determine necessary and, further, to obtain a judicial determination or declaratory judgment as to any questions of construction of this Trust Agreement or for instructions as to any action thereunder and, further, as to any questions relating to the discharge of their duties and obligations under, or in connection with the administration of, this Trust and as to the distribution of assets belonging to the Trust. Any such determination, decision, or judgment shall be binding upon all parties to, or claiming under, this Trust Agreement.

Section 9.8 Withholding Payment. In the event any questions or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until there shall have been made an adjudication of such question or dispute which, in the Trustees' sole judgment, is satisfactory to them, or until the Trustees shall have been fully protected against loss by means of such indemnification agreement or bond as they, in their sole judgment, determine to be adequate.

Section 9.9 Gender. Whenever any words are used in this Trust Agreement in the masculine gender, they shall also be construed to include the feminine or neuter gender in all situations where they would so apply; and whenever any words are used in the singular, they shall also be construed to include the plural in all situations where they would so apply and wherever any words are used in the plural, they shall also be construed to include the singular.

Section 9.10 Amendment of Trust Agreement. The provisions of this Trust Agreement may be amended at any time by an instrument in writing executed by the Trustees, provided that no amendment shall divert or provide for the use of the Trust Fund then in the hands of the Trustees from the purposes of this Trust Fund to provide for the payment of such benefits as may be authorized under Section 5.2 of Article V hereof.

It is further provided that no amendment shall provide for the use of application of the Trust Fund for any purpose other than those set forth in Section 2.1 hereof; or permit the return to, or payment of the Trust Fund, or any part thereof, to any Employer, except a contribution or other payment made by mistake to the extent permitted by law; or so amend this Trust Agreement that there shall not be equal representation of Employer Trustees and of Employee Trustees to administer the Trust.

Section 9.11 Liability. This Trust Fund shall not be responsible for the safety of apprentices while working on the job, under the daily work assignments of the employer or representatives of the employer. Safe working practices shall be the responsibility of the apprentice, and the provision of a safe working environment shall be the responsibility of the employer.

Section 9.12 Article and Section Titles. The Article and Section titles are included solely for convenience and shall, in no event, be construed to affect or modify any part of the provisions of this Trust Agreement or be construed as part thereof.

IN WITNESS WHEREOF, the undersigned have caused this Agreement and Declaration of Trust to be executed this 28th day of February, 2012, to signify their acceptance of the terms and conditions stated herein.

EMPLOYER TRUSTEE	**EMPLOYEE TRUSTEE**
[signature]	[signature]
[signature]	Barry L. [signature]
	Dennis E. Stancel

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AMENDMENT NO. 1

TO

SECOND RESTATED AGREEMENT AND DECLARATION OF TRUST FLORIDA WEST COAST OPERATING ENGINEERS APPRENTICESHIP TRUST FUND

WHEREAS, a Second Restated Agreement and Declaration of Trust was previously entered into; and

WHEREAS, amendments of the Trust Agreement are authorized to be made by an instrument executed by the Trustees; and

WHEREAS, it is the desire of the Trustees to amend said Restated Agreement and Declaration of Trust clarifying the conditions pertaining to Number, Appointment and Term of Board of Trustees.

NOW, THEREFORE, in consideration of the mutual promises, covenants and contentions herein contained and other good and valuable consideration, it is agreed that the following Sections of the Restated Agreement and Declaration of Trust are amended by deleting in its entirety the existing Sections and substituting in lieu thereof new Sections, copies of which are attached hereto and by reference incorporated herein. The Sections to be amended are: 1.18 and 9.5

Except as specifically amended herein, the Trust shall remain in full force and effect.

IN WITNESS WHEREOF, the Board of Trustees have caused this Amendment to be signed by the Employer Trustees and the Employee Trustees this 28th day of February, 2017, to be effective as of the 28th day of February, 2017.

EMPLOYEE TRUSTEES	EMPLOYER TRUSTEES
Mark [signature]	[signature]
[signature]	[signature]
[signature]	

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Section 1.18 **Union.** The term "Union", as used herein, shall mean **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 487,** its successors and assigns, and such other union or unions as may from time to time be accepted for participation hereunder under such terms and conditions as may be required by the Trustees.

Section 9.5 **Merger.** The Trustees shall have the power to merge with any other fund established for similar purposes as this Trust Fund (provided such purposes are exempt within the meaning of the Internal Revenue Code under terms and conditions mutually agreeable to the respective Board of Trustees, subject to the approval of the Union and the Association.

AMENDMENT NO. 2

TO

SECOND RESTATED AGREEMENT AND DECLARATION OF TRUST
FLORIDA WEST COAST OPERATING ENGINEERS
APPRENTICESHIP TRUST FUND

WHEREAS, a Second Restated Agreement and Declaration of Trust was previously entered into; and

WHEREAS, amendments of the Trust Agreement are authorized to be made by an instrument executed by the Trustees; and

WHEREAS, it is the desire of the Trustees to amend said Restated Agreement and Declaration of Trust clarifying the conditions pertaining to Number, Appointment and Term of Board of Trustees.

NOW, THEREFORE, in consideration of the mutual promises, covenants and contentions herein contained and other good and valuable consideration, it is agreed that the following Sections of the Restated Agreement and Declaration of Trust are amended by deleting in its entirety the existing Sections and substituting in lieu thereof new Sections, copies of which are attached hereto and by reference incorporated herein. The Sections to be amended are: 2.1, 3.1, 3.2, 3.3 and 4.5.

Except as specifically amended herein, the Trust shall remain in full force and effect.

IN WITNESS WHEREOF, the Board of Trustees have caused this Amendment to be signed by the Employer Trustees and the Employee Trustees this 1st day of July, 2018, to be effective July 1, 2018.

EMPLOYEE TRUSTEES	EMPLOYER TRUSTEES
______________________	______________________
______________________	______________________
______________________	______________________

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<u>Section 2.1</u> This Trust Fund is created, established and maintained and the Trustees agree to receive, hold and administer the Trust Fund, for the purpose of providing apprenticeship and training benefits as now are or hereafter may be authorized or permitted by law and by the Collective Bargaining Agreement for participants and in accordance with provisions herein set forth. It is understood that contributions received are for the purpose of providing apprenticeship and training including, but not limited to, training of apprentices, preapprentices and journeymen.

This organization was organized exclusively for charitable, religious, educational and/or scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations described under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

<u>Section 3.1</u> <u>Number, Appointment and Term.</u> The Fund shall be administered by a minimum of two (2) Trustees and a maximum of six (6) Trustees, a minimum of one (1) of whom and a maximum of three (3) of whom shall be appointed by the Union and shall act as Employee Trustees, and a minimum of one (1) of whom and a maximum of three (3) of whom shall be appointed by the Association and shall act as Employer Trustees.

The respective Trustees shall serve without compensation but they may be reimbursed for all reasonable and necessary expenses properly and accurately incurred by them in connection with the performance of their official duties as such.

A vacancy shall occur whenever a Trustee resigns or when a Trustee is removed by the party which appointed him, or by reason of death, or incapacity.

<u>Section 3.2</u> <u>Resignation and Removal.</u> If any Employer Trustee shall die, become incapable of acting hereunder, resign, or be removed such that the minimum number of Trustees are not serving, a Successor Employer Trustee shall be immediately appointed by the Association such appointment to be in writing and to be delivered to the Chairman and Secretary-Treasurer of the Trustees serving at that time. If any Employee Trustee shall die, become incapable of acting hereunder, or resign, such that the minimum number of Trustees are not serving, a Successor Employee Trustee shall immediately be appointed by the Union, such appointment to be in writing and to be delivered to the Chairman and Secretary-Treasurer of the Trustee serving at that time.

<u>Section 3.3</u> <u>Successor Trustees, Appointment.</u>

(a) If any Employer Trustee shall die, become incapable of acting hereunder, resign, or be removed, a Successor Employer Trustee shall be immediately appointed by the Association or, if the Association fails to appoint within 60 days of notification of a vacancy, by the remaining Employer Trustees(s). Such appointment to be in writing and to be delivered to the Chairman and Secretary-Treasurer of the Trustees serving at that time. If any Employee Trustee shall die, become incapable of acting hereunder, or resign, a Successor Employee Trustee shall immediately be appointed by the Union, such appointment to be in writing and to be delivered to the Chairman and Secretary-Treasurer of the Trustee serving at that time.

(b) It is the intention hereof that the Fund shall at all times be administered by at least the minimum number of Trustees.

(c) Upon the failure of the proper party to appoint such minimum number of Successor Trustees, then any Trustee may petition the local United States District Court for an Order appointing such Successor Trustee to serve until a Successor Trustee has been appointed by the proper party. The expenses incidental to any such proceedings shall be paid by the Trust Fund.

Section 4.5 Costs of Collection. In the event of a delinquency, the Trustees may require the payment by Employers of liquidated damages of twenty (20%) percent of the delinquent amount, interest and interest at the rate of 15% and of other costs and expenses including cost of an audit and a reasonable attorney's fee (of not less than 20% of the delinquency) arising out of the verification and collection of such employers delinquent contributions.

In any action under 29 USC §1132 to enforce 29 USC §1145, the employer shall be required to pay interest at the rate of 15% per annum plus an amount equal to the greater of interest on the delinquent contributions at the rate of 15% per annum or liquidated damages of 20% of delinquent amount pursuant to 29 USC §1132, along with other costs and expenses including cost of an audit and a reasonable attorney's fee (of not less than 20% of the delinquency) arising out of the verification and collection of such employers delinquent contributions.