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July 17, 1984

File I CA-40
Section 3(C)(5)(C)

File
Public 8/31/84
Availability



Thomas S. Harman, Esq.
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: No-Action Letter Request Relating to
Baton Rouge Building and Construction
Industry Foundation
Our File No. B6675/16770

Dear Mr. Harman:

Based on our conversations on behalf of the above-captioned foundation (the "Foundation"), we hereby submit additional factual representations and the most recent versions of certain of the organizational documents of the Foundation. These representations and materials are for your use in responding to our request that the Staff of the Securities and Exchange Commission (the "Commission") advise us that it will not recommend that the Commission take enforcement action concerning the actions of the Foundation or the Trusts to be created thereunder without registering the Foundation or the Trusts as investment companies under the Investment Company Act of 1940, and without registering the Foundation or the Trusts as investment advisors under the Investment Advisers Act of 1940.

This letter will supplement our letter of June 22, 1984, addressed to the Office of Chief Counsel, Division of Corporation Finance. Copies of this letter are being forwarded to the Divisions of Corporation Finance and Market Regulation for their use in responding to our requests of them concerning the Foundation.

On the question of the assets of the Trusts and the investments to be made by the Foundation, we confirm that the Trusts will be holding assets consisting solely of participation interests in construction period mortgage loans. The Foundation, as trustee of the

Thomas S. Harman, Esq.
July 17, 1984
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Trusts, will purchase only participation interests on behalf of the Trusts, and will not hold or invest any reserves for either its benefit or for the benefit of the respective Trusts.

Enclosed herewith are the most recent versions of two of the Foundation's Master Documents, as identified in our letter of June 22. As described in our telephone conversations, it has been determined that the Foundation should be organized as a non-profit corporation organized under the laws of the State of Louisiana. This change in the structure of the Foundation has been undertaken for tax purposes, but should not affect either the organization or the operation of the Construction Industry Investment Plan. The pension plans who were to be members of the unincorporated Foundation will now be the members of the non-profit corporation known as The Baton Rouge Building and Construction Industry Foundation. The trustees of the member Plans who were to sit on the unincorporated Foundation's Board of Directors will now serve on the corporation's Board of Trustees. Officers will be elected annually, but will not exercise any operational authority, and will not receive compensation of any kind.

This change in format has necessitated the revision of certain of the Master Documents. The Foundation Agreement, which was Exhibit A to our letter of June 22, has been reconstituted to serve as the By-laws of the corporation, while the Construction Industry Investment Plan, Exhibit C to the June 22 letter, has been extensively revised to reflect the creation of the corporate entity. These two documents are enclosed as Amended Exhibits A and C, respectively. No substantive provisions of either document have been materially affected by the restructuring.

We trust that these representations and documents will enable you to complete your action on our request. Please contact either George Chapman or the undersigned if you have any questions.

Very truly yours,

SHUMAKER, LOOP & KENDRICK

By 

Mark R. High

MRH/sjs

Enclosures

cc: Division of Corporation Finance (w/encl.)
Division of Investment Management (w/encl.)
Marc Gertner, Esq. (w/o encl.)
George L. Chapman, Esq. (w/o encl.)

BY-LAWS
OF
BATON ROUGE BUILDING AND
CONSTRUCTION INDUSTRY FOUNDATION

Shumaker, Loop & Kendrick

North Courthouse Square
1000 Jackson
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(800) 662-5056

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ARTICLE I

DEFINITIONS

As used in these By-laws, unless the context clearly indicates otherwise, the following words and terms shall have the meanings here set forth:

Section 1.01. Agreement. The term "Agreement" means this instrument governing the establishment and operations of the Baton Rouge Building and Construction Industry Foundation and shall include all exhibits, amendments, modifications, supplements and addenda hereto.

Section 1.02. Director. The term "Director" means a member of the Board of Directors of the Foundation appointed pursuant to Section 5.01 or Section 5.02 hereof.

Section 1.03. ERISA. The term "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and regulations of the Department of the Treasury and the Department of Labor promulgated thereunder.

Section 1.04. Member. The term "Member" means both the Founder Members who are the original subscribers of the Foundation and such Additional Members as may hereafter and from time to time be admitted pursuant to the provisions of Section 3.03 hereof. The term shall not include any Founder Member or Additional Member whose membership shall have terminated prior to the pertinent determination of Member status.

Section 1.05. Corporate Trustee. The term "Corporate Trustee" means the corporate institution with Trust powers, if any, selected pursuant to the provisions of Article IX.

Section 1.06. Foundation. The term "Foundation" means the Baton Rouge Building and Construction Industry Foundation as governed by this Agreement and as it may be subsequently amended.

ARTICLE II

OFFICES

Section 2.01. Principal Office. The principal office of the Foundation shall be at such place in the City of Baton Rouge, Louisiana, as may be designated from time to time by the Board of Directors.

Section 2.02. Other Offices. The Foundation shall also have offices at such other places without, as well as within, the State of Louisiana, as the Board of Directors may from time to time determine.

ARTICLE III

PURPOSES; MEMBERS

Section 3.01. Purposes. The purposes of the Foundation are to provide a procedure and system whereby representatives of Members may gather from time to time to evaluate investment proposals presented to them so that such representatives may provide useful information to the respective Members, and a means through which such Members can invest portions of their respective funds as they may from time to time independently determine in such ventures as real estate equity and financial transactions, thereby diversifying their respective investment portfolios.

Section 3.02. Founder Members. The Founder Members of the Foundation are those trusts which are signatories to this Agreement.

Section 3.03. Additional Members. An eligible trust may be admitted as an Additional Member of the Foundation upon the vote of the Members of the Foundation and shall thereafter have all rights, privileges and obligations of membership as provided herein (and as this Agreement shall hereafter be amended from time to time). A trust shall be eligible if and so long as it is a trust exempt from federal income taxation by virtue of Section 501 of the Code, and exempt from applicable state income taxation on a corresponding basis. Upon admission, each such Additional Member shall execute an adoption agreement in substantially the form last approved by vote for use by the Foundation.

Section 3.04. Termination of Membership. Any Member may terminate its membership in the Foundation upon written notice to the Foundation. A Member's status as such shall automatically terminate when it ceases to be an eligible trust as described in Section 3.03 hereof. A termination of membership by a Member shall not affect any investment theretofore made by the Member prior to its termination.

Section 3.05. Voting Power of Members. On any matter submitted to a vote of the Members of the Foundation, each Member shall have one (1) vote.

ARTICLE IV

MEETINGS OF MEMBERS

Section 4.01. Annual Meeting. An annual meeting of the Members of the Foundation shall be held during the month of April or at such other time as may be determined by the Directors, at such place within or without Louisiana as the Directors may determine.

Section 4.02. Annual Report. At the annual meeting of the Members, there shall be presented to the Members a financial statement of the Foundation as of a date not more than four months prior to the date of the meeting as originally convened. At such meeting there shall

also be presented to the Members for approval a proposed capital expenditures budget and a proposed operating budget for the current fiscal year as prepared by the Board of Directors.

Section 4.03. Special Meetings. Special meetings of Members may be called at any time by a majority of the Board of Directors or the President.

Section 4.04. Notice. Unless waived, a written, printed or typewritten notice of each annual or special meeting stating the day, hour and place, and, in the case of a special meeting, the purpose or purposes thereof shall be given to or mailed to each Member not more than sixty (60) days nor less than five (5) days before any such meeting. The Secretary of the Foundation shall be responsible for providing such notice.

Section 4.05. Quorum. A simple majority of the entire existing number of Members shall constitute a quorum for a meeting of the Members, and a concurring vote of a simple majority of the votes cast at a meeting at which a quorum is present shall be the act of the Members. If at any meeting there should be less than a quorum present, those present may adjourn the meeting without further notice from time to time until a quorum shall be present.

Section 4.06. Proxies. Members may vote or act by proxy in respect to all matters which are to be voted upon by Members, and voting on all matters may be conducted by mail.

ARTICLE V

BOARD OF DIRECTORS

Section 5.01. Election and Qualifications of Directors. Each Member shall be represented on the Foundation by two (2) individuals (Directors) appointed by such Member. One (1) such Director shall be a trustee of such Member who has been selected by a labor organization and the other Director shall be a trustee of such Member who has been selected as an employer trustee of such Member. Directors shall be elected for a term of one year and until their successors are elected and duly qualified, or until their earlier resignation, removal from office, or death. Each Additional Member shall provide the Foundation with a written notification of initial Directors appointed by the Additional Member.

Section 5.02. Successor and Substitute Directors. A Member may, by written notice to the Foundation, remove any of its previously appointed Directors and appoint a successor Director or Directors, provided that it must comply with Section 5.01 hereof. A Director or Member may, by written notice to the Foundation, authorize a substitute Director as to a particular meeting specified in such notice. Each such notice shall be presented to the meeting and filed with the minutes of the meeting. A Director may resign by written notice to the Foundation and to the Member which appointed such Director. The resignation of a

Director shall be effective immediately, unless otherwise stated in the notice.

Section 5.03. Compensation of Directors. No Director shall receive any compensation from the Foundation.

Section 5.04. Meetings. The annual meeting of the Directors shall be held each year within 30 days following the Annual Meeting of the Members at the earliest convenience of the elected Directors. Special meetings may be called at any time by the President or, in the absence of the President, by the Secretary or by any three (3) Directors.

Section 5.05. Quorum and Voting. A simple majority of the whole authorized number of Directors shall constitute a quorum for a meeting of the Directors, and the concurring vote of a simple majority of votes cast at a meeting at which a quorum is present shall be the act of the Board. If, at any meeting, there should be less than a quorum present, those present may adjourn the meeting without further notice, from time to time, until a quorum shall be present.

Section 5.06. Notice. Unless waived, a written, printed or typewritten notice of each annual or special meeting stating the day, hour and place, and the purpose or purposes thereof shall be given to or mailed to each Director not more than sixty (60) days nor less than five (5) days before any such meeting. The Secretary of the Foundation shall be responsible for providing such notice.

Section 5.07. Written Consents and Waivers of Notice. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if a written consent to such action is signed by all members of the Board or of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board or committee.

Section 5.08. Committees. The Board of Directors may create an Executive Committee and such other Committee or Committees as the Directors may determine, the members of which Committee or Committees shall consist of not less than three (3) Directors. The Directors may delegate to any such Committee any of the authority of the Directors. A simple majority of the members of any such Committee shall constitute a quorum, and the act of a simple majority of the votes cast at a meeting at which a quorum is present shall be the act of the Committee. The President shall be a voting member of the Executive Committee.

Section 5.09. Transactions with Interested Persons. No contract or other transaction is void or voidable because it is between the Foundation and one or more of the Members, Directors or officers of the Foundation, or between the Foundation and any other person in which one or more of the Foundation's Members, Directors or officers are directors, trustees or officers or have a financial or personal interest, nor because one or more interested Members, Directors or officers participate in or vote at the meeting of the Directors or of a Committee of the Directors that authorizes the contract or transaction,

if any of the circumstances enumerated in Louisiana Revised Statutes §12:228 apply. Common or interested Members, Directors or officers may be counted in determining the presence of a quorum at a meeting of the Members, Directors or of a Committee of the Directors that authorizes the contract or transactions.

Section 5.10. Powers of Directors. Subject to the powers reserved by the Members, the business and affairs of the Foundation shall be managed and controlled by the Board of Directors. Subject to the provisions of the Louisiana Nonprofit Corporation Law, the Articles of Incorporation and the By-laws of the Foundation, the Board of Directors shall do and perform every act and thing whatsoever which it shall deem necessary, expedient or advisable to carry out the purposes of the Foundation.

Without limiting the generality of the duties of the Board of Directors as set forth in the preceding paragraph, the Board of Directors shall maintain corporate surveillance over all of the Foundation's activities. The Board of Directors shall determine the Foundation's programs and policies, and assure that such policies and programs are designed to serve the philosophies, objectives, and purposes of the Foundation, approve organization and major authority delegation patterns, delegate to the President the authority to conduct the business of the Foundation and carry out the policies and programs approved by the Board of Directors, appoint a competent staff and define its authority and responsibilities, make provision for establishment of various auxiliaries to aid in accomplishing the objectives of the Foundation, provide for financial stability, and analyze and evaluate the total operation including all activities and services.

ARTICLE VI

OFFICERS

Section 6.01. Number, Title and Election. The officers of the Foundation shall be a President, Vice President, Secretary, and Treasurer, and such other officers and assistant officers as the Board of Directors may from time to time determine. Any two offices may be held by the same person. All officers shall be elected annually by vote of the Board of Directors.

The officers of the Foundation shall be chosen from among the Board membership, and shall be equally divided, to the extent reasonably possible, between Directors who are union representatives and Directors who are management representatives.

Any officer may resign at any time by giving written notice to the Board of Directors or to the President or the Secretary of the Foundation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.02. Vacancies. In the event of a vacancy in any office, the vacancy shall be filled by a majority vote of the Board of Directors then in office, for the remainder of the vacancy term.

Section 6.03. Powers and Duties. Subject to the limited operational responsibilities of the Foundation, and to such limitations as may be prescribed from time to time by the Members with respect to the President, or by the Board of Directors with respect to all other officers of the Foundation, the President shall have the authority and responsibility to operate the Foundation in all its activities and departments, and all officers shall each have such powers and perform such duties as generally pertain to their respective offices and such further powers and duties as may be conferred from time to time by the Board of Directors or, in the case of all officers other than the President, by the President. The President may be removed at any time by a majority vote of the Members, and any other officer may be removed at any time by a majority vote of the Board of Directors or by vote of the Members.

ARTICLE VII

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

Each person who at any time is or shall have been a Member, Director, officer, employee or agent of the Foundation, or is or shall have been serving at the request of the Foundation as a member/stockholder/principal, trustee/director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, and his heirs, executors and administrators, shall be indemnified by the Foundation in accordance with and to the full extent permitted by the Nonprofit Corporation Law (Louisiana Revised Statutes, Section 12:227) as in effect at the time of the adoption of this Article or as amended from time to time thereafter. The foregoing right of indemnification shall not be deemed exclusive of other rights to which any Member, Director, officer, employee, agent or other person may be entitled in any capacity as a matter of law or under any regulations, agreement, vote of Members or Directors, or otherwise. If authorized by the Directors, the Foundation may purchase and maintain insurance against liability on behalf of any such person to the full extent permitted by law in effect at the time of the adoption of these By-laws or as changed from time to time.

ARTICLE VIII

FINANCING PROPOSAL REVIEW PROCEDURE

Section 8.01. Meetings. The Directors shall meet on such dates and at such meeting places as the Directors shall from time to time establish by vote for consideration of all financial proposals then received, with at least one (1) meeting per quarter. The Directors may by vote determine a schedule for periodic regular meetings and a procedure for the calling of special meetings.

Prior to each such meeting, the Secretary shall use his best efforts to arrange an agenda for such meeting which, among other things, shall list all financing proposals which will be presented at such meeting and which agenda he shall endeavor to deliver to Directors seven (7) days prior to the meeting.

Directors representing a simple majority of all Members shall constitute a quorum at a meeting. Any Director may participate in a meeting by conference telephone, provided all Directors can hear each other and be heard by all; and any vote or action taken by such Director shall be confirmed in writing and delivered to the Foundation within three (3) business days of the voting or other action.

In addition, a Member may provide a proxy for a Director to be voted by the other Director appointed by it.

Section 8.02. Subscription to Financing Proposals. As part of each meeting of the Foundation, financial proposals for construction mortgage loans or other investment opportunities may be presented by representatives of local lending institutions for review by the Members. The Directors shall solicit, receive, consider and transmit to their respective Members all binding, enforceable commitments made by all cooperating banks and savings and loan associations, whether or not they are for loans to local or nonlocal developers, for local or nonlocal construction projects, or for union-built or nonunion-built construction projects. Upon receipt of this information from the institutions, the Directors of each Member shall notify the full Board of Trustees or other designated representatives of each Member of the Foundation of all information received by them. The trustees of the Members shall then determine:

(a) if they desire to participate in the specific construction mortgage loan; and

(b) if so, the amount of their participation.

The Directors of the Foundation shall accumulate the responses from all of the Members and shall advise the lending institution of its desire to participate or not and, if so, the amount of the participation. The amount of the participation shall be the amount of the aggregate participations by the individual Members. Each said loan shall be deemed and construed to constitute a separate and distinct legal transaction and shall be documented as a separate trust, and the Foundation shall maintain its books and records of account accordingly.

Section 8.03. Reliance by Third Parties. No borrower, broker, mortgage banker, correspondent, investment advisor, agent or any other third party shall be entitled to rely upon any action of any Member or Director of the Foundation. The Foundation itself shall have no authority to issue a financing commitment. Commitments as to particular transactions shall be issued, if at all, by an appropriate Transaction Trust pursuant to the provisions of Article IX hereof.

ARTICLE IX

TRANSACTION TRUSTS

When a financing proposal has been subscribed, in whole or in part, as promptly as practicable thereafter, those Members who have subscribed to such financing proposal (the "Beneficiaries") shall form and fund a Transaction Trust in accordance with the provisions of this Article IX.

A Transaction Trust shall be formed by the execution of a Transaction Trust Agreement (in counterparts or otherwise) by the Beneficiaries and the Foundation, as Trustee of a Transaction Trust, with such modifications as such Beneficiaries and the Foundation shall unanimously find acceptable, which shall be conclusively evidenced by their respective signatures thereon.

In order to assure that no Member who undertakes to participate in a financing transaction with other Members may be embarrassed by the financial inability of a Member to fund its portion of the financing at the specified time, each Beneficiary shall, concurrently with its execution of its Transaction Trust Agreement, fund in cash its share of the participation in the subject financing proposal and Transaction Trust.

Such Transaction Trust shall thereafter promptly execute and deliver such commitment and other documents as shall be approved by counsel.

The Trustee shall then enter into a Participation Agreement with the bank, savings and loan association or other financial organization which shall act as the Lead Lender to service the Transaction. The Trustee may, but shall not be required, to engage a Corporate Trustee for the aggregation and representation of the collective interests of the Beneficiaries where it is legally necessary or in the best interests of the Beneficiaries to do so.

All participations purchased by the Members and taken by the Foundation as Trustee shall be co-participations with the originating bank or savings and loan association and not the purchase of an interest in any existing investment from the bank or savings and loan.

The aggregated interest of all Members in a single participation shall not exceed fifty per cent (50%) of the total loan commitment.

In all participations, the Members shall receive from the lead lender as part of their participation:

(a) interest at or above the prevailing market rate of interest for comparable commercial financing transactions; and

(b) their pro rata share of the financing points to the extent the points represent return on

the loan and not compensation and/or reimbursement to the originating bank or savings and loan association for the actual expenses incurred and/or services rendered in servicing the construction mortgage loan.

ARTICLE X

EXPENSES; REIMBURSEMENTS; ADMINISTRATION

Section 10.01. Expenses. The Foundation may incur and, as funds are available, pay such expenses as may be approved by the Directors, including the reasonable expenses heretofore incurred in connection with its organization.

Section 10.02. Expense Reimbursement Payments From Transactions. The representatives of the lending institutions from whom loans are bought or with whom loans are made shall be requested to obtain from each prospective borrower a commitment to pay the Foundation, as Trustee of the particular transaction, at the time such transaction documents are established, an amount sufficient to reimburse both the organizational and legal expenses of such transaction and an allocated portion of the organizational and operating expenses of the Foundation. As to each transaction, such allocated portion of the organizational and operating expenses of the Foundation shall be determined by the Directors.

Section 10.03. Regulatory Compliance. The Foundation shall apply for such federal and state tax-exempt status, tax rulings, federal and state securities no-action letters, and ERISA exemptions as determined by vote of the Directors (or by duly delegated officers of the Foundation) on recommendation of counsel.

Section 10.04. Forms, Rules and Procedures. The Foundation may adopt such forms, rules and procedures (including, without limitation, financing procedures) as the Directors may determine from time to time.

ARTICLE XI

GENERAL PROVISIONS

Section 11.01. Amendments. This Agreement may be amended only by a writing signed by the then Members holding at least a majority of the total voting power of the Foundation. Such amendments shall be made only after due consideration of applicable tax, securities, ERISA and other laws and regulations.

Section 11.02. Headings. The headings of the Articles and Sections of this Agreement are for convenience only and shall not be deemed to affect the interpretation or validity of any part of this Agreement.

Section 11.03. Qualified Status. It is the intended purpose of the parties to this Agreement that the Foundation shall be and at all times remain exempt from federal and state income taxes. The Foundation shall avoid the receipt of income or payments which are inconsistent with the tax-exempt status of the Foundation and its Members. No part of any net earnings of the Foundation shall inure to the benefit of any private person. If any court or administrative ruling holds that any provision of this Agreement or any of the procedures, practices, rules or documents of the Foundation are inconsistent with applicable qualification requirements under presently existing laws and/or regulations or any laws or regulations hereinafter enacted or adopted, any such provision, procedure, practice, rule or document shall be nullified; and the Members shall thereafter promptly attempt to make such changes as may be necessary to retain such status while fully accomplishing the purposes of this Agreement.

BATON ROUGE BUILDING AND
CONSTRUCTION INDUSTRY FOUNDATION

CONSTRUCTION INDUSTRY INVESTMENT PLAN

Shumaker, Loop & Kendrick
North Courthouse Square
1000 Jackson
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BATON ROUGE BUILDING AND
CONSTRUCTION INDUSTRY FOUNDATION
CONSTRUCTION INDUSTRY INVESTMENT PLAN

THIS AGREEMENT, made and entered into at Baton Rouge, Louisiana by and among the Directors appointed by the Employee Benefit Plans who are the Founder Members of the Baton Rouge Building and Construction Industry Foundation (as those terms are hereinafter defined).

W I T N E S S E T H:

WHEREAS, certain of said Employee Benefit Plans (the "Founder Members") have established a nonprofit corporation under the laws of the State of Louisiana known as the Baton Rouge Building and Construction Industry Foundation to enable the Boards of Trustees of said Employee Benefit Plans which become members of the Foundation to make legal and prudent investments on a combined and consolidated basis but compliant in all respects with all requirements of LMRA, ERISA and the Code; and

WHEREAS, the Founder Members have appointed their respective members of the Board of Directors of the Foundation; and

WHEREAS, the Board of Directors, by the terms of the Articles of Incorporation and By-Laws of the Foundation, is empowered to establish a Plan for the Foundation; and

WHEREAS, the Board of Directors desires to implement and effectuate the provisions of the Foundation by setting forth the terms and provisions of the Plan for the Foundation.

NOW, THEREFORE, in consideration of these premises, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed by and among the Board of Directors as follows:

ARTICLE I

DEFINITIONS

SECTION 1 - UNION

The term "Union" as used herein shall mean any labor organization which is:

(a) the duly designated collective bargaining representative of workmen engaged in the building and construction industry in the greater Baton Rouge, Louisiana area; and

(b) a co-sponsor of any Employee Benefit Plan which becomes a member of the Foundation.

SECTION 2 - ASSOCIATION

The term "Association" as used herein shall mean any association of employers which is:

(a) the representative of Employers engaged in the building and construction industry in the greater Baton Rouge, Louisiana area who employ workmen represented by a Union; and

(b) a co-sponsor of any Employee Benefit Plan which becomes a member of the Foundation.

SECTION 3 - EMPLOYEE BENEFIT PLAN

The term "Employee Benefit Plan" as used herein shall mean any employee benefit plan as defined in Section 3(3) of ERISA which:

(a) is sponsored by one or more Unions and one or more Associations;

(b) becomes a member of the Foundation; and

(c) is exempt from taxation by virtue of Section 501(a) of the Code.

SECTION 4 - EMPLOYEE BENEFIT PLAN CONTRIBUTIONS

The term "Employee Benefit Plan Contributions" as used herein shall mean payments made to the Foundation by participating Employee

Benefit Plans in accordance with this Plan and/or the Foundation By-Laws.

SECTION 5 - PLAN

The term "Plan" as used herein shall mean the program, methods and procedures for the investment of monies from the Employee Benefit Plans by the Directors, as set forth herein.

SECTION 6 - DIRECTOR

The term "Director" as used herein shall mean a member of the Board of Directors of the Foundation appointed pursuant to Article V, Section 5.01 or Section 5.02 of the Foundation By-Laws.

SECTION 7 - ERISA

The term "ERISA" as used herein shall mean the Employee Retirement Income Security Act of 1974, as amended, and regulations of the Department of the Treasury and the Department of Labor promulgated thereunder.

SECTION 8 - FOUNDATION

The term "Foundation" as used herein shall mean the Baton Rouge Building and Construction Industry Foundation, a nonprofit corporation organized under the laws of the State of Louisiana, as originally adopted and as it may be subsequently amended.

SECTION 9 - MEMBER

The term "Member" as used herein shall mean both the Founder Members who are the original members of the Foundation and such Additional Members as may hereafter and from time to time be admitted pursuant to the provisions of Article III, Section 3.03 of the Foundation By-Laws. The term shall not include any Founder Member or Additional Member whose membership shall have terminated prior to the pertinent determination of Member status.

SECTION 10 - FOUNDER MEMBERS

The term "Founder Members" as used herein shall mean those Employee Benefit Plans which are the initial organizational members of the Foundation.

SECTION 11 - ADDITIONAL MEMBER

The term "Additional Member" as used herein shall mean an Employee Benefit Plan which is not a Founder Member and which is admitted to participation in the Foundation pursuant to Article III, Section 3.03 of the Foundation By-Laws.

SECTION 12 - FOUNDATION BY-LAWS

The term "Foundation By-Laws" means the By-Laws adopted by the Board of Directors of the Foundation.

ARTICLE II

PLAN OPERATION

SECTION 1 - ROSTER OF LENDERS

The Directors shall establish contact with and shall maintain a roster of all banks, savings and loan associations, and mortgage brokers involved in generating, bidding, approving and funding of construction loans to general contractors in the geographic jurisdictions set forth in the collective bargaining agreement between the Union and the Association.

SECTION 2 - RECEIPT OF COMMITMENTS

The Directors shall solicit, receive, consider and transmit all binding, enforceable commitments made by all cooperating banks, savings and loan associations, and mortgage brokers, whether or not they are for loans to local or nonlocal developers, for local or nonlocal construction projects, or for union-built or nonunion-built construction projects, which:

(a) shall comply with the terms, conditions, and provisions of Prohibited Transaction Exemption 76-1; and

(b) which comply with the guidelines adopted by the Directors and which are attached hereto and incorporated herein.

SECTION 3 - TRANSMITTAL OF DATA

All data obtained by the Directors from banks, savings and loan associations, and mortgage brokers as hereinbefore described shall be promptly transmitted to the Boards of Trustees of the Employee Benefit Plans participating herein at such time and in such manner as shall be determined by the Directors with the approval of the participating Employee Benefit Plans.

SECTION 4 - RULES AND REGULATIONS

The Directors shall promulgate rules and regulations applicable to those Employee Benefit Plans which desire to participate in any of the proffered construction mortgage loan participations, setting forth the manner in which the Employee Benefit Plans desiring to participate therein shall notify the Directors of such fact, of the amount of such participation, and such other information as the

Directors deem appropriate. In no event shall the Directors make any investment decision for or on behalf of any participating Employee Benefit Plan.

SECTION 5 - EMPLOYEE BENEFIT PLAN ACCOUNT

If an Employee Benefit Plan decides to participate in any one or more of the offered construction mortgage participations, the Board of Trustees of the Employee Benefit Plan shall forward to the Directors the dollar amount of its participation therein. The contributions from the Employee Benefit Plans participating in each transaction shall be promptly transmitted to the lead lender.

SECTION 6 - RECORDS OF INVESTMENTS

The Foundation shall keep records as to each investment hereunder, including the names of all participating Employee Benefit Plans, the nature and extent of the participation, copies of all loan documents, records of periodic payments of principal and interest on the investment, and such other information as the Directors, with the advice of their professional advisors, shall determine. Copies of this information shall be made available on a regular basis to all Employee Benefit Plans participating in each said investment.

SECTION 7 - INVESTMENTS

All investments shall be acquired in the name of the Foundation. Payments to fund the investments shall be made by the respective Members participating in each investment. Repayments of principal and interest shall be made to and in the name of the respective Members participating in each investment.

SECTION 8 - PRINCIPAL PAYMENTS

The Foundation shall, on a regular basis, remit to all participating Employee Benefit Plans their pro rata shares of principal repayment and income earned on their respective participations in each investment.

SECTION 9 - INTEREST PAYMENTS

The Foundation shall receive and record all payments of interest on interim holding account investments. The income from such investments shall be used first to pay all expenses attendant to the operation of the Foundation and shall thereafter be distributed pro rata to participating Employee Benefit Plans. To the extent expenses attributable to the operation of the Foundation remain after the application of the preceding sentence, remittances of the pro rata

shares shall be made to the participating Employee Benefit Plans, net of expenses, on a pro rata basis.

SECTION 10 - PARTICIPATION REQUIREMENTS

In all participations, the Members shall receive from the originating bank or savings and loan association as part of their participation:

(a) interest at or above the prevailing market rate of interest for comparable commercial financing transactions; and

(b) their pro rata share of the financing points to the extent the points represent return on the loan and not compensation and/or reimbursement to the originating bank, savings and loan association or mortgage broker for the actual expenses incurred and/or services rendered in servicing the construction mortgage loan.

SECTION 11 - MORTGAGE LOAN COMMITMENTS

The Foundation shall not forward for consideration by the Members any construction mortgage loan commitments for purchase of a participation through the Foundation unless the bank, savings and loan association or mortgage broker originating the commitment has a valid, legal, binding and enforceable commitment to the loan applicant and the borrower for the construction mortgage loan, without regard to participation by any Employee Benefit Plan participating in the Foundation.

SECTION 12 - CO-PARTICIPATIONS

All participations purchased by an Employee Benefit Plan shall be co-participations with the originating bank or savings and loan association in the commitments and not the purchase of an interest in any existing investment from the bank or savings and loan association.

SECTION 13 - LIMITED INVESTMENT

In no event shall any Employee Benefit Plan invest:

(a) more than ten per cent (10%) of the assets of said Employee Benefit Plan at cost in any single participation investment nor

(b) more than thirty-three and one-third per cent (33 1/3%) of the assets of said Employee Benefit Plan at cost in all of the participation investments obtained through the Foundation.

The Foundation shall not participate in any participating construction mortgage loan in which the originating bank or savings and loan association has less than a fifty per cent (50%) interest in the loan.

SECTION 14 - DEPARTMENT OF LABOR REGULATIONS

The Directors do hereby adopt and expressly make a part of this Plan Department of Labor Regulation Section 2550.408b-2(e) and the examples of Regulation Section 2550.408b-2(f). Without limiting the generality of the foregoing, any Director who has an interest in the employer entity which is involved in a construction project to be financed by a commitment, the participation in which is being trusted by the Foundation, shall:

(a) abstain from voting on the participation determination;

(b) absent himself from the Directors' meeting room when the issue of the purchase of a participation in said commitment is under discussion and consideration; and

(c) represent on the record that he has not discussed the participation with any other Director nor has he attempted to exert any influence upon any Director with regard to the issue.

SECTION 15 - RECORDKEEPING

The Foundation shall maintain or cause to be maintained for a period of six (6) years from the date of each loan participation such records as are necessary to enable the Department of Labor, the Internal Revenue Service, the Plan's participants and beneficiaries, or any employee organization whose members are covered by the Plan to determine whether all conditions of the Department of Labor's prohibited transaction exemption have been met.

SECTION 16 - TAKE OUT LOAN COMMITMENTS

Before the Loan is made, the Foundation shall receive from the lending institution a written commitment for permanent financing from a person other than a participating Plan or the Foundation to enable full repayment of the participating loan upon completion of construction.

ARTICLE III

SPENDTHRIFT PROVISIONS

No part of any benefits to be given hereunder or payments of any benefits shall be assigned, alienated or in any manner encumbered. If by reason of any such act, by operation of law, by the happening of any event, or for any other reason (except by an act authorized by the Directors) any such benefit, payment or account shall cease to be enjoyed by any employee or beneficiary of any Employee Benefit Plan participating herein, either directly or indirectly, or if by reason of an attempt of such employee or beneficiary to alienate, charge or encumber the same, or by reason of the bankruptcy or insolvency of such employee or his beneficiary or because of any attachment, garnishment, execution or other proceedings, or any order, finding or judgment of any court of law or equity, the same except for this provision would vest in and be enjoyed by some other person, firm, corporation or otherwise than as provided for herein, then all of the rights and benefits provided for herein for any such employee or beneficiary shall cease and desist; and, thereafter, any such benefit or payment on account of any such benefit which would have been enjoyed by such employee or beneficiary, except for this provision, shall be held and disposed of by the Directors may cause to be paid or expended for the support, care and maintenance of said employee or beneficiary out of the monies due said employee or beneficiary such sums as in their discretion shall be deemed just and proper which do not exceed the amount withheld for the benefit of said employee or beneficiary.

ARTICLE IV

EFFECTIVE DATE AND TERMINATION

SECTION 1 - EFFECTIVE DATE

The Plan created hereby shall become effective on the 1st day of July, 1984.

SECTION 2 - TERMINATION AND DISTRIBUTION

The Plan may be terminated at any time by agreement of a majority of the Members then serving. In the event of such termination, no further investments shall be made by the Foundation in construction loans, all future remittances to the Members shall be placed in an income-producing account in the name of the Members, and expenses applicable to the operation of the Plan and the Foundation shall be paid as herein provided. At such time as the Directors determine, the Foundation shall distribute (on a pro rata basis) the proceeds of such loans, plus any additional income from the interest-bearing account, less any applicable expenses, to the Employee Benefit Plans participating at the time of termination. Notwithstanding the termination of the Plan, a winding up period shall follow such termination to enable the Directors to conclude the operations of the Plan, including the collection of principal and interest payments and the payment of expenses.

SECTION 3 - ALTERNATE DISTRIBUTION

In lieu of the distribution set forth in Section 2 hereof, upon the agreement of a majority of the Directors then serving, the Directors may, after all obligations of the Foundation have been set aside or actuarially secured, turn over any surplus monies and property in the Foundation to any future foundation that may be created through the collective bargaining process.

SECTION 4 - AMENDMENTS

This Plan may be amended at any time and from time to time by a majority vote of the Directors.

ARTICLE V
CONSTRUCTION

SECTION 1 - GOVERNING LAW

This Plan is created and accepted in the State of Louisiana; and all questions pertaining to the validity or construction hereof and of the acts and transactions of the parties hereto shall be determined in accordance with the laws of the State of Louisiana, except as to matters governed by federal law.

SECTION 2 - VALIDITY OF DOCUMENTS

Anything herein contained to the contrary notwithstanding, the Directors shall not have any responsibility for the validity of this Plan or for the form, genuineness, validity or sufficiency or effect of any insurance contract at any time included in the Foundation or for the act of any person or persons which may render any such contract null and void, or for the failure of any insurance company to pay the proceeds and avails and benefits of any such contract as and when the same shall become due and payable, or for any delay occasioned by reason of any restriction or provision contained in any such contract, or if for any reason whatsoever any contract shall lapse or otherwise become uncollectible.

SECTION 3 - EFFECT OF ILLEGALITY

Should any provision of this Plan be held to be unlawful as to any person or instance, such provision or fact shall not adversely affect the other provisions herein contained or application of said provisions to any other person or instance unless such legality shall make impossible the function of the Foundation or the Plan. No Director shall be held liable for any act done or performed in pursuance of any provisions herein contained (regardless of the fact that such provisions may be held unlawful) prior to the time when such provisions shall, in fact, be held to be unlawful by a court of competent jurisdiction.

SECTION 4 - JUDICIAL CONSTRUCTION

The Directors may take any legal action or proceeding they deem necessary to settle their accounts or to obtain a judicial determination or declaratory judgment as to any question of construction of the Plan or for instruction as to any action thereunder. Any such determination shall be binding upon all parties to or claiming under the Foundation By-Laws and/or the Plan.

SECTION 5 - EXTENT OF DIRECTOR LIABILITY

To the fullest extent permitted by law, the costs and expenses of any action, suit or proceeding brought by or against the Directors or any of them, including counsel fees, court costs and also including the payment of any judgment and/or cost of settlement of any suit or proceeding which the Directors may approve upon advice of their counsel that such judgment or settlement was in payment of an obligation owed or reasonably deemed to be owed by the Foundation shall be paid from the Foundation, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director was acting in bad faith or was negligent in the performance of his duties hereunder.

SECTION 6 - TITLES

Titles of articles and sections are for general information only, and this Plan is not to be construed by reference thereto.

SECTION 7 - EXECUTION

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

SECTION 8 - SEVERABILITY

In the event that any article of this instrument or any part thereof is determined to be illegal or invalid, such illegality or invalidity shall not affect the remaining provisions of this instrument as presently written or subsequently amended unless such illegality or invalidity prevents the Directors from accomplishing the purpose of this Plan. In such event, the parties hereto individually and collectively agree to commence negotiations aimed at correcting any such defect.

IN WITNESS WHEREOF, the Employer Directors and the Union Directors have executed this Plan on this _____ day of _____, 1984, to be effective as of the date set forth in Article IV, Section 1.

EMPLOYER DIRECTORS

UNION DIRECTORS

MG:djl
7/9/84
BATON2

GUIDELINES FOR CONSTRUCTION INDUSTRY
INVESTMENTS BY THE BATON ROUGE
BUILDING AND CONSTRUCTION INDUSTRY FOUNDATION

The following guidelines are hereby adopted by the Directors of the Baton Rouge Building and Construction Industry Foundation and are incorporated into and made a part of the Baton Rouge Building and Construction Industry Foundation Construction Industry Investment Plan:

1. The lending institutions will initiate, process and approve all applications for loans. The leaders of the Baton Rouge Building and Construction Trades Industry will encourage owners, developers, and builders to apply to those lending institutions participating with the Foundation in its construction industry investment program. However, the generation and approval of all loans rest solely and exclusively with the lending institutions.

2. The first contact by the lending institution with the Foundation will only be after the lending institution has made a valid, binding and enforceable construction mortgage loan commitment.

3. On a periodic basis (chronology to be worked out with each lending institution to its satisfaction), the lending institution will advise the administrator of the Foundation of all construction mortgage loan applications it has approved since the last communication and shall transmit to the Foundation's administrator the loan package showing the borrower, amount of the loan, rate and terms of the loan and security, contractor and subcontractors, description of project, etc.

4. The administrator of the Foundation will immediately copy and forward all information received to all Plans.

5. Within an acceptable time frame, the Trustees of each Plan shall consider each loan commitment and make two (2) determinations:

- (a) shall the Plan participate in each loan; and
- (b) if so, to what financial extent?

6. Each Plan shall then advise the administrator of the Foundation of its decisions on each loan commitment.

7. The administrator of the Foundation shall accumulate the responses from each Plan on each loan commitment and shall notify the lending institution:

- (a) if there will be participation in each loan; and
- (b) if so, in what aggregate amount.

8. The Foundation shall act as trustee under a Transaction Trust Agreement for each participation. The lending institution will deal only with the Foundation, as trustee, not with the individual Plans or Trustees.

9. The Foundation, as trustee, will execute a Participation Agreement with the lending institution, with the Foundation as the participant and the lending institution as lead lender.

10. Within ten (10) days of the execution of the Transaction Trust and the Participation Agreement, each participating Plan will fund one hundred per cent (100%) of its participation to the lending institution. The lending institution shall keep all of the participant's funding invested for the participant's account until drawn down.

11. The lending institution as lead lender will fully service the loan, without involvement by the Foundation or the participating Plan.

12. The transactions shall be documented and handled as participating construction mortgage loans in accordance with the rules, practices and procedures of the lending institution.

13. The Trustees of each Plan shall receive and consider all loan commitments from all cooperating lending institutions for which a legally binding and enforceable commitment has been made, whether the commitments are for:

- (a) local developers or nonlocal developers;
- (b) local construction projects or nonlocal construction projects; and
- (c) union-built construction projects or nonunion-built construction projects.

Provided, however, that the cooperating lending institutions shall not be required to submit to the Foundation all commitments for construction mortgage loans unless:

- (a) its customer-borrower shall have consented to the invitation for participation by the Foundation, which participation by the Foundation shall be affirmatively recommended by the lending institution;

(b) the commitment shall be in the amount of Two Hundred Thousand Dollars (\$200,000.00) or more; and

(c) the loan is generated by a branch or affiliate of the lending institution and/or is for construction to be performed in the geographic jurisdiction of the Foundation.

14. All participations purchased by the Plans shall be co-participations with the originating lending institutions in the commitments and not the purchase of an existing investment from the institutions.

15. In no event shall any Plan invest:

(a) more than ten per cent (10%) of the assets of the Plan at cost in any single participation investment; nor

(b) more than thirty-three and one-third per cent (33 1/3%) of the assets of the Plan at cost in all of the participation investments obtained through the Foundation.

16. In no event shall the aggregate participation through the Foundation be more than fifty per cent (50%) of the total loan.

17. In any participation purchase by a Plan through the Foundation with the originating lending institution, the Plan shall require that:

(a) the loan is made at or above the prevailing market rate of interest for comparable commercial financing transactions; and

(b) the Plan receive its pro rata share of the financing points to the extent the points represent a return on the loan and not compensation and/or reimbursement to the lending institution for actual expenses incurred and/or services rendered in servicing the construction mortgage loan.

18. The Trustees of the Plans shall adopt and expressly make a part of their Plan documents Department of Labor Regulation Section 2550.408b-2(e) and the examples of Regulation Section 2550.408b-2(f). Without limiting the generality of the foregoing, any Trustee of any Plan who has an interest in the employer entity which is involved in a construction project to be financed by a commitment, the participation in which is being considered by the Plan, shall:

(a) abstain from voting on the participation determination;

(b) absent himself from the Trustees' meeting room when the issue of the purchase of a participation in said commitment is under discussion and consideration; and

(c) represent on the record that he has not discussed the participation with any other Trustee nor has he attempted to exert any influence upon any Trustee with regard to the issue.

19. In considering and acting upon the purchase of a participation in any commitment, the Trustees of each Plan shall act in strict compliance with ERISA Section 404(a).

20. Before the loan is made, the Foundation shall receive from the lending institution a written commitment for permanent financing from a person other than a participating Plan or the Foundation to enable full repayment of the participating loan upon completion of construction.

21. The Foundation shall maintain or cause to be maintained for a period of six (6) years from the date of each loan participation such records as are necessary to enable the Department of Labor, the Internal Revenue Service, the Plan's participants and beneficiaries, any employer of Plan participants and beneficiaries, or any employee organization whose members are covered by the Plan to determine whether all conditions of the Department of Labor's prohibited transaction exemption have been met.

MG:djl
7/9/84
BATON2

SHUMAKER, LOOP & KENDRICK

NORTH COURTHOUSE SQUARE 1000 JACKSON TOLEDO, OHIO 43624

(419) 241-4201

June 22, 1984

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Re: Request for No-Action Letter Relating to the Baton Rouge
Building and Construction Industry Foundation
Section 3(a)(2) of the Securities Act of 1933;
Sections 3(a)(12) and 12(g) of the Securities Exchange
Act of 1934;
Sections 3(a)(4), 3(a)(5), and 15(a)(1) of the Securities
Exchange Act of 1934;
Sections 3(c)(5) and 3(c)(11) of the Investment Company
Act of 1940;
Section 202(a)(11) of the Investment Advisers Act of 1940
Our File No. B6675/16770

Ladies and Gentlemen:

The Baton Rouge Building and Construction Trades Council (the "Trades Council") is a confederation of local building and construction trades unions which represent building and construction tradesmen working in central Louisiana. The local unions are affiliates of international trades unions, which are all members of the AFL-CIO and its Building Trades Department. The Baton Rouge Council of Construction Employers (the "Employers' Council") is a confederation of employers engaged in the building and construction industry in the same geographic area.

The Trades Council and the Employers' Council, on behalf of the local unions and employers' associations within their respective groups, desire to establish a construction industry investment program for the benefit of the employee pension benefit plans which they or their members co-sponsor (collectively, the "Plans"). Our firm has been

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retained as special counsel by the Trades Council and the Employers' Council to assist in establishing the program.

In brief, a foundation will be established pursuant to a written agreement among the Plans who want to participate in the foundation. The foundation will be administered by a Board of Trustees. The trustees will be directed to establish procedures to allow the Plans to acquire participations in construction period mortgage loans. The foundation will contact lending institutions in central Louisiana to learn of the availability of participations in mortgage loans, and pass this information along to its member Plans. Each individual Plan will determine whether to participate in the proposed loan, and the extent of its participation. This decision will be communicated to the foundation, which will tabulate the responses and inform the lending institution as to the aggregate amount of participation interests which the Plans wish to acquire.

The Plans participating in a mortgage will establish a separate trust as the acquiring entity for each lending transaction, with the foundation acting as trustee. The Plans will transfer the funds required to the foundation, which will forward these funds to the lending institution. The foundation will not take possession of any funds or securities of the Plans, and will have no investment responsibilities, serving merely as a conduit through which the Plans and lending institutions can communicate to indicate mutual interest in participating in mortgage loans.

We respectfully request that you advise us that the Staff of the Securities and Exchange Commission (the "Commission") will not recommend that the Commission take any enforcement action if the program is organized and operated in the manner set forth in this letter:

(1) without registering the interests in the trusts as securities under Section 2(1) of the Securities Act of 1933 (the "1933 Act"), in reliance upon the exemption from the registration provisions set forth in Section 3(a)(2) of the 1933 Act;

(2) without registering the interests in the trusts as securities under Section 12(g) of the Securities Exchange Act of 1934 (the "1934 Act") in the event that the statutory minimums specified in that section are exceeded, in reliance upon the definition of exempt securities set forth in Section 3(a)(12) of the 1934 Act;

(3) without registering either the foundation or the trusts as broker-dealers under the 1934 Act, either because the foundation and the trusts do not fall within the definitions of broker-dealer contained at Sections 3(a)(4) and 3(a)(5) of the 1934 Act, or in reliance upon an exemption from the broker-dealer registration requirement contained in Section 15(a)(1) of the 1934 Act for those persons who deal only in exempt securities, as defined in Section 3(a)(12) of that Act;

(4) without registering the foundation or the individual trusts as investment companies under the Investment Company Act of 1940 (the "Investment Company Act"), in reliance upon the exclusions from the definition of an investment company set forth in Sections 3(c)(5) and 3(c)(11) of the Investment Company Act; and

(5) without registering the foundation or the trusts as investment advisers under the Investment Advisers Act, in reliance upon an exemption from the definition of investment adviser set forth in Section 202(a)(11) of the Investment Advisers Act.

A. DESCRIPTION OF PROPOSED OPERATIONS

As noted above, the Trades Council and the Employers' Council desire to develop an alternative to the traditional investment opportunities available to the employee pension benefit plans maintained by their respective members. The Plans are all qualified under Section 401 of the Internal Revenue Code of 1954, as amended (the "Code"), exempt from taxation under Section 501 of the Code, and comply with the requirements of the Labor Management Relations Act of 1947, as amended, 29 U.S.C.A. §§141 et seq. (1973 and Supp. 1983) (the "LMRA"), and the Employee Retirement Income Security Act of 1974, 29 U.S.C.A. §§1001 et seq. (1975 and Supp. 1983) ("ERISA"). The Plans range in size from \$15 million to \$20 million in total assets.

All of the unions participating in the Plans are members of the AFL-CIO through affiliations with international unions. Moreover, all the local unions are affiliated with the Baton Rouge Building and Construction Trades Council, a confederation of local building and construction trades unions which represent building and construction

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tradesmen working in central Louisiana. The Trades Council was organized to coordinate employee benefits policies among the locals, to provide a forum for employee grievance procedures, and to serve as a focal point for the local unions' contacts with the community. All the employers are members of the Baton Rouge Council of Construction Employers. This Employers' Council constitutes a cohesive bargaining unit which bargains with the various local unions. The local unions act either separately or under the auspices of the Trades Council, as the locals may determine.

Under the program, the Trades Council and the Employers' Council will establish a foundation to be known as the Baton Rouge Building and Construction Industry Foundation (the "Foundation"). The Foundation will be a not-for-profit unincorporated association organized under and governed by the laws of Louisiana, and will be qualified under Section 501(c) of the Code. The Foundation will provide that any employee benefit plan qualified under Sections 401 et seq. of the Code and co-sponsored by the Trades Council or any local union affiliated with it, or the Employers' Council or any employer affiliated with it, may elect to participate in the Foundation, if collective investment of the Plan's funds is not prohibited by the instrument creating the Plan.

The Plans which elect to participate in the Foundation will be parties to and be governed by four documents:

1. The Foundation Agreement;
2. The Participation Agreement for Construction Mortgage Loan;
3. The Construction Industry Investment Plan with Guidelines 1 through 21 attached as Exhibit A to the Plan; and
4. The Transactional Trust Agreement.

Copies of these documents (the "Master Documents") are included with this letter as Exhibits A, B, C, and D, respectively.

The Foundation will be administered by a Board of Trustees (the "Trustees"). Every Plan participating in the Foundation shall be entitled to two Trustees on the Foundation's Board, one appointed by the union co-sponsor of the Plan and the other by the employer co-sponsor of the Plan. The Trustees shall not receive any compensation for serving on the Board of Trustees.

The Foundation will allow the Plans to utilize a portion of their funds in a way that would benefit both their members and the local

community. Rather than investing in anonymous corporations or other more traditional investment media, the Plans hope to encourage new construction within their jurisdictions and create jobs for their members. By creating an umbrella organization such as the Foundation, the Plans can contribute to the financing of a larger number of projects, and involve themselves in more extensive projects. The Plans can also achieve the expertise and the economies of scale inherent in larger investments. Additionally, the Foundation will allow the Plans to minimize their investment risk by providing a diversification among types and locations of available investments that they could not individually obtain.

The Foundation will approach every bank, savings and loan association, insurance company, and mortgage broker in the central Louisiana area and ask that they allow the Foundation's members the opportunity to participate in all construction period mortgage loans made by them. All such participations shall be made in accordance with documents prepared by the Foundation, unless the participating Plans agree to use the paperwork of the lending institution.

Upon receiving information from lending institutions regarding an appropriate loan, the Foundation shall transmit to all Plans all materials received from all cooperating financial institutions. The Foundation will not sponsor, screen, analyze, or recommend in any way any proposals brought to it, and the individuals representing the Plans will take all proposals presented to them back to their respective Plans for decision. Each individual Plan through its trustees or other investment manager shall then determine if it desires to participate in the specific loan opportunity, and, if so, the amount of its participation. The Plans would relay their decisions to the Foundation, which would, in turn, inform the lending institution of the aggregate amount of participation desired. The participating Plans would then create a trust (the "Trust") by entering into a trust agreement with the Foundation as trustee.

Upon the formation of the Trust, each individual Plan would forward the amount of its participation to the Foundation in the form of checks or federal funds drafts made payable to the lending institution, and the Foundation would collect these checks and deliver them to the lending institution. The lending institution would keep all such contributions productively invested until such time as the funds are required. Any income of the Trust would be allocated among the various participating Plans by the lending institution, which would prepare and deliver to the Foundation checks made payable to the individual Plans. The Foundation would then distribute these checks to the Plans. This

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administrative procedure would provide maximum protection of the funds of the Plans by minimizing the opportunity for and effect of any misappropriation of funds by the Foundation, since the Foundation would not have any discretion over the investment, management, or disposition of Trust assets. At the same time, funds of the transaction trusts could be conveniently and efficiently transferred to the lending institution with a minimum of involvement by the lending institution.

Any loan participation fees collected from the borrowers at the time that the loan is made will be immediately allocated among the participating Plans by the lending institution, and distributed directly to the Plans who are members of that particular Trust through the Foundation, as described above. Any expenses incurred by the Foundation will be assessed to and reimbursed by the individual Plans. Thus, the Foundation will not receive any compensation, and it will not hold any funds in reserve or exercise any investment or management responsibility relating to reserves.

The loan transactions proposed to be entered into through the Foundation may fund projects which will be built by employers whose employees are covered by the Plans. These transactions would be prohibited by the terms of ERISA absent an exemption from Section 406 of that act. A class exemption, known as Prohibited Transaction Exemption 76-1(B) ("PTE 76-1(B)"), has been adopted by the Department of Labor (the "Department") and the Internal Revenue Service (the "Service"), for transactions similar in nature to those described here. The program as herein described does not fall within PTE 76-1(B) only because the trustees of the Plans, which probably will not include a bank, insurance company, or savings and loan association, will make the investment decisions on behalf of the Plans. The Foundation has filed an application with the Department for an administrative exemption under ERISA Section 408(a), based on the criteria of PTE 76-1(B). For purposes of your response to this letter, the Staff may assume that such a ruling will be received.

The Foundation will be subject to many conditions imposed by the Department resulting from their review of the exemption application. These conditions are designed to help protect the employee/beneficiaries of the Plans by insuring that the Foundation will be presented only with loan opportunities already approved by the lending institution offering the participations, limiting the risks which the Foundation may be exposed to, and preventing self-dealing between the Plans, their trustees, and the sponsoring employers. The Foundation has incorporated all applicable conditions of PTE 76-1(B) into the Master Documents, and, in addition, has adopted twenty-one additional guidelines submitted by

the Department, which are attached to the Construction, Industry Investment Plan included as Exhibit C to this letter.¹ The Foundation, through the members of its Board of Trustees, is already subject to common law and contractual fiduciary duties to the Plans, and to the general requirements of ERISA and the LMRA.

1. Securities Act of 1933.

Interests in the Trusts to be held by the Plans could be deemed to be "securities" as defined in Section 2(1) of the 1933 Act. Section 3(a)(2) exempts the following from the registration provisions of that act:

. . . any interest or participation in a single
. . . trust fund . . . which interest or participation is issued in connection with (A) a stock bonus,

1. Under PTE 76-1(B), loans which observe the following conditions may be made by an employee benefit plan to an employer who has employees covered by the plan: (1) only construction period loans may be made, and a commitment for permanent financing must have been made by someone other than the plan before the loan can be made; (2) the decision to make the loan must be made by an independent bank or insurance company which meets the requirements of Section 3(38) of ERISA, or by a savings and loan association subject to regulation by the Federal Home Loan Bank Board, pursuant to its sole discretionary authority or control regarding management of plan assets; (3) the bank, insurance company, or savings and loan association must commonly make such loans on similar terms and conditions from its own funds, and the loan must satisfy their qualifications established for the review of such loans; (4) immediately after making the loan, the aggregate amount of investments (including loans) of an individual plan in any one employer participating in the plan cannot exceed ten percent of the fair market value of the plan's assets, and the aggregate amount of investments of the plan in loans to all its participating employers cannot exceed thirty-five percent of the plan's fair market value; and (5) certain records of the plan must be retained and made available to specified individuals, including plan participants and beneficiaries, for six years from the date of the loan. In addition, the Department has required that each Trust will not acquire more than a 50 percent participation in any individual construction loan. This limitation will not affect the ability of the Trust to effect enforcement of the loan documents, including foreclosure on the mortgage, in the event of a default under the loan documents.

pension, or profit-sharing plan which meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1954 . . . other than any [such] plan . . . (i) the contributions under which are held in a single trust fund maintained by a bank . . . for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities . . . issued by the employer or by any company directly or indirectly controlling, controlled by or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of Section 401(c)(1) of such Code, or (iii) which is a plan funded by an annuity contract described in Section 403(b) of such Code.

If the interests in the Trusts are deemed to be securities, it is our belief that these interests are exempted from the registration requirements of the 1933 Act by Section 3(a)(2) of that act.

The availability of this exemption turns in part on whether the Trusts are considered single trusts, or collective trusts which must be maintained by a bank. To constitute a single or non-collective trust, the member Plans and their underlying sponsors must be sufficiently related to demonstrate their commonality of interests in monitoring the administration of the Trusts.

We take as our starting point the analysis contained in Communications Workers of America, 1980 Fed. Sec. L. Rep. (CCH) ¶76,321 (avail. Jan. 27, 1980). In that case, the Communications Workers of America (the "CWA") organized a Savings and Retirement Trust (the "CWA Trust") limited to employees of the CWA, its locals, and employees of various employers in bargaining units represented by the CWA. The CWA Trust was to be administered by a Board of Trustees consisting of individuals representing the CWA and a corporate trustee selected by the employers. All members of the Board of Trustees were entitled to exercise equal authority over all aspects of administration of the CWA Trust, including the selection of investments. The CWA Trust was established under the sponsorship of the CWA, solely for the benefit of its members and not as a means of promoting the sale of the investment services of any financial institution.

The structure of the Foundation and the Trusts is virtually identical to that of the CWA Trust. Membership in the Foundation is limited to employees of employers in bargaining units represented by the

member locals of the Trades Council. The Foundation's Board of Trustees is comprised of individuals representing both the local unions and the participating employers, although no corporate trustee is involved. All members of the Board will be entitled to exercise equal authority over all aspects of the Foundation's administration, keeping in mind that investment decisions are made by the member Plans. Finally, the Foundation was established under the sponsorship of the Trades Council and the Employers' Council solely for the benefit of their member/employees and not as a means of promoting the sale of investment services of any financial institution or intermediary. This last factor was described in the Communications Workers correspondence as the "hallmark" of a non-collective trust.

Similarly, the sale without registration of interests in trusts organized pursuant to a construction industry investment program virtually identical to the one described here was viewed with approval by the Staff in its letter to this firm concerning the Northwestern Ohio Building and Construction Trades Foundation (May 3, 1984). In that case, the Staff pointed to the following four factors which it found particularly important:

1. All of the local unions were related through their membership in a body equivalent to the Trades Council;
2. The member plans would maintain a direct and continuous involvement in the operations of the trusts;
3. The employees of each employer participating in the foundation program were represented by one of the local unions; and
4. The operations of each trust were to be governed by a set of master documents which all participating plans would be parties to.

All of these factors are present in the instant situation. The participating unions are related through their affiliations with the AFL-CIO and the Trades Council. The decisions to be made by the trustees of each member Plan and by the Foundation's Board of Trustees requires a direct and continuous involvement and responsibility of the member Plans and their sponsors on behalf of their member/employees. All of the employees of each employer participating in the Foundation

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are represented by one of the participating local unions. Finally, the operations of each Trust will be governed by the Master Documents.

No interest in the Trust is expected to be issued in connection with or held by any plan which covers employees, some or all of which are employees within the meaning of Section 401(c)(1) of the Code, or any plan funded by an annuity contract described in Section 403(b) of the Code. None of the Trust funds will be used for direct investment by members of the public, and none of the funds is presently expected to include assets of any Keogh plans or Individual Retirement Accounts. To the extent that a single trust fund is created for a single employer, it will not be maintained by a bank, but by the Foundation and, in any event, the Foundation will not cause that trust fund to invest an amount in excess of the employer's contribution for the purchase of securities issued by the employer or by any company directly or indirectly controlling, controlled by, or under common control with the employer.

We therefore believe that, assuming the interests of the Plans in the Trusts are securities under Section 2(1) of the 1933 Act, the interests will be exempted from the registration requirements of that act by the provisions of Section 3(a)(2).

2. Securities Exchange Act of 1934: Registration of Securities.

Section 12(g) of the 1934 Act requires issuers with assets exceeding \$1,000,000 and a class of equity security (other than an exempted security) held of record by 500 or more persons, and who meet the other conditions specified therein, to register the class of security with the Commission.

"Exempted security" is defined in Section 3(a)(12) of the 1934 Act as including:

. . . any interest or participation in a single trust fund, . . . which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under Section 401 of [the Code], . . . other than any plan described in clause (A), (B), or (C) of this paragraph (i) which covers employees some or all of whom are employees within the meaning of Section 401(c) of such Code, or (ii) which is a plan funded by an

annuity contract described in Section 403(b) of such Code . . .

Assuming that Section 12(g) applies to the Trusts, the interests of the Trusts need not be registered under the provisions of Section 12(g), because the interests are "exempted securities" under Section 3(a)(12). The language of Section 3(a)(12) is equivalent to that contained in Section 3(a)(2) of the 1933 Act exempting interests in a single trust fund issued in connection with a stock bonus, pension, or profit-sharing plan qualified under Section 401 of the Code. See letter from the Staff to this firm concerning the Northwestern Ohio Building and Construction Trades Foundation (May 3, 1984).

Thus, we ask to be advised that interests in the Trusts need not be registered under the provisions of Section 12(g)(1) of the 1934 Act.

3. Securities Exchange Act of 1934: Registration as Broker-Dealer.

Section 3(a)(4) of the 1934 Act provides: "The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank."

Section 3(a)(5) of the 1934 Act provides:

The term "dealer" means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.

Section 15(a)(1) of the 1934 Act provides in part:

It shall be unlawful for any broker or dealer . . . to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

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It might be argued that either or both the Foundation and the individual Trusts would have to register as brokers or dealers. The individual Trusts, however, will not be engaged in the business of effecting transactions in securities, either for their own account or on behalf of their participating Plans. As indicated above, each Trust will enter into only a single transaction, the purchase of a participation in a mortgage loan, and will dissolve upon the completion of that transaction. To the extent that these participation interests may constitute securities, they are "exempted securities" under Section 3(a)(12) of the 1934 Act, as explained above.

We also believe that the Foundation need not register as a broker or a dealer. The Foundation will not be acquiring securities on its own behalf, and thus will not be acting as a dealer. As it will be acting merely as a conduit to facilitate the collective purchase of participations by the Plans, neither will the Foundation be acting as a broker. The Foundation will neither hold funds nor have any investment responsibility, but will act merely in an administrative capacity to transfer information between the lending institutions and the Plans. It will act only on the Plans' behalf, will not solicit additional customers or otherwise seek to act on behalf of anyone other than the Plans, and will not sponsor, analyze, or recommend any loan participation proposals. Finally, the Foundation will not undertake any sales or promotional efforts, and will receive no compensation from the Plans for any actions taken by it on behalf of the Trusts, but would receive only reimbursement for expenses incurred in performing its ministerial functions.

Even assuming the Foundation is acting in a manner which brings it within the definition of a broker-dealer, its activities will be limited to dealings in the mortgage participation interests, securities which are "exempted securities" under Section 3(a)(12) of the 1934 Act. Under Section 15(a)(1) of the 1934 Act, persons effecting transactions only in exempted securities are exempted from the registration requirements contained in that section. See the letter from the Staff to this firm concerning the Northwestern Ohio Building and Construction Trades Foundation (May 3, 1984).

We therefore believe that neither the Trusts nor the Foundation need to register as a broker-dealer.

4. Investment Company Act of 1940.

We do not believe that the purchase of participations in construction period mortgage loans would constitute the acquisition of a

security. Even if the participations are viewed as securities, however, the Foundation does not fall within the definition of "investment company" at Section 3(a)(1) of the Investment Company Act, as it will not engage in the business of investing in securities, but will merely acquire such securities on behalf of each Trust in its capacity as trustee, and passively hold them on behalf of the Trusts. It could be argued, however, that each Trust will issue equity interests to the Plans, and will engage in the business of "owning [or] holding . . . securities . . . having a value exceeding 40 per centum of the value of such issuer's total assets . . ." Investment Company Act, Section 3(a)(3).

Section 3(c) provides various exemptions from the definition of "investment company." In particular, companies meeting the following criteria are not within the definition of "investment company":

(5) Any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: . . . (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

(11) Any employee's stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1954 or which holds only assets of governmental plans described in section 3(a)(2)(C) of the Securities Act of 1933; . . .

A. Section 3(c)(5)(C). The Plans will hold equity interests in the Trusts which will not be redeemable except upon withdrawal from or liquidation of the Trust. Interests in the Trusts will not be made available to the public, but only to those Plans which elect to participate in the Trust through their involvement with the Foundation.

The participation interests in a construction period mortgage loan held by a Trust would be an interest in real estate where each loan is fully secured by real property and the participation interests held by the Trust are sufficient to give the Foundation, as trustee for the Trust, the right by itself to foreclose the mortgage securing the loan in the event of a default. See MGIC Mortgage Corporation (avail. August 1, 1974), cited in the letter from the Staff to this firm

concerning the Northwestern Ohio Building and Construction Trades Foundation (April 20, 1984). Because, in the present situation, each loan would be fully secured by real property and the participation interests held by a Trust would give the Foundation, as trustee for the Trust, the right by itself to foreclose the mortgage securing the loan in the event of default, it appears that a Trust would be primarily engaged in purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

B. Section 3(c)(11). The employee benefit plans underlying the Trusts and the Foundation are excluded from the definition of an investment company by the first clause of Section 3(c)(11) of the Investment Company Act.

The Trusts themselves may also be excluded from the definition of an investment company by the first clause of Section 3(c)(11) of the Investment Company Act. The Staff stated in Communications Workers, supra, that the first clause of Section 3(c)(11) of the Investment Company Act and the words "single . . . trust fund" in Section 3(a)(2) of the 1933 Act describe the same type of trust. As indicated above, interests in the Trusts will fall within Section 3(a)(2) of the 1933 Act, and, therefore, the Trusts would fall within the first clause of Section 3(c)(11) of the Investment Company Act.

We therefore believe that, assuming the Trusts fall within Section 3(a) of the Investment Company Act, the Trusts will be exempt from registration as an investment company by the provisions of either Section 3(c)(5) or Section 3(c)(11) as explained above.

5. Investment Advisers Act of 1940.

Section 202(a)(11) of the Investment Advisers Act defines an "investment adviser" as:

any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analysis or reports concerning securities; . . .

In our interpretation, neither the Trusts nor the Foundation will fall within the definition of "investment adviser." Assuming that

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the Plans will be purchasing "securities," as defined in Section 202(a)(18) of the Investment Advisers Act, through the Trusts, it could be argued that the Foundation will be in the business of advising others, namely the Plans, as to the advisability of investing in, purchasing, or selling securities. A close analysis of the Foundation's duties, however, makes it clear that the Plans have sole responsibility for choosing among loan participation opportunities, and that the Foundation provides no advisory services to the Plans. The Foundation merely transmits to all Plans all information received from all cooperating financial institutions. It is then the responsibility of the individual Plans to determine whether they desire to participate in any given loan. The Foundation will not screen in any way proposals brought to it, and the individuals representing the Plans will take all proposals presented to them back to their respective Plans for decision. The Foundation thus has no part in the investment decisions of the Plans.

In Texas Newsletter (avail. January 23, 1984), it was stated that no action would be recommended to the Commission if a newsletter, without registering under the Investment Advisers Act, printed information about securities where any such information about a security would be prepared by the issuer of the security and would be presented as an advertisement for the security. Because the Foundation would (1) distribute only information about a participation in a construction period mortgage loan prepared by the cooperating financial institution issuing the participation, (2) identify such information as having been prepared by the cooperating financial institution, and (3) transmit all information given to the Foundation without commenting on, screening, or evaluating the information in any manner, we do not consider the Foundation to be engaged in the business of issuing or promulgating analyses or reports concerning securities. Thus, we do not regard the Foundation's proposed service to bring the Foundation within the definition of "investment adviser" contained in Section 202(a)(11) of the Investment Advisers Act. See the letter from the Staff to this firm concerning the Northwestern Ohio Building and Construction Trades Foundation (April 20, 1984).

Because a Trust's sole function would be to hold participations in a particular construction period mortgage loan selected by the Plans participating in the Trust, a Trust would neither be engaged in the business of advising others about the value of securities or the advisability of investing in securities, nor of issuing or promulgating analyses or reports concerning securities as part of a regular business. Accordingly, a Trust would not be an

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investment adviser as defined by Section 202(a)(11) of the Investment Advisers Act.

C. REQUESTED NO-ACTION POSITION


Based upon the foregoing facts, statutes, and releases, the prior no-action positions taken by the Commission Staff, and our analysis of the policy considerations and statutes involved, we respectfully request that the Staff advise us that it will not recommend to the Commission that any action be taken under the 1933 Act or 1934 Act regarding the proposed operations of the Foundation and the Trusts as summarized in this letter.

We ask that you forward an enclosed copy of this letter to the Office of Chief Counsel for the Division of Investment Management for confirmation that the Foundation and the Trusts need not be registered as investment companies under the Investment Company Act or as investment advisers under the Investment Advisers Act, and to the Office of Chief Counsel for the Division of Market Regulation for confirmation that the Foundation and the Trusts need not be registered as broker-dealers under the 1934 Act.

Please contact the undersigned if you have any questions.

Very truly yours,

SHUMAKER, LOOP & KENDRICK

By 
George L. Chapman

GLC/sjs
Attachments
Enclosures
cc: Marc Gertner, Esq.

PUBLIC

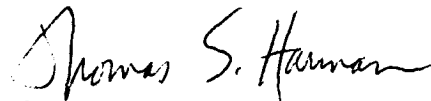
AUG 1 1984

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 84-204-CC
Baton Rouge Building and
Construction Industry
Foundation
File No. 132-3

We would not recommend that the Commission take any enforcement action under the Investment Company Act of 1940 or the Investment Advisers Act of 1940 against the Baton Rouge Building and Construction Industry Foundation or any of the related trusts it serves as trustee if they proceed with their proposal without registering as either investment companies or investment advisers. See Northwestern Ohio Building & Construction Trades Foundation (pub. avail. May 21, 1984). Our position is based on the facts and representations in your letters and exhibits of June 22 and July 17, 1984.

We understand that the Division of Corporation Finance and the Division of Market Regulation will be writing separately to address the issues you have raised regarding the Securities Act of 1933 and the Securities Exchange Act of 1934.



Thomas S. Harman
Attorney

BATON ROUGE BUILDING AND
CONSTRUCTION INDUSTRY FOUNDATION

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BATON ROUGE BUILDING AND
CONSTRUCTION INDUSTRY FOUNDATION

THIS AGREEMENT is entered into as of the _____ day of _____, 1984 by and among the Founder Members, which are qualified pension trusts signatory hereto.

W I T N E S S E T H:

WHEREAS, each of the parties to this Agreement is a Section 302(c) Taft-Hartley trust qualified under the Internal Revenue Code of 1954 (the "Code") and exempt from federal income tax by virtue of Section 501(a) of the Code and from applicable state income taxes on a similar basis.

WHEREAS, it is the desire of the parties to this Agreement to provide a procedure and system whereby representatives of one or more of such parties and other Members may meet from time to time to evaluate investment proposals presented to them for the purposes of providing useful information regarding investment opportunities to such parties and to enhance their portfolio diversification in keeping with the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

As used in this Agreement, unless the context clearly indicates otherwise, the following words and terms shall have the meanings here set forth:

Section 1.01. Agreement. The term "Agreement" means this instrument establishing the Baton Rouge Building and Construction Industry Foundation and shall include all exhibits, amendments, modifications, supplements and addenda hereto.

Section 1.02. Delegate. The term "Delegate" means a delegate to the Foundation appointed pursuant to Section 2.07 or Section 2.08 hereof.

Section 1.03. ERISA. The term "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and regulations of the Department of the Treasury and the Department of Labor promulgated thereunder.

Section 1.04. Member. The term "Member" means both the Founder Members who are the original signatories to this Agreement and such Additional Members as may hereafter and from time to time be admitted pursuant to the provisions of Section 2.04 hereof. The term shall not include any Founder Member or Additional Member whose membership shall have terminated prior to the pertinent determination of Member status.

Section 1.05. Vote. The term "Vote," unless a greater number is specified in the specific provision, means either the affirmative vote of a simple majority of the total voting power of the Members represented at a duly called meeting of the Foundation or the affirmative written consent of all Members. The vote or written consent of any Member in order to be valid must be given by both of its then appointed Delegates (or substitute Delegates), as provided in Section 2.07 hereof.

Section 1.06. Corporate Trustee. The term "Corporate Trustee" means the corporate institution with Trust powers, if any, selected pursuant to the provisions of Article V.

Section 1.07. Foundation. The term "Foundation" means the Baton Rouge Building and Construction Industry Foundation as created by this Agreement and as it may be subsequently amended.

ARTICLE II

CREATION; MEMBERS; DELEGATES

Section 2.01. The Foundation. There is hereby created under Louisiana law the Baton Rouge Building and Construction Industry Foundation. The purposes of the Foundation are to provide a procedure and system whereby representatives of Members may gather from time to time to evaluate investment proposals presented to them so that such representatives may provide useful information to the respective Members, and a means through which such Members can invest portions of their respective funds as they may from time to time independently determine in such ventures as real estate equity and financial transactions, thereby diversifying their respective investment portfolios.

Section 2.02. No Agency or Fiduciary Relationship Created. This Agreement does not create any agency relationship among any of the parties hereto at any time, nor is any individual Delegate, officer of the Foundation or committee, except as herein expressly provided, authorized to act on behalf of a Member or Members of the Foundation, or to incur any liability or expense on behalf of the Foundation or any of its Members. Each Member hereby acknowledges and agrees that no other Member nor its Delegates nor the Foundation or any of the Foundation's officers or agents undertakes any fiduciary responsibility to such Member or to its beneficiaries, and each Member waives and releases any claim based on any such potential fiduciary relationship. Each Member hereby acknowledges that through its Delegates it will make its own independent decisions whether or not to participate in any investment proposal and the extent of that participation, and that it does not rely upon advice or information from the Foundation, any other Member, or any of the officers or agents of the Foundation in connection with such decisions.

Section 2.03. Founder Members. The Founder Members of the Foundation are those trusts which are signatories to this Agreement.

Section 2.04. Additional Members. An eligible trust may be admitted as an Additional Member of the Foundation upon the Vote of the Members of the Foundation and shall thereafter have all rights, privileges and obligations of membership as provided herein (and as this Agreement shall hereafter be amended from time to time). A trust shall be eligible if and so long as it is a trust exempt from federal income taxation by virtue of Section 501 of the Code, and exempt from applicable state income taxation on a corresponding basis. Upon admission, each such Additional Member shall execute an adoption

agreement in substantially the form last approved by Vote for use by the Foundation.

Section 2.05. Termination of Membership. Any Member may terminate its membership in the Foundation upon written notice to the Foundation. A Member's status as such shall automatically terminate when it ceases to be an eligible trust as described in Section 2.04 hereof. A termination of membership by a Member shall not affect any investment theretofor made by the Member prior to its termination.

Section 2.06. Voting Power of Members. On any matter submitted to a Vote of the Members of the Foundation, each Member shall have one (1) vote.

Section 2.07. Delegates. Each Member shall be represented on the Foundation by two (2) individuals (Delegates) appointed by such Member, One (1) such Delegate shall be a trustee of such Member who has been selected by a labor organization and the other Delegate shall be a trustee of such Member who has been selected as an employer trustee of such Member. The initial Delegates of the Founder Members are hereby appointed by the respective Founder Members as set forth on Exhibit A attached hereto. Each Additional Member shall provide the Foundation with a written notification of initial Delegates appointed by the Additional Member.

Section 2.08. Successor and Substitute Delegates. A Member may, by written notice to the Foundation, remove any of its previously appointed Delegates and appoint a successor Delegate or Delegates, provided that it must comply with Section 2.07 hereof. A Delegate or Member may, by written notice to the Foundation, authorize a substitute Delegate as to a particular meeting specified in such notice. Each such notice shall be presented to the meeting and filed with the minutes of the meeting. A Delegate may resign by written notice to the Foundation and to the Member which appointed such Delegate. The resignation of a Delegate shall be effective immediately, unless otherwise stated in the notice.

Section 2.09. Compensation of Delegates. No Delegate shall receive any compensation from the Foundation.

ARTICLE III

OFFICERS; COMMITTEES

Section 3.01. Officers. The Delegates may from time to time by Vote select one (1) of their number to act as Chairman and one (1) to act as Co-Chairman. When the Chairman is selected from among the Delegates who are union representatives, the Co-Chairman shall be selected from among the Delegates who are management representatives, and vice versa. The Delegates may also by Vote elect a Secretary, who need not be a Delegate. The Chairman shall preside at meetings of the Delegates of the Foundation. The Co-Chairman shall serve as Chairman in the absence of the Chairman from any meeting. The Secretary shall distribute agendas of such meetings as provided elsewhere herein, shall keep and maintain minutes of the meetings of the Foundation, and shall retain copies of all notices given to or by the Foundation under this Agreement and written consents of the Members permitted by Section 1.05 hereof. The Foundation shall have such other offices and officers as the Members may establish by Vote. Each officer shall serve for a period of one (1) year and until his successor is elected or until his earlier resignation, retirement, death or disability. An officer may serve successive terms at the Vote of the members.

Section 3.02. Committees. The Foundation shall have such committees as its Members may establish by Vote, with such duties and members as the Members shall determine by Vote. The members of each committee may elect a Chairman, Co-Chairman and a Secretary.

ARTICLE IV

FINANCING PROPOSAL REVIEW PROCEDURE

Section 4.01. Meetings. The Delegates shall meet on such dates and at such meeting places as the Delegates shall from time to time establish by Vote, with at least one (1) meeting per quarter. The Delegates may by Vote determine a schedule for periodic regular meetings and a procedure for the calling of special meetings.

Prior to each such meeting, the Secretary shall use his best efforts to arrange an agenda for such meeting which, among other things, shall list all financing proposals which will be presented at such meeting and which agenda he shall endeavor to deliver to Delegates seven (7) days prior to the meeting.

Delegates representing a simple majority of all Members shall constitute a quorum at a meeting. Any Delegate may participate in a meeting by conference telephone, provided all Delegates can hear each other and be heard by all; and any Vote or action taken by such Delegate shall be confirmed in writing and delivered to the Foundation within three (3) business days of the voting or other action.

In addition, a Member may provide a proxy for a Delegate to be voted by the other Delegate.

Section 4.02. Subscription to Financing Proposals. As part of each meeting of the Foundation, financial proposals for construction mortgage loans or other investment opportunities may be presented by representatives of local lending institutions for review by the Members. The Delegates shall solicit, receive, consider and transmit all binding, enforceable commitments made by all cooperating banks and savings and loan associations, whether or not they are for loans to local or nonlocal developers, for local or nonlocal construction projects, or for union-built or nonunion-built construction projects. Upon receipt of this information from the institutions, the Delegates of each Member shall notify the full Board of Trustees or other designated representatives of each Member of the Foundation of all information received by them. The trustees of the Members shall then determine:

(a) if they desire to participate in the specific construction mortgage loan; and

(b) if so, the amount of their participation.

The Delegates of the Foundation shall accumulate the responses from all of the Members and shall advise the lending institution of its

desire to participate or not and, if so, the amount of the participation. The amount of the participation shall be the amount of the aggregate participations by the individual Members. Each said loan shall be deemed and construed to constitute a separate and distinct legal transaction and shall be documented as a separate trust, and the Delegates shall maintain their books and records of account accordingly.

Section 4.03. Reliance by Third Parties. No borrower, broker, mortgage banker, correspondent, investment advisor, agent or any other third party shall be entitled to rely upon any action of any Member or Delegate of the Foundation. The Foundation itself shall have no authority to issue a financing commitment. Commitments as to particular transactions shall be issued, if at all, by an appropriate Transaction Trust pursuant to the provisions of Article V hereof.

ARTICLE V

TRANSACTION TRUSTS

When a financing proposal has been subscribed, in whole or in part, as promptly as practicable thereafter, those Members who have subscribed to such financing proposal (the "Beneficiaries") shall form and fund a Transaction Trust in accordance with the provisions of this Article V.

A Transaction Trust shall be formed by the execution (in counterparts or otherwise) by the Beneficiaries and the Foundation, as Trustee of a Transaction Trust, with such modifications as such Beneficiaries and the Foundation shall unanimously find acceptable, which shall be conclusively evidenced by their respective signatures thereon.

In order to assure that no Member who undertakes to participate in a financing transaction with other Members may be embarrassed by the financial inability of a Member to fund its portion of the financing at the specified time, each Beneficiary shall, concurrently with its execution of its Transaction Trust Agreement, fund in cash its share of the participation in the subject financing proposal and Transaction Trust.

Such Transaction Trust shall thereafter promptly execute and deliver such commitment and other documents as shall be approved by counsel.

The Trustee shall then enter into a Participation Agreement with the bank, savings and loan association or other financial organization which shall act as the Lead Lender to service the Transaction. The Trustee may, but shall not be required, to engage a Corporate Trustee for the aggregation and representation of the collective interests of the Beneficiaries where it is legally necessary or in the best interests of the Beneficiaries to do so.

All participations purchased by the Members and taken by the Foundation as Trustee shall be co-participations with the originating bank or savings and loan association and not the purchase of an interest in any existing investment from the bank or savings and loan.

The aggregated interest of all Members in a single participation shall not exceed fifty per cent (50%) of the total loan commitment.

In all participations, the Members shall receive from the lead lender as part of their participation:

(a) interest at or above the prevailing market rate of interest for comparable commercial financing transactions; and

(b) their pro rata share of the financing points to the extent the points represent return on the loan and not compensation and/or reimbursement to the originating bank or savings and loan association for the actual expenses incurred and/or services rendered in servicing the construction mortgage loan.

ARTICLE VI

EXPENSES; REIMBURSEMENTS; ADMINISTRATION

Section 6.01. Expenses. The Foundation may incur and, as funds are available, pay such expenses as may be approved by a Vote of its Members, including the reasonable expenses heretofore incurred in connection with its organization.

Section 6.02. Expense Reimbursement Payments From Transactions. The representatives of the lending institutions from whom loans are bought or with whom loans are made shall be requested to obtain from each prospective borrower a commitment to pay the Foundation, as Trustee of the particular transaction, at the time such transaction documents are established, an amount sufficient to reimburse both the organizational and legal expenses of such transaction and an allocated portion of the organizational and operating expenses of the Foundation. As to each transaction, such allocated portion of the organizational and operating expenses of the Foundation shall be determined by Vote of the Members. All such amounts shall be paid directly to the Foundation, to reimburse the Foundation for that portion of its organizational and operating expenses which are allocated to such transaction.

No person other than an eligible trust may make any contribution to the Foundation.

Section 6.03. Regulatory Compliance. The Foundation shall apply for such federal and state tax-exempt status, tax rulings, federal and state securities no-action letters, and ERISA exemptions as determined by Vote of the Delegates (or by duly delegated officers of the Foundation) on recommendation of counsel.

Section 6.04. Forms, Rules and Procedures. The Foundation may adopt such forms, rules and procedures (including, without limitation, financing procedures) as the Delegates may determine from time to time by Vote.

ARTICLE VII

GENERAL PROVISIONS

Section 7.01. Governing Law. This Agreement has been executed and delivered in the State of Louisiana and shall be exclusively governed by and construed and enforced in accordance with the laws of such state and any applicable laws of the United States.

Section 7.02. Notices. Any legal notice given pursuant to this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, to each party to be notified (in the case of a notice directed to a Member, separate copies shall be sent to each of its then Delegates) at its respective address set forth on Exhibit A attached hereto or to such other address as such party shall earlier have designated by notice given pursuant to this provision. A notice sent by mail shall be deemed received five (5) business days after its deposit in the United States mail.

Section 7.03. Amendments. This Agreement may be amended only by a writing signed by the then Members holding at least a majority of the total voting power of the Foundation. Such amendments shall be made only after due consideration of applicable tax, securities, ERISA and other laws and regulations.

Section 7.04. Headings. The headings of the Articles and Sections of this Agreement are for convenience only and shall not be deemed to affect the interpretation or validity of any part of this Agreement.

Section 7.05. Severability. In the event any provision of this Agreement, in whole or in part (or the application of any provision of a specified situation), is held to be invalid or unenforceable by the final judgment of a court of competent jurisdiction after appeal or the time for appeal has expired, such invalidity shall be limited to such specific provision or portion thereof (or to such situation), and this Agreement shall be construed and applied in such manner as to minimize such unenforceability. This Agreement shall otherwise remain in full force and effect.

Section 7.06. Qualified Status. It is the intended purpose of the parties to this Agreement that the Foundation shall be and at all times remain exempt from federal and state income taxes. The Foundation shall avoid the receipt of income or payments which are inconsistent with the tax-exempt status of the Foundation and its Members. No part of any net earnings of the Foundation shall inure to the benefit of any private person. If any court or administrative ruling holds that any

provision of this Agreement or any of the procedures, practices, rules or documents of the Foundation are inconsistent with applicable qualification requirements under presently existing laws and/or regulations or any laws or regulations hereinafter enacted or adopted, any such provision, procedure, practice, rule or document shall be nullified; and the Members shall thereafter promptly attempt to make such changes as may be necessary to retain such status while fully accomplishing the purposes of this Agreement.

Section 7.07. No Third Party Rights. This Agreement is for the benefit only of the parties hereto and their respective successors and shall not be deemed to confer any rights upon any third parties.

Section 7.08. Counterparts; Effectiveness. This Agreement may be signed in two (2) or more counterparts, all of which shall constitute but one (1) single agreement. This Agreement shall not be effective until executed by each party for whom a signature line is provided below.

Section 7.09. Termination. This Agreement shall terminate on December 31, 2010, unless earlier terminated or extended by Agreement of all then Members. On termination, the Members shall be provided with a written accounting, which shall be audited, with respect to the final fiscal period of the Foundation. Any debts and liabilities of the Foundation shall be paid or provided for; and any remaining assets of the Foundation shall be distributed equally among the then Members, provided that the Delegates shall make a different disposition if necessary to avoid adverse tax consequences to the members.

IN WITNESS WHEREOF, each of the Founder Members has executed and delivered this Agreement as of the date first above written.

BATON ROUGE BUILDING AND
CONSTRUCTION INDUSTRY FOUNDATION

I.B.E.W. LOCAL NO. 955-ELECTRICIANS
PENSION PLAN AND TRUST

CARPENTERS LOCAL NO. 1098
PENSION PLAN AND TRUST

BY _____
Chairman

BY _____
Chairman

AND _____
Secretary

AND _____
Secretary

AGREEMENT OF PARTICIPATION

The undersigned, qualified trust hereby subscribes to the Agreement establishing the Baton Rouge Building and Construction Industry Foundation dated as of _____, a copy of which is attached to this form of agreement.

(Name of Trust)

BY _____

EXHIBIT A

INITIAL DELEGATES

Name and Address of
Founder Member

Names(s) and Address(es)
of Its Delegate(s)

MG:dj1
5/17/84
BATON2

PARTICIPATION AGREEMENT
FOR
CONSTRUCTION MORTGAGE LOAN

THIS PARTICIPATION AGREEMENT, made and entered into this
day of _____, 198__, by and between

(the "Lender"), a banking corporation having its principal banking
office at _____,
and a mailing address of _____,
Attention: _____, and BATON ROUGE BUILDING AND
CONSTRUCTION INDUSTRY FOUNDATION, TRUSTEE (the "Participant"), having
its principal office at _____,
Attention: Administrator.

W I T N E S S E T H:

WHEREAS, the Lender has made a valid and binding commitment to
make a _____
Dollar (\$ _____) construction mortgage loan (the "Loan") to
_____ (the "Borrower"); and

WHEREAS, Lender has agreed to sell to Participant an undivided
interest in the Loan and Participant has agreed to purchase an undivided
interest in the Loan to the extent of _____ per cent (____%) of
the Loan upon the following terms and conditions.

NOW, THEREFORE, in consideration of these premises, the mutual
promises of the parties and other good and valuable consideration, the
Lender and the Participant hereby mutually covenant and agree as
follows:

1. PARTICIPATION.

1.01 Advances. Lender sells to Participant and Participant
purchases from Lender a participation of _____ per cent (____%)
in the Loan, including all interim advances thereunder. The purchase
price of each participation in each advance is _____ per cent
(____%) of the amount of the advance. Participant is not obligated to
participate in any advance made (a) if, with the advance, the unpaid
balance of the Loan would exceed the stated amount of the Loan plus
interest; or (b) if, with the advance, the unpaid balance of
Participant's participation in the Loan would exceed one-half (1/2) of

the stated amount of the Loan plus interest; or (c) after Lender has knowledge of a default by Borrower.

1.02 Undivided Interest. Participant's participation and Lender's retained participation shall each constitute at all times an undivided interest in the proportion of the amounts of the respective participants in the Loan, including all rights and benefits of Lender under the Loan Agreement (the "Loan Agreement"), all notes or other instruments pertaining thereto, and all collateral securing the Loan (including but not limited to all guaranties, security interests, assignments of life insurance, and mortgages) held by Lender.

(a) Nonrecourse. Participant's participation is without recourse against Lender.

1.03 Interest. The unpaid principal amount of Participant's participation shall bear interest at a variable annual rate equal to the sum of the prime rate in effect on the first day of each calendar quarter plus _____ per cent (____%) per annum. The "prime rate" shall be the minimum prime lending rate, as quoted in the money market section of The Wall Street Journal. Interest shall be payable monthly.

1.04 Maturity. This agreement shall terminate upon the payment in full of the Loan, unless earlier terminated under other provisions of this agreement. The term of the Loan and this agreement may be extended or renewed upon the consent of the Lender and the Participant. Any extension or renewal of this agreement shall be upon the terms and subject to the conditions of this agreement as amended by any extension or renewal agreement.

2. ADMINISTRATION.

2.01 Payment by Participant. Forthwith upon the execution of this agreement, Participant shall forward to Lender the full amount of its participation hereunder. Lender shall keep Participant fully invested in an income-producing account and/or in riskless securities. All earnings on the monies so advanced shall be for the account of the Participant only.

2.02 Payments to Participant. When Lender receives a payment to be remitted to Participant, in whole or in part, Lender shall deliver to Participant the amount due from the payment. Payments received by Participant need not be endorsed on any participation certificates, though Participant may, upon payment in full of its participation with interest, mark "paid" and return to Lender the latest participation certificate received by Participant from Lender.

2.03 Order of Payment. Whenever Participant has an outstanding participation in the Loan and Lender receives any payment on the Loan, Lender and Participant shall apply the payment to the following in order:

(a) Expenses covered by section 2.06 that are reimburseable by Borrower;

(b) Accrued unpaid interest in the proportion of the respective amounts owing to Participant and Lender; and

(c) Principal in the proportion of the respective amounts owing to Participant and Lender.

In all cases, including the bankruptcy or insolvency of Borrower or any marshalling of Borrower's assets and liabilities, Participant's participation and Lender's retained participation shall be on a parity, with neither being subordinate to the other.

2.04 Mode of Payment. Payments to Lender from Participant and from Participant to Lender may be made by immediately available funds by wire for principal or by check or wire for interest or by any other means that the parties may later agree to use.

2.05 Documents and Collections. Lender shall hold all documents pertaining to the Loan and shall make all collections hereunder and otherwise administer the Loan in accordance with its regularly established practices and procedures. Lender will accept repayment of advances from Borrower, third parties liable therefor, or any guarantors of Borrower for proportionate repayment of Participant's participation. Lender shall use its best efforts to enforce the Loan, to keep proper records of the Loan and participation, and to perform such other tasks as Lender and Participant may agree.

2.06 Expenses, Costs and Fees. Any out-of-pocket expenses, court costs, and attorneys' fees incurred in connection with the administration of the Loan, the protection, collection, realization or enforcement of the Loan or the collateral for the Loan, or for the protection, preservation, insurance or maintenance of any property which is the subject matter of any such collateral shall be borne by Participant and Lender in the same ratio as their respective participation in the advances under the Loan at the time such expenses are incurred. The expenses, costs and fees described in this paragraph shall not include hire of regular or clerical employees or executives of Participant or Lender or any ordinary overhead of either Participant or Lender. The costs, expenses and fees shall include the amount of any monies paid in satisfaction or compromise of any suit, claim, action or demand by any

receiver or trustee in bankruptcy of Borrower on account of any alleged void or voidable preference or other void or voidable transfer received or alleged to have been received from Borrower in connection with the advances under the Loan or paid in satisfaction or compromise of any suit, claim or demand of any kind against either Lender or Participant on account of the assignment of any receivable or other collateral as security for advances in which Participant owns a participation or the security therefor or the payment by Borrower of any monies in connection therewith.

2.07 Examination of Books. Participant may examine all of Lender's books of account and other records pertaining to the Loan and the related agreements and instruments at any reasonable time during Lender's business hours.

2.08 Reports, Etc. Lender shall provide Participant copies of all reports, financial statements and other information given to Lender under the Loan Agreement. Lender and Participant shall endeavor to keep the other advised of all information about Borrower and the Loan that each receives.

3. LENDER'S RIGHTS AND POWERS.

3.01 Default in the Loan. Lender shall advise Participant of any defaults in the Loan of which Lender has actual knowledge.

3.02 Exercise of Remedies. Lender shall do the following only with the prior written consent of Participant:

(a) Collect the Loan;

(b) Waive, exercise or enforce any rights or remedies accruing to Lender under the Loan Agreement or any other documents executed in connection with the Loan;

(c) Amend the Loan, including releases, substitutions or exchanges of any collateral for or guaranties of the Loan; or

(d) Grant indulgences to Borrower.

If Lender and Participant disagree over the foregoing, Lender and Participant shall terminate this agreement under Article 8.

4. EXCULPATION FROM LIABILITY AND DISCLAIMER.

4.01 Exculpation from Liability. Lender shall not be liable for any error of judgment or for any action taken or omitted, except for willful misconduct. Lender may consult with legal counsel, independent public accountants, and other experts selected by Lender and shall not be liable for any act or omission taken in good faith by Lender in accordance with the advice of such counsel, accountants or experts. Lender shall not have any liability to Participant for repayment of Participant's participations nor the realization or recovery of such participations from any collateral, other security or guaranties of the Loan.

4.02 Disclaimer. Neither Lender nor any of its agents has made any representation or warranty of any kind concerning the subject matter of this agreement nor shall Lender or its agents hereafter be deemed to have made any further or other representation or warranty. Lender makes no representations or warranties, expressed or implied, of and assumes no liability to Participant for the effectiveness, enforceability, validity or execution of the Loan Agreement or any other documents executed in connection with the Loan or the attachment or perfection of any interest in any property securing payment of the Loan. Lender has no responsibility for the integrity or solvency of Borrower.

5. PARTICIPANT'S REPRESENTATIONS AND WARRANTIES.

Participant makes the following representations and warranties upon which Lender may rely.

5.01 Investment Experience. Participant has knowledge and experience in financial and business matters and in the investing of monies and is capable of evaluating the merits and risks of purchasing a participation and making the investment contemplated by such a purchase.

5.02 Review and Investigation. During the course of the transaction and prior to the sale and delivery of the participation to Participant, Participant has been afforded the opportunity (a) to review final copies of all documents pertaining to the Loan, (b) to ask questions and receive answers from the Borrower concerning the terms and conditions of the documents, and (c) to review such financial reports and to ask questions of and receive answers from the Borrower pertaining to Borrower and its business, operations, financial condition and future prospects as Participant deemed necessary and appropriate to permit it to make a fully informed decision with respect to its participation in the Loan. Participant acknowledges that Lender has not (a) undertaken to ascertain the accuracy or completeness of any information furnished to Participant relating to the business, operations, financial condition or future prospects of the Borrower, or (b) made any representations

concerning the accuracy or completeness of any information supplied to Participant by or relating to the Borrower. Participant is capable of and has made its own investigation of the Borrower in connection with its decision to purchase the participation. Participant will continue to make its own independent investigations and decisions concerning its participation.

5.03 Nonregistration. Participant understands that its participation in the Loan has not been registered under the Securities Act of 1933, as amended, by the Trust Indenture Act of 1939, as amended, or under the securities laws of any state.

5.04 Purchase as Trustee. Participant is purchasing its participation as Trustee for the benefit of the employee benefit plans set forth on Schedule B to Transaction Trust Agreement No. _____.

5.05 Consultation with Legal Counsel. Participant has consulted with and been advised by its own legal counsel as to the significance of the representations contained in this agreement.

6. NONASSIGNABLE AND NONTRANSFERABLE.

This agreement is neither assignable nor transferable by either party without the consent of the other, except for affiliates, subsidiaries, and successors of either party.

7. MODIFICATION, AMENDMENT AND WAIVER.

The provisions of this agreement may be amended, modified or temporarily waived from time to time; but each amendment, modification or temporary waiver, as the case may be, must be approved in writing by both Participant and Lender.

8. TERMINATION.

8.01 Upon Default. If either party, but not both, defaults in its obligations under this agreement and the default remains uncured for ten (10) days after written notice, the nondefaulting party may terminate this agreement. Upon termination, the defaulting party shall repurchase the nondefaulting party's entire participation at par plus accrued interest, and this agreement shall be cancelled.

8.02 Upon Disagreement. If a default occurs under the Loan and either Lender or Participant, but not both, does not agree to waive the default, then the one that does not agree to waive the default may terminate this agreement upon written notice to the one that is agreeable to waiving the default. Within a reasonable time after receipt of such a notice of termination, the one agreeable to waiving

the default shall either (a) purchase for itself or find another to purchase the nonwaiving party's participation interest at par plus accrued interest, or (b) if Lender is the one agreeable to waiving the default, promptly begin and prosecute collection of the Loan or permit, if Participant is the one agreeable to waiving the default, Lender to do so. This agreement shall terminate upon the purchase of the nonwaiving party's participation interest or the completion of collection of the Loan, as the case may be.

9. INTERPRETATION.

9.01 Captions and Headings. Captions and headings are used for convenience and reference only and shall not be used in construing or interpreting this agreement.

9.02 Law. This agreement shall be governed and construed according to the laws of Louisiana.

BY _____

Title: _____

BATON ROUGE BUILDING AND
CONSTRUCTION INDUSTRY FOUNDATION,
TRUSTEE

BY _____

Title: _____

MG:dj1
5/23/84
BATON3

**BATON ROUGE BUILDING AND
CONSTRUCTION INDUSTRY FOUNDATION**

CONSTRUCTION INDUSTRY INVESTMENT PLAN

**Shumaker, Loop & Kendrick
North Courthouse Square
1000 Jackson
Toledo, Ohio 43624
(800) 662-5056**

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BATON ROUGE BUILDING AND
CONSTRUCTION INDUSTRY FOUNDATION
CONSTRUCTION INDUSTRY INVESTMENT PLAN

THIS AGREEMENT, made and entered into at Baton Rouge, Louisiana by and among the Delegates appointed by the Employee Benefit Plans who are the Founder Members of the Baton Rouge Building and Construction Industry Foundation (as those terms are hereinafter defined).

W I T N E S S E T H:

WHEREAS, certain of said Employee Benefit Plans (the "Founder Members") have established a Foundation known as the Baton Rouge Building and Construction Industry Foundation to enable the Boards of Trustees of said Employee Benefit Plans which become parties to the Foundation to make legal and prudent investments on a combined and consolidated basis but compliant in all respects with all requirements of LMRA, ERISA and the Code; and

WHEREAS, the Founder Members have appointed their respective Delegates; and

WHEREAS, the Delegates, by the terms of the Foundation Agreement, are empowered to establish a Plan for the Foundation; and

WHEREAS, the Delegates desire to implement and effectuate the provisions of the Foundation by setting forth the terms and provisions of the Plan for the Foundation.

NOW, THEREFORE, in consideration of these premises, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed by and among the Delegates as follows:

ARTICLE I

DEFINITIONS

SECTION 1 - UNION

The term "Union" as used herein shall mean any labor organization which is:

(a) the duly designated collective bargaining representative of workmen engaged in the building and construction industry in the greater Baton Rouge, Louisiana area; and

(b) a co-sponsor of any Employee Benefit Plan which becomes a party to the Foundation.

SECTION 2 - ASSOCIATION

The term "Association" as used herein shall mean any association of employers which is:

(a) the representative of Employers engaged in the building and construction industry in the greater Baton Rouge, Louisiana area who employ workmen represented by a Union; and

(b) a co-sponsor of any Employee Benefit Plan which becomes a party to the Foundation.

SECTION 3 - EMPLOYEE BENEFIT PLAN

The term "Employee Benefit Plan" as used herein shall mean any employee benefit plan as defined in Section 3(3) of ERISA which:

(a) is sponsored by one or more Unions and one or more Associations;

(b) becomes a party to the Foundation; and

(c) is exempt from taxation by virtue of Section 501(a) of the Code.

SECTION 4 - EMPLOYEE BENEFIT PLAN CONTRIBUTIONS

The term "Employee Benefit Plan Contributions" as used herein shall mean payments made to the Foundation by participating Employee

Benefit Plans in accordance with this Plan and/or the Foundation Agreement.

SECTION 5 - PLAN

The term "Plan" as used herein shall mean the program, methods and procedures for the investment of monies from the Employee Benefit Plans by the Delegates, as set forth herein.

SECTION 6 - DELEGATE

The term "Delegate" as used herein shall mean a delegate to the Foundation appointed pursuant to Article II, Section 2.07 or Article II, Section 2.08 of the Foundation Agreement.

SECTION 7 - ERISA

The term "ERISA" as used herein shall mean the Employee Retirement Income Security Act of 1974, as amended, and regulations of the Department of the Treasury and the Department of Labor promulgated thereunder.

SECTION 8 - FOUNDATION

The term "Foundation" as used herein shall mean the Baton Rouge Building and Construction Industry Foundation as originally adopted and as it may be subsequently amended.

SECTION 9 - MEMBER

The term "Member" as used herein shall mean both the Founder Members who are the original signatories to the Foundation Agreement and such Additional Members as may hereafter and from time to time be admitted pursuant to the provisions of Article II, Section 2.04 of the Foundation Agreement. The term shall not include any Founder Member or Additional Member whose membership shall have terminated prior to the pertinent determination of Member status.

SECTION 10 - FOUNDER MEMBERS

The term "Founder Members" as used herein shall mean those Employee Benefit Plans which are signatories to the Foundation Agreement.

SECTION 11 - ADDITIONAL MEMBER

The term "Additional Member" as used herein shall mean an Employee Benefit Plan which is not a Founder Member and which is

admitted to participation in the Foundation pursuant to Article II, Section 2.04 of the Foundation Agreement.

SECTION 12 - FOUNDATION AGREEMENT

The term "Foundation Agreement" means the document establishing the Baton Rouge Building and Construction Industry Foundation.

ARTICLE II

PLAN OPERATION

SECTION 1 - ROSTER OF LENDERS

The Delegates shall establish contact with and shall maintain a roster of all banks, savings and loan associations, and mortgage brokers involved in generating, bidding, approving and funding of construction loans to general contractors in the geographic jurisdictions set forth in the collective bargaining agreement between the Union and the Association.

SECTION 2 - RECEIPT OF COMMITMENTS

The Delegates shall solicit, receive, consider and transmit all binding, enforceable commitments made by all cooperating banks, savings and loan associations, and mortgage brokers, whether or not they are for loans to local or nonlocal developers, for local or nonlocal construction projects, or for union-built or nonunion-built construction projects, which:

(a) shall comply with the terms, conditions, and provisions of Prohibited Transaction Exemption 76-1; and

(b) which comply with the guidelines adopted by the Delegates and which are attached hereto and incorporated herein.

SECTION 3 - TRANSMITTAL OF DATA

All data obtained by the Delegates from banks, savings and loan associations, and mortgage brokers as hereinbefore described shall be promptly transmitted to the Boards of Trustees of the Employee Benefit Plans participating herein at such time and in such manner as shall be determined by the Delegates with the approval of the participating Employee Benefit Plans.

SECTION 4 - RULES AND REGULATIONS

The Delegates shall promulgate rules and regulations applicable to those Employee Benefit Plans which desire to participate in any of the proffered construction mortgage loan participations, setting forth the manner in which the Employee Benefit Plans desiring to participate therein shall notify the Delegates of such fact, of the amount of such participation, and such other information as the

Delegates deem appropriate. In no event shall the Delegates make any investment decision for or on behalf of any participating Employee Benefit Plan.

SECTION 5 - EMPLOYEE BENEFIT PLAN ACCOUNT

If an Employee Benefit Plan decides to participate in any one or more of the offered construction mortgage participations, the Board of Trustees of the Employee Benefit Plan shall forward to the Delegates the dollar amount of its participation therein. The contributions from the Employee Benefit Plans participating in each transaction shall be promptly transmitted to the lead lender.

SECTION 6 - RECORDS OF INVESTMENTS

The Delegates shall keep records as to each investment hereunder, including the names of all participating Employee Benefit Plans, the nature and extent of the participation, copies of all loan documents, records of periodic payments of principal and interest on the investment, and such other information as the Delegates, with the advice of their professional advisors, shall determine. Copies of this information shall be made available on a regular basis to all Employee Benefit Plans participating in each said investment.

SECTION 7 - INVESTMENTS

All investments shall be registered in the name of the Foundation. Payments to fund the investments shall be made by the Delegates. Repayments of principal and interest shall be made to and in the name of the Delegates.

SECTION 8 - PRINCIPAL PAYMENTS

The Delegates shall, on a regular basis, remit to all participating Employee Benefit Plans their pro rata shares of principal repayment and income earned on their respective participations in each investment.

SECTION 9 - INTEREST PAYMENTS

The Delegates shall receive and record all payments of interest on interim holding account investments. The income from such investments shall be used first to pay all expenses attendant to the operation of the Foundation and shall thereafter be distributed pro rata to participating Employee Benefit Plans. To the extent expenses attributable to the operation of the Foundation remain after the application of the preceding sentence, remittances of the pro rata

shares shall be made to the participating Employee Benefit Plans, net of expenses, on a pro rata basis.

SECTION 10 - PARTICIPATIONS

All participations purchased by the Members and taken by the Foundation shall be co-participations with the originating bank or savings and loan association and shall not be the purchase of an interest in any existing investment from the bank or savings and loan.

The aggregate interest of all Members in a single participation shall not exceed fifty per cent (50%) of the total loan commitment.

In all participations, the Members shall receive from the lead lender as part of their participation:

(a) interest at or above the prevailing market rate of interest for comparable commercial financing transactions; and

(b) their pro rata share of the financing points to the extent the points represent return on the loan and not compensation and/or reimbursement to the originating bank, savings and loan association or mortgage broker for the actual expenses incurred and/or services rendered in servicing the construction mortgage loan.

SECTION 11 - MORTGAGE LOAN COMMITMENTS

The Delegates shall not consider any construction mortgage loan commitments for purchase of a participation through the Foundation unless the bank, savings and loan association or mortgage broker originating the commitment has a valid, legal, binding and enforceable commitment to the loan applicant and the borrower for the construction mortgage loan, without regard to participation by any Employee Benefit Plan participating in the Foundation.

SECTION 12 - CO-PARTICIPATIONS

All participations purchased by an Employee Benefit Plan shall be co-participations with the originating bank or savings and loan association in the commitments and not the purchase of an existing investment from the bank or savings and loan association.

SECTION 13 - LIMITED INVESTMENT

In no event shall any Employee Benefit Plan invest:

(a) more than ten per cent (10%) of the assets of said Employee Benefit Plan at cost in any single participation investment nor

(b) more than thirty-three and one-third per cent (33 1/3%) of the assets of said Employee Benefit Plan at cost in all of the participation investments obtained through the Foundation.

The Foundation shall not participate in any participating construction mortgage loan in which the originating bank or savings and loan association has less than a fifty per cent (50%) interest in the loan.

SECTION 14 - PARTICIPATION REQUIREMENTS

In any participation purchase by the Delegates through the Foundation with the originating bank or savings and loan association, an Employee Benefit Plan shall require that:

(a) the loan is made at or above the prevailing market rate of interest for comparable commercial financing transactions; and

(b) said Employee Benefit Plan receives its pro rata share of the financing points to the extent the points represent a return on the loan and not compensation and/or reimbursement to the bank or savings and loan association for actual expenses incurred and/or services rendered in servicing the construction mortgage loan.

SECTION 15 - DEPARTMENT OF LABOR REGULATIONS

The Delegates do hereby adopt and expressly make a part of this Plan Department of Labor Regulation Section 2550.408b-2(e) and the examples of Regulation Section 2550.408b-2(f). Without limiting the generality of the foregoing, any Delegate who has an interest in the employer entity which is involved in a construction project to be financed by a commitment, the participation in which is being considered by the Foundation, shall:

(a) abstain from voting on the participation determination;

(b) absent himself from the Delegates' meeting room when the issue of the purchase of a participation in said commitment is under discussion and consideration; and

(c) represent on the record that he has not discussed the participation with any other Delegate nor has he attempted to exert any influence upon any Delegate with regard to the issue.

SECTION 16 - RECORDKEEPING

The Foundation shall maintain or cause to be maintained for a period of six (6) years from the date of each loan participation such records as are necessary to enable the Department of Labor, the Internal Revenue Service, the Plan's participants and beneficiaries, or any employee organization whose members are covered by the Plan to determine whether all conditions of the Department of Labor's prohibited transaction exemption have been met.

SECTION 17 - TAKE OUT LOAN COMMITMENTS

Before the Loan is made, the Foundation shall receive from the lending institution a written commitment for permanent financing from a person other than a participating Plan or the Foundation to enable full repayment of the participating loan upon completion of construction.

ARTICLE III

SPENDTHRIFT PROVISIONS

No part of any benefits to be given hereunder or payments of any benefits shall be assigned, alienated or in any manner encumbered. If by reason of any such act, by operation of law, by the happening of any event, or for any other reason (except by an act authorized by the Delegates) any such benefit, payment or account shall cease to be enjoyed by any employee or beneficiary of any Employee Benefit Plan participating herein, either directly or indirectly, or if by reason of an attempt of such employee or beneficiary to alienate, charge or encumber the same, or by reason of the bankruptcy or insolvency of such employee or his beneficiary or because of any attachment, garnishment, execution or other proceedings, or any order, finding or judgment of any court of law or equity, the same except for this provision would vest in and be enjoyed by some other person, firm, corporation or otherwise than as provided for herein, then all of the rights and benefits provided for herein for any such employee or beneficiary shall cease and desist; and, thereafter, any such benefit or payment on account of any such benefit which would have been enjoyed by such employee or beneficiary, except for this provision, shall be held and disposed of by the Delegates may cause to be paid or expended for the support, care and maintenance of said employee or beneficiary out of the monies due said employee or beneficiary such sums as in their discretion shall be deemed just and proper which do not exceed the amount withheld for the benefit of said employee or beneficiary.

ARTICLE IV

EFFECTIVE DATE AND TERMINATION

SECTION 1 - EFFECTIVE DATE

The Plan created hereby shall become effective on the 1st day of July, 1984.

SECTION 2 - TERMINATION AND DISTRIBUTION

The Plan may be terminated at any time by agreement of a majority of the Delegates then serving. In the event of such termination, no further investments shall be made by the Delegates in construction loans, all future remittances to the Delegates shall be placed in an income-producing account in the name of the Delegates, and expenses applicable to the operation of the Plan and the Foundation shall be paid as herein provided. At such time as the Delegates determine, the Delegates shall distribute (on a pro rata basis) the proceeds of such loans, plus any additional income from the interest-bearing account, less any applicable expenses, to the Employee Benefit Plans participating at the time of termination. Notwithstanding the termination of the Plan, a winding up period shall follow such termination to enable the Delegates to conclude the operations of the Plan, including the collection of principal and interest payments and the payment of expenses.

SECTION 3 - ALTERNATE DISTRIBUTION

In lieu of the distribution set forth in Section 2 hereof, upon the agreement of a majority of the Delegates then serving, the Delegates may, after all obligations of the Foundation have been set aside or actuarially secured, turn over any surplus monies and property in the Foundation to any future foundation that may be created through the collective bargaining process.

SECTION 4 - AMENDMENTS

This Plan may be amended at any time and from time to time by a majority vote of the Delegates.

ARTICLE V

CONSTRUCTION

SECTION 1 - GOVERNING LAW

This Plan is created and accepted in the State of Louisiana; and all questions pertaining to the validity or construction hereof and of the acts and transactions of the parties hereto shall be determined in accordance with the laws of the State of Louisiana, except as to matters governed by federal law.

SECTION 2 - VALIDITY OF DOCUMENTS

Anything herein contained to the contrary notwithstanding, the Delegates shall not have any responsibility for the validity of this Plan or for the form, genuineness, validity or sufficiency or effect of any insurance contract at any time included in the Foundation or for the act of any person or persons which may render any such contract null and void, or for the failure of any insurance company to pay the proceeds and avails and benefits of any such contract as and when the same shall become due and payable, or for any delay occasioned by reason of any restriction or provision contained in any such contract, or if for any reason whatsoever any contract shall lapse or otherwise become uncollectible.

SECTION 3 - EFFECT OF ILLEGALITY

Should any provision of this Plan be held to be unlawful as to any person or instance, such provision or fact shall not adversely affect the other provisions herein contained or application of said provisions to any other person or instance unless such legality shall make impossible the function of the Foundation or the Plan. No Delegate shall be held liable for any act done or performed in pursuance of any provisions herein contained (regardless of the fact that such provisions may be held unlawful) prior to the time when such provisions shall, in fact, be held to be unlawful by a court of competent jurisdiction.

SECTION 4 - JUDICIAL CONSTRUCTION

The Delegates may take any legal action or proceeding they deem necessary to settle their accounts or to obtain a judicial determination or declaratory judgment as to any question of construction of the Plan or for instruction as to any action thereunder. Any such determination shall be binding upon all parties to or claiming under the Foundation Agreement and/or the Plan.

SECTION 5 - EXTENT OF DELEGATE LIABILITY

To the fullest extent permitted by law, the costs and expenses of any action, suit or proceeding brought by or against the Delegates or any of them, including counsel fees, court costs and also including the payment of any judgment and/or cost of settlement of any suit or proceeding which the Delegates may approve upon advice of their counsel that such judgment or settlement was in payment of an obligation owed or reasonably deemed to be owed by the Foundation shall be paid from the Foundation, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Delegate was acting in bad faith or was negligent in the performance of his duties hereunder.

SECTION 6 - TITLES

Titles of articles and sections are for general information only, and this Plan is not to be construed by reference thereto.

SECTION 7 - EXECUTION

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

SECTION 8 - SEVERABILITY

In the event that any article of this instrument or any part thereof is determined to be illegal or invalid, such illegality or invalidity shall not affect the remaining provisions of this instrument as presently written or subsequently amended unless such illegality or invalidity prevents the Delegates from accomplishing the purpose of this Plan. In such event, the parties hereto individually and collectively agree to commence negotiations aimed at correcting any such defect.

IN WITNESS WHEREOF, the Employer Delegates and the Union Delegates have executed this Plan on this _____ day of _____, 1984, to be effective as of the date set forth in Article IV, Section 1.

EMPLOYER DELEGATES

UNION DELEGATES

MG:dj1
5/18/84
BATON2

GUIDELINES FOR CONSTRUCTION INDUSTRY
INVESTMENTS BY THE BATON ROUGE
BUILDING AND CONSTRUCTION INDUSTRY FOUNDATION

The following guidelines are hereby adopted by the Delegates of the Baton Rouge Building and Construction Industry Foundation and are incorporated into and made a part of the Baton Rouge Building and Construction Industry Foundation Construction Industry Investment Plan:

1. The lending institutions will initiate, process and approve all applications for loans. The leaders of the Baton Rouge Building and Construction Trades Industry will encourage owners, developers, and builders to apply to those lending institutions participating with the Foundation in its construction industry investment program. However, the generation and approval of all loans rest solely and exclusively with the lending institutions.

2. The first contact by the lending institution with the Foundation will only be after the lending institution has made a valid, binding and enforceable construction mortgage loan commitment.

3. On a periodic basis (chronology to be worked out with each lending institution to its satisfaction), the lending institution will advise the administrator of the Foundation of all construction mortgage loan applications it has approved since the last communication and shall transmit to the Foundation's administrator the loan package showing the borrower, amount of the loan, rate and terms of the loan and security, contractor and subcontractors, description of project, etc.

4. The administrator of the Foundation will immediately copy and forward all information received to all Plans.

5. Within an acceptable time frame, the Trustees of each Plan shall consider each loan commitment and make two (2) determinations:

- (a) shall the Plan participate in each loan; and
- (b) if so, to what financial extent?

6. Each Plan shall then advise the administrator of the Foundation of its decisions on each loan commitment.

7. The administrator of the Foundation shall accumulate the responses from each Plan on each loan commitment and shall notify the lending institution:

- (a) if there will be participation in each loan; and
- (b) if so, in what aggregate amount.

8. The Foundation shall act as trustee under a Transaction Trust Agreement for each participation. The lending institution will deal only with the Foundation, as trustee, not with the individual Plans or Trustees.

9. The Foundation, as trustee, will execute a Participation Agreement with the lending institution, with the Foundation as the participant and the lending institution as lead lender.

10. Within ten (10) days of the execution of the Transaction Trust and the Participation Agreement, each participating Plan will fund one hundred per cent (100%) of its participation to the lending institution. The lending institution shall keep all of the participant's funding invested for the participant's account until drawn down.

11. The lending institution as lead lender will fully service the loan, without involvement by the Foundation or the participating Plan.

12. The transactions shall be documented and handled as participating construction mortgage loans in accordance with the rules, practices and procedures of the lending institution.

13. The Trustees of each Plan shall receive and consider all loan commitments from all cooperating lending institutions for which a legally binding and enforceable commitment has been made, whether the commitments are for:

- (a) local developers or nonlocal developers;
- (b) local construction projects or nonlocal construction projects; and
- (c) union-built construction projects or nonunion-built construction projects.

Provided, however, that the cooperating lending institutions shall not be required to submit to the Foundation all commitments for construction mortgage loans unless:

- (a) its customer-borrower shall have consented to the invitation for participation by the Foundation, which participation by the Foundation shall be affirmatively recommended by the lending institution;

(b) the commitment shall be in the amount of Two Hundred Thousand Dollars (\$200,000.00) or more; and

(c) the loan is generated by a branch or affiliate of the lending institution and/or is for construction to be performed in the geographic jurisdiction of the Foundation.

14. All participations purchased by the Plans shall be co-participations with the originating lending institutions in the commitments and not the purchase of an existing investment from the institutions.

15. In no event shall any Plan invest:

(a) more than ten per cent (10%) of the assets of the Plan at cost in any single participation investment; nor

(b) more than thirty-three and one-third per cent (33 1/3%) of the assets of the Plan at cost in all of the participation investments obtained through the Foundation.

16. In no event shall the aggregate participation through the Foundation be more than fifty per cent (50%) of the total loan.

17. In any participation purchase by a Plan through the Foundation with the originating lending institution, the Plan shall require that:

(a) the loan is made at or above the prevailing market rate of interest for comparable commercial financing transactions; and

(b) the Plan receive its pro rata share of the financing points to the extent the points represent a return on the loan and not compensation and/or reimbursement to the lending institution for actual expenses incurred and/or services rendered in servicing the construction mortgage loan.

18. The Trustees of the Plans shall adopt and expressly make a part of their Plan documents Department of Labor Regulation Section 2550.408b-2(e) and the examples of Regulation Section 2550.408b-2(f). Without limiting the generality of the foregoing, any Trustee of any Plan who has an interest in the employer entity which is involved in a construction project to be financed by a commitment, the participation in which is being considered by the Plan, shall:

(a) abstain from voting on the participation determination;

(b) absent himself from the Trustees' meeting room when the issue of the purchase of a participation in said commitment is under discussion and consideration; and

(c) represent on the record that he has not discussed the participation with any other Trustee nor has he attempted to exert any influence upon any Trustee with regard to the issue.

19. In considering and acting upon the purchase of a participation in any commitment, the Trustees of each Plan shall act in strict compliance with ERISA Section 404(a).

20. Before the loan is made, the Foundation shall receive from the lending institution a written commitment for permanent financing from a person other than a participating Plan or the Foundation to enable full repayment of the participating loan upon completion of construction.

21. The Foundation shall maintain or cause to be maintained for a period of six (6) years from the date of each loan participation such records as are necessary to enable the Department of Labor, the Internal Revenue Service, the Plan's participants and beneficiaries, any employer of Plan participants and beneficiaries, or any employee organization whose members are covered by the Plan to determine whether all conditions of the Department of Labor's prohibited transaction exemption have been met.

MG:djl
5/31/84
BATON2

TRANSACTION TRUST AGREEMENT

BATON ROUGE BUILDING AND
CONSTRUCTION INDUSTRY FOUNDATION

AND

TRUST NO. _____

Shumaker, Loop & Kendrick

North Courthouse Square

1000 Jackson

Toledo, Ohio 43624

(800) 662-5056

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TRANSACTION TRUST AGREEMENT

THIS TRANSACTION TRUST AGREEMENT (the "Agreement") is entered into this _____ day of _____, 198__, by and among BATON ROUGE BUILDING AND CONSTRUCTION INDUSTRY FOUNDATION (the "Trustee") and those Members of the Foundation participating in this Trust (the "Beneficiaries"), which are set forth in Exhibit B hereto.

W I T N E S S E T H:

WHEREAS, a certain investment proposal, which is summarized for purposes of identification only on Exhibit A attached hereto, has been reviewed and approved by the Beneficiaries; and each desires to establish a trust (the "Trust") pursuant to which they will collectively provide funds to finance the proposed transaction (the "Transaction"); and

WHEREAS, the Beneficiaries desire to appoint the Trustee as the trustee of the Trust, to serve upon the terms and conditions set forth herein; and the Trustee is willing to serve in such capacity and upon such terms and conditions; and

WHEREAS, it is intended that the Trustee will finance, in whole or in part, the Transaction and that until the funding of the Transaction, the funds contributed to this Trust by the Beneficiaries may be invested by the Lead Lender upon the terms set forth in the Participation Agreement with it; and

WHEREAS, each of the Beneficiaries is a trust which is exempt from federal and state income taxation under the terms of the Internal Revenue Code (the "Code" as hereinafter defined) and applicable state income tax statutes and is a "qualified trust" as that term is defined in the Code; and

WHEREAS, it is intended that the Trust itself shall be similarly exempt from federal income taxation and that the Trustee and the Beneficiaries shall cooperate in taking such actions as may be necessary or desirable to assure the continuance of that exempt status; and

WHEREAS, each of the Beneficiaries desires to make contributions to the Trust to best utilize its assets to the benefit of participants and investments.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises set forth herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

The following terms and phrases shall, for purposes of this Agreement, unless the context clearly indicates to the contrary, have the meanings set forth herein.

Section 1.01. Agreement. The term "Agreement" shall mean this Agreement and any amendments, addenda, supplements, exhibits or modifications hereto. The terms "hereof," "hereunder," "herewith," and "hereto" shall each refer to this Agreement.

Section 1.02. Beneficiary. The term "Beneficiary" shall mean any trust forming a part of any employee benefit plan (a) that is and continues to be exempt from federal income taxation under the Code and that is and continues to constitute a qualified trust as that term is defined under the Code, and (b) that shall be a party to this Agreement.

Section 1.03. Code. The term "Code" shall mean the Internal Revenue Code of 1954, as amended from time to time, or any successor statute or statutes.

Section 1.04. ERISA. The term "ERISA" shall mean the Employee Retirement Income Security Act of 1974 and any amendments thereto and regulations promulgated thereunder.

Section 1.05. Foundation. The term "Foundation" shall mean the entity formed pursuant to that certain agreement establishing the Baton Rouge Building and Construction Industry Foundation.

Section 1.06. Interest. The term "Interest" shall mean the beneficial interest owned by each Beneficiary under the Trust.

Section 1.07. Lead Lender. The term "Lead Lender" shall mean the bank, savings and loan association or other financial organization with which the Trustee has entered into a Participation Agreement setting forth the respective interests of the Lead Lender and the Trustee in the Transaction and the duties of the Lead Lender, including but not limited to the interim investment of the funding and the servicing of the Transaction.

Section 1.08. Transaction. The term "Transaction" shall mean that certain transaction identified in Exhibit A attached hereto.

Section 1.09. Trust. The term "Trust" shall mean the trust created hereunder.

Section 1.10. Trust Counsel. The term "Trust Counsel" shall mean Shumaker, Loop & Kendrick or any successor legal counsel to the Trust.

Section 1.11. Trustee. The term "Trustee" shall mean the Foundation or any successor trustee or trustees as provided in Article V of this Agreement.

ARTICLE II

CREATION, TRUSTEE, BENEFICIAL INTEREST

Section 2.01. Creation of Trust. The Beneficiaries hereby establish this Trust, and the Trustee hereby accepts such Trust on the terms and conditions set forth in this Agreement. The name of this Trust shall be Baton Rouge Building and Construction Industry Foundation Trust No. _____. The corpus of the Trust shall consist of such property as shall from time to time be delivered to the Trustee in trust under this Agreement, which shall be invested by the Trustee with the Lead Lender in the Transaction described in Exhibit A.

Section 2.02. Beneficial Interests. The Beneficiaries of the Trust shall be those trusts named on Exhibit B attached hereto, and their respective Interests shall be in the amounts and the proportions set forth on Exhibit B hereto. Each Beneficiary hereby represents to the other Beneficiaries and to the Trustee that such Beneficiary has its principal office in the State of Louisiana and is acquiring its Interest in the Trust for its own account for investment and not with a view to or for resale in connection with any distribution of such Interest.

Section 2.03. Principal Office. The Trust shall have its principal office in the East Baton Rouge Parish, State of Louisiana.

Section 2.04. Fiscal Year and Accounting Method. The fiscal year of the Trust shall end on December 31 of each year. The books and records of the Trust shall be maintained on an accrual basis; provided, however, that the Trustee may, upon the recommendation of the independent certified public accountant retained by the Trust, change or modify the accounting basis on which the books and records of the Trust are kept, in whole or in part.

Section 2.05. Contributions. In the event the Transaction consists of a construction loan or other immediate investment requirement, each Beneficiary shall, concurrently with its execution of this Agreement, provide to the Trustee an amount of cash (or its equivalent acceptable to the Trustee) equal to its total contribution as set forth beside its name on Exhibit B attached hereto.

Section 2.06. Failure to Make Contributions. In the event, for any reason, any Beneficiary (the "Defaulting Beneficiary") shall fail to make any payment required to be made by it in accordance with the provisions of this Trust Agreement, ten (10) calendar days after written notice from the Trustee to the Defaulting Beneficiary (and if such default then continues) the Trustee shall offer Interests corresponding to the Defaulting Beneficiary's unfunded portion (the "Unfunded

Portion") to the remaining Beneficiaries in the same ratio that the amount of the original subscription of each of such remaining Beneficiaries bears to the total original subscription of such remaining Beneficiaries. To the extent that any part of the Unfunded Portion then remains unsubscribed, the remaining Beneficiaries shall then be given an opportunity by the Trustee to subscribe on the same basis to such remaining unsubscribed portion of the Unfunded Portion. If any portion of the Transaction remains unsubscribed by the Beneficiaries, the Lead Lender shall accept and fund the unsubscribed interest.

ARTICLE III

PURPOSES OF TRUST

The primary purposes of the Trust are to provide an entity through which (a) one or more commitments may be issued to cover the Transaction, (b) the Transaction may be funded, and (c) the Beneficiaries may diversify their portfolio of investments. Until the time the Transaction is funded by the Lead Lender and subject to Section 4.02(c) below, the duty of the Trustee shall be to forward the contributions by the Beneficiaries to the Lead Lender which shall invest the amounts contributed by the Beneficiaries in the types of income-producing investments specified on Exhibit C attached hereto, with all income from such investments to be distributed to the Beneficiaries entitled thereto (on the basis of the respective amounts of their contributions and the dates on which such contributions were made).

ARTICLE IV

DUTIES, RIGHTS AND POWERS OF TRUSTEE

Section 4.01. Duties of the Trustee. Subject to the provisions of Section 4.02(e) below, the Trustee shall have the following duties:

(a) Reasonably and promptly after the establishment of the Trust, to forward the amount of the funding by the Beneficiaries to the Lead Lender in the transaction to invest the funds contributed by the Beneficiaries [subject to the establishment of any reserve pursuant to Section 4.02(c) below] in the types of income-producing investments specified on Exhibit C attached hereto, consistent with ERISA objectives until the Lead Lender completes the funding of the Transaction which is the subject of this Trust.

(b) Reasonably and promptly after the establishment of the Trust, to execute and deliver one or more commitments in the name of the Trust and on its behalf (in the form proposed and approved by Trust Counsel), pursuant to which the Trust shall become committed to fund the Transaction.

(c) Reasonably and promptly to distribute to the Beneficiaries entitled thereto in accordance with Article II hereof all interim income received from the investments referred to in Section 4.01(a) above, subject to the establishment of any reserves pursuant to Section 4.02(c) below.

(d) During the period of the commitment, to execute such documentation and take such actions as shall be directed by Trust Counsel, acting within its field of responsibility, in order to satisfy the Trust's obligation under the commitment.

(e) To reasonably and promptly distribute all net cash flow generated by the Transaction to the Beneficiaries in accordance with their Interests, subject to the establishment of any reserves pursuant to Section 4.02(c) below and subject to the investment, until distributed, of such net cash flow in any of the investments permitted in Exhibit C or those set forth in Section 4.02(c) below.

(f) To provide the Beneficiaries the following regular reports, as well as such additional reports and information as may reasonably be requested by the Beneficiaries or by Trust Counsel:

(1) Within one hundred twenty (120) days after the end of each fiscal year of the Trust, a report containing a balance sheet of the Trust as of the end of such fiscal year, a statement of income and expenses, and a statement of source and application of funds for such fiscal year, which balance sheet and statements shall be audited and reported upon by the independent certified public accountants retained by the Trust. Such reports shall specify those expenses reimbursed to the Trustee.

(2) Within thirty (30) days after the end of each fiscal quarter (including the fourth fiscal quarter) of each fiscal year of the Trust, an unaudited quarterly financial report, consisting of at least a balance sheet for the Trust as of the end of such quarter, a statement of income and expenses, and a statement of source and application of funds for such quarter.

(3) Such other periodic reports and information as any of the Beneficiaries or Trust Counsel may request in order to comply with the requirements of ERISA or other applicable federal or state laws or the regulations of the Internal Revenue Service, the Department of Labor or any other federal, state or local government agency having jurisdiction.

Section 4.02. Powers of the Trustee. The Trustee shall have and may exercise in furtherance of the purposes of the Trust the following discretionary powers with respect to any and all property, real or personal, forming a part of the Trust or at any time held by the Trust, as well as any and all other powers conferred by law and by this Agreement:

(a) To incur reasonable expenses, fees and costs on behalf of the Trust.

(b) To pay the reasonable expenses, fees and costs of the Trust.

(c) To establish reasonable reserves with respect to the anticipated liabilities, expenses, fees and costs of the Trust, and to invest and reinvest Trust assets held as reserves, either as permitted in Exhibit C attached hereto or in certificates of deposit, banker's acceptances, United States government securities, insured savings accounts and money market mutual funds, or to hold any part of the Trust

funds in cash or uninvested for any period during which the Trustee deems reasonable, prudent and in the best interests of the Trust and the Beneficiaries.

(d) To employ agents, broker-dealers, attorneys, accountants and bookkeepers and to pay their reasonable fees as expenses of the Trust.

(e) To consult with Trust Counsel regarding the Trustee's duties and responsibilities or actions which may be contemplated.

(f) To appear in, prosecute or defend any action in connection with the activities of the Trust.

(g) To deduct from and charge against the Trust any taxes paid by the Trustee which may be imposed on the Trust or any property owned by the Trust or which the Trustee may be required to pay with respect to the interest of any person therein.

Notwithstanding any of the foregoing subparagraphs (a) through (g), the Trustee shall not incur any expense or pay any amount on behalf of the Trust in excess of Two Thousand Five Hundred Dollars (\$2,500.00) without the prior written consent of the Beneficiaries holding a majority of the Interests in the Trust.

Section 4.03. General Duties, Rights, Privileges and Liabilities of the Trustee. In addition to and notwithstanding its duties, rights, privileges and liabilities set forth elsewhere herein, the Trustee shall have the following duties, rights and privileges and shall be subject to the following liabilities:

(a) Subject to Section 4.02(e) above, the Trustee shall undertake such actions as it may deem necessary at any and all times to protect the Trust and the rights and interests of the Beneficiaries pursuant to the terms of this Agreement.

(b) Subject to the provisions of ERISA, the Trustee shall not be responsible for or in respect of the recitals herein or the validity or sufficiency of this Agreement; and the Trustee shall in no event assume or incur any liability, duty or obligation to any Beneficiary (or to the beneficiaries of any Beneficiary) other than as expressly provided for herein and, specifically, for the decisions of the Beneficiaries to enter into the Transaction.

(c) Should the Trustee with the proper consent or direction of a majority of the Beneficiaries appear in, prosecute or defend any action in connection with the activities of the Trust, any cost to the Trustee from such conduct shall constitute an expense of the Trust reimbursable from the assets of the Trust, provided that such action is not the result of any conduct or inaction of the Trustee which is finally adjudged to be a breach of any of its duties.

(d) Subject to the provisions of ERISA, the Trustee shall have no liability for the independent acts or omissions of the Beneficiaries or Trust Counsel.

(e) Subject to the provisions of ERISA, the Trustee shall not be liable or responsible for the default or misconduct of any independent advisor, agent, attorney, accountant or bookkeeper (other than an employee of the Trustee) of the Trust if such independent advisor, agent, attorney, accountant or bookkeeper shall have been selected and retained with reasonable care, unless the Trustee knowingly participates in such default or misconduct and fails to take reasonable remedial action, or through negligence in the performance of its own specific responsibilities hereunder has enabled such default or misconduct to occur.

(f) Except as may be imposed directly upon the Trustee under ERISA, the Code or any comparable provision of the law, the Trustee shall not be liable for any tax or other governmental charge imposed upon or in respect of the Trust or upon it as Trustee hereunder, which may be required under any present or future law of the United States of America, any state of the United States or of any other taxing authority having jurisdiction. For all such taxes and charges and for any expense, including attorneys' fees, which the Trustee may sustain or incur with respect to such tax or charge, the Trustee shall be reimbursed from the Trust.

(g) The duties, responsibilities, liabilities and prohibitions of the Trustee under this Agreement shall be determined solely by the express provisions of this Agreement, and no further duties, responsibilities, liabilities or prohibitions shall be implied or imposed, except that the Trustee shall comply with all applicable federal and state laws and regulations relating to trustees or fiduciaries. The Trustee shall incur no liability in acting upon any papers, documents, data or information believed by it to be genuine and accurate and to have been made, executed, delivered or assembled by the proper party or parties. The Trustee may delegate any of its

powers or duties from time to time to any of its employees or agents.

Section 4.04. Limitations on Powers. Notwithstanding any other provisions in this Agreement, the Trustee shall not:

(a) Leverage, mortgage or hypothecate Trust assets or otherwise borrow money.

(b) Except as specifically permitted by this Agreement, invest or lend any Trust assets to any person, firm or corporation for any purpose whatsoever.

(c) Accept any contribution or subscription from any person other than a Beneficiary.

Section 4.05. Compensation. The Trustee shall receive no compensation for its services pursuant to this Agreement.

Section 4.06. Custodian of Trust Accounts. Subject to the investment of Trust funds in the investments permitted in Exhibit C and those set forth in Section 4.02(c) above, the Trust shall place and maintain all of its cash and securities, and may place and maintain its instruments evidencing the Transaction, in the custody of one or more banks or savings and loan institutions maintaining an office in East Baton Rouge Parish, Louisiana to be selected by the Trustee to act as custodian or custodians. Such funds and accounts shall be held in the name of the Trust and separate from other funds and accounts of such banks or of their other customers and shall not be commingled with other funds of the banks or of their other customers.

ARTICLE V

SUCCESSOR TRUSTEE

Section 5.01. Resignation of Trustee. The Trustee may resign on at least sixty (60) days' prior written notice to the Trust Counsel and each Beneficiary. Such resignation shall not terminate the Trust.

Section 5.02. Removal of Trustee. At any time, the Beneficiaries, by a unanimous vote or written consent, may remove the Trustee upon at least thirty (30) days' prior written notice to the Trustee. Such removal shall not terminate the Trust.

Section 5.03. Appointment of Successor Trustee. In the event a notice of resignation or notice of removal has been given pursuant to Section 5.01 or 5.02 above, a successor Trustee (or two or more successor co-trustees) may be designated by a majority of the Beneficiaries. Such successor Trustee shall by execution of this Agreement agree to act as Trustee of the Trust and to be subject to the terms and provisions of this Agreement, commencing as of the date of such execution. The resigning or removed Trustee shall, promptly after notice from the successor Trustee, forthwith deliver all assets of the Trust to such successor and deliver an accounting reflecting the activities of the Trust since the last accounting.

ARTICLE VI

TRANSFER OF INTERESTS AND ACQUISITION OF ADDITIONAL INTERESTS

Section 6.01. Prohibition of Transfers of Interests. Except as specifically provided in Section 6.03 below, or where the Transaction is between Beneficiaries, no Beneficiary shall sell, assign, pledge, encumber or otherwise transfer its Interest in the Trust or any portion thereof, unless prior thereto the Internal Revenue Service shall consent to such Transaction.

Section 6.02. Loss of Exempt and Qualified Status of Beneficiary. If any Beneficiary receives a final determination from the Internal Revenue Service (or any equivalent state taxing authority) to the effect that the Beneficiary is no longer exempt from federal and state income taxation under the Code as a qualified trust within the meaning of the Code, such Beneficiary shall notify the Trustee and the other Beneficiaries in writing within five (5) days of such notice of loss of exemption in accordance with the procedure set forth in Section 6.03 below.

Section 6.03. Redemption and Liquidation. In the event a Beneficiary loses its exempt or qualified status as provided in Section 6.02 above and the Trustee exercises its rights under this Section 6.03, then subject to Section 4.02(e), the Trustees shall undertake any one of the following courses of action:

(a) Redeem the Interest held by such Beneficiary. The Trustee, in its sole discretion, may elect to pay accrued Interest in a lump sum or by payment of a series of installments.

(1) If such Interest is redeemed in a lump sum, payment shall be made in cash or its equivalents paid on or prior to the last day of the second month succeeding the month in which such written notification of final determination, as described in Section 6.02 above, is received by the Trustee. In the event of such a lump sum payment, the Interest being redeemed shall be valued by an independent third party appraiser selected by persons appointed by the Trustee and such Beneficiary. If no such appraiser can be agreed upon, then no lump sum shall be paid. The value determined by such appraiser shall include the accrued but undistributed earnings to which such Beneficiary is entitled but shall

exclude the Beneficiary's share of reserves, as determined by the Trustee in its sole discretion, costs of the appraisal, other costs associated with the redemption, and other costs or expenses (including attorneys' fees and costs) as a result of the Beneficiary's ceasing to be qualified and exempt under the Code or as a result of Beneficiary's breach of the Trust, as the case may.

(2) If such Interest is redeemed by payment of a series of installments, such installments shall be in cash, shall consist of amounts to which such Beneficiary would have been entitled if it continued as a Beneficiary, and shall be paid at the same times as other Beneficiaries are paid, less its share of reserves, as determined by the Trustee in its sole discretion, costs associated with the redemption and other costs or expenses (including attorneys' fees and costs) as a result of such Beneficiary's ceasing to be qualified or exempt under the Code.

(b) Transfer an undivided interest in all of the Trust's property, to the extent of such Beneficiary's Interest, less its share of reserves, as determined by the Trustee in its sole discretion, costs associated with the transfer and other costs of expenses (including attorneys' fees and costs) as a result of such Beneficiary's ceasing to be qualified and exempt under the Code or as a result of such Beneficiary's breach of this Trust, as the case may be, to a trust, to a similar custodial account or to a similar entity for the benefit of such Beneficiary. The costs of any tax ruling applied for by the Trustee in connection with such transfer shall in any event be borne by such Beneficiary.

(c) Take such other steps as it deems reasonably necessary or prudent in order to enable the Trust to retain its status as qualified and exempt under the Code. It is expressly understood that in the event this Section 6.03 becomes operative with respect to a Beneficiary, such Beneficiary shall forthwith cease to be a Beneficiary of this Trust and shall have only the right to receive property representing its Interest in the Trust in the manner provided in this Agreement.

Section 6.04. Acquisition of Additional Interests. If a Beneficiary ceases to be a qualified and tax-exempt trust under the Code, the Trustee (in addition to its rights set forth in Section 6.03

above) shall first offer such Beneficiary's Interest to the remaining Beneficiaries and thereafter (to the extent the Interest has not been subscribed by remaining Beneficiaries) may, in its sole discretion, offer such Beneficiary's Interest or the remaining part thereof to other Beneficiaries on such terms and conditions as the Trustee and the remaining Beneficiaries shall agree.

ARTICLE VII

TAX QUALIFICATION AND EXEMPTION

Section 7.01. Maintenance of Status. Each of the Beneficiaries hereby represents to the other Beneficiaries under the Trust as follows:

(a) It is exempt from federal income taxation under the Code and hereby agrees to use all reasonable efforts to maintain that status. In the event such status is determined by the Internal Revenue Service or equivalent state taxing authority not to exist or is hereafter lost, such Beneficiary hereby agrees to notify the Trustee, each other Beneficiary, and the Trust Counsel.

(b) It shall take such action as the Internal Revenue Service requires, if any, in connection with granting a favorable determination letter or the equivalent to the Trust to the effect the Trust is exempt from federal income taxation under the Code and is a qualified trust pursuant to the Code.

ARTICLE VIII

TERMINATION

The Trust created by this Agreement shall terminate upon the earliest to occur of the following:

(a) Ninety (90) days after the effective date of the resignation or termination of the Trustee, if there shall not have been appointed a successor Trustee or Trustees prior to the expiration of such ninety (90) days and if there is not then in office a remaining co-Trustee.

(b) Repayment in full of the obligations owed to the Trust in connection with the Transaction and distribution of the proceeds thereof to the Beneficiaries (after payment of any final expenses of the Trust) pro rata according to their Interests.

(c) The unanimous decision on the part of the Beneficiaries, which shall be communicated to the Trustee by notice, that the commitment has been breached and the Transaction is not to be funded. In such case, the Trustee shall promptly liquidate the interim investments of the Trust and distribute the balance of the Trust assets to the Beneficiaries according to their Interests.

(d) At any time after the Transaction is funded, upon the decision by Beneficiaries holding at least seventy-five per cent (75%) of the total investment of the Trust, which shall be communicated by notice to the Trustee, to liquidate the Trust. In such event, the Trustee shall use reasonable efforts, acting upon the written instructions, to sell the Trust estate. If such sale is not consummated within four (4) months after receipt by the Trustee of the notice of intent to liquidate, the Beneficiaries shall pay or provide for all remaining expenses and obligations of the Trust (pro rata according to their Interests), and the promissory note or other documentation evidencing the Transaction shall be distributed in kind to the Beneficiaries pro rata according to their Interests. If the Trust estate is sold by the Trust, the Trustee shall pay or provide for all remaining expenses and obligations of the Trust and shall distribute the balance of its assets to the Beneficiaries pro rata according to their Interests.

On termination of the Trust, the Trustee shall provide a written accounting, which shall be audited, to the Beneficiaries with respect to the final fiscal period of the Trust. Notwithstanding any termination of the Trust, the indemnities set forth in this Agreement shall remain in full force and effect for three (3) years thereafter.

ARTICLE IX

GENERAL PROVISIONS

Section 9.01. Governing Law. This Agreement has been executed and delivered in the State of Louisiana and shall be exclusively governed by and construed and enforced in accordance with the laws of such state and any applicable laws of the United States, including but not limited to ERISA. In the event of any conflict between ERISA and any provision of this Agreement (or of state law), the provisions of ERISA shall prevail.

Section 9.02. Notices. Any notice given pursuant to this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, to each party to be notified at its respective address set forth on the signature pages or to such other address as any such party shall have otherwise designated by notice given to each Beneficiary, to the Trustee and to Trust Counsel. A notice sent by mail shall be deemed received five (5) business days after its deposit in the United States mail.

Section 9.03. Amendments. This Agreement may be amended only by a writing signed by the Trustee and by the then Beneficiaries holding a majority of the total investments in the Trust.

Section 9.04. Headings. The headings of the Articles and Sections of this Agreement are for convenience only and shall not be deemed to affect the interpretation or validity of any part of this Agreement.

Section 9.05. Severability. Any provision of this Agreement which is inconsistent with the intent of the parties hereto that the Trust created hereby shall be and remain exempt from federal and state income taxation shall, to that extent, be deemed null and void. In the event any provision of this Agreement, in whole or in part (or the application of any provision of a specific situation), is held to be invalid or unenforceable by the final judgment of a court of competent jurisdiction, after appeal or after the time for appeal has expired, such invalidity shall be limited to such specific provision or portion thereof (or to such situation); and this Agreement shall be construed and applied in such manner as to minimize such unenforceability. This Agreement shall otherwise remain in full force and effect.

Section 9.06. Expenses of Disputes. In the event any dispute arises as to any subject matter of this Agreement, in addition to such other relief to which any party may be entitled, the prevailing party or parties to such dispute shall be entitled to recover its or their

reasonable expenses, including attorneys' fees, arising from such dispute.

Section 9.07. No Third Party Rights. This Agreement is for the sole benefit of the parties hereto and their respective successors and shall not be deemed to confer any rights upon any third parties.

Section 9.08. Counterparts; Effectiveness. This Agreement may be signed in two or more counterparts, each of which shall constitute but one single agreement. This Agreement shall not be effective until executed by each party for whom a signature line is provided below.

Section 9.09. Loss of Qualified Status of Trust. If the Trust receives notices from any governmental agency that the Trust has lost or is threatened with loss of its qualified and exempt status under the Code, the Trustee shall give immediate notice thereof to each Beneficiary; and the Trustee shall use its best efforts to reinstate or retain such exempt status of the Trust. Should the Trust lose such exempt status, the Trustee shall use its best efforts to ensure that the Beneficiaries do not lose their qualified tax-exempt status as a result thereof.

Section 9.10. Disputes; Arbitration. In the event any dispute arises as to any subject matter of this Agreement, it shall be submitted to arbitration under the commercial rules of the American Arbitration Association; and in addition to such other relief to which any party may be entitled, the prevailing party or parties to such dispute shall be entitled to recover their reasonable expenses, including attorney's fees, arising from such dispute.

Section 9.11. Other Documents. Each party to this Agreement, whenever and as often as requested to do so by any other party to this Agreement or Trust Counsel, shall execute or provide such other and further documents and instruments as may be requested in order to fulfill the purposes, terms and conditions of this Agreement.

Section 9.12. Partition and Accounting. No Beneficiary, under any circumstances, in any manner, or at any time shall seek or otherwise assert the right to a partition or division of the assets of the Trust or, except as otherwise specifically provided herein, to an accounting.

Section 9.13. No Diversion. No part of the corpus or income of the Trust which equitably belongs to any Beneficiary shall be used or diverted for any purpose other than for the exclusive benefit of the Beneficiary or its respective beneficiaries who are entitled to benefits under the governing instrument of such Beneficiary.

IN WITNESS WHEREOF, each of the parties to this Agreement has executed and delivered the same as of the date first above written.

TRUSTEE:

BATON ROUGE BUILDING AND
CONSTRUCTION INDUSTRY FOUNDATION

BY _____
Title: _____

BENEFICIARIES:

BY _____
Title: _____

(Address)

BY _____
Title: _____

(Address)

EXHIBIT A

SUMMARY DESCRIPTION OF TRANSACTION

EXHIBIT B

BENEFICIAL INTERESTS

<u>Beneficiary</u>	<u>Amount of Contribution ("Interest")</u>	<u>Percentage Interest</u>
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Totals:

EXHIBIT C

AUTHORIZED INVESTMENTS

Examples:

1. Investments in short-term fixed income obligations of every nature, including but not limited to commercial paper, bankers' acceptances, repurchase agreements, certificates of deposit, variable notes, savings accounts, governmental securities and other bonds, notes or evidences of indebtedness which are payable on demand or have a maturity date which is commensurate with the timing of the funding obligations of the Transactions. Such investment shall, under usual circumstances, be held to maturity. Maturity shall be defined as the date at which obligations mature or, if called for redemption prior thereto, the redemption date. Such investments may be in certificates of deposit and other investments with the Trustee, provided they bear the prevailing interest rate.

2. Certificates of deposit issued by _____

_____, provided that at the time of each such investment the yield thereon is competitive with that offered by other banks of the same or larger capitalization.

EXHIBIT D

ADMINISTRATIVE AND SERVICING PROCEDURES

1. Until the principal and interest of any mortgage owned by the Trust and any lease payments due under any lease or ground lease are paid in full, the Trustee will proceed diligently to attempt to collect all payments due under any such mortgage and/or leases as and when the same shall become due. The Trustee shall keep complete and accurate records of and properly apply all sums paid to the Trustee on account of each mortgage and/or lease for (a) taxes and assessments, (b) premiums on policies of casualty and liability insurance, and (c) mortgage insurance premiums (if the loan is insured).

2. All late charges collected by the Trustee as provided under the terms of any note and mortgage and/or any lease shall be distributed to the Beneficiaries in the same manner as other payments received by the Trust.

3. The Trustee shall hold all funds in connection with any mortgage and/or lease in a separate bank trust account. On or before the fifteenth (15th) day of each month, the Trustee shall provide the Beneficiaries with a reconciliation (for the preceding month) of any bank trust account maintained by the Trustee on behalf of the Trust.

4. The Trustee shall hold all funds paid in by each mortgagor and/or lessee under the terms of any mortgage and/or lease to cover charges such as taxes, assessments and insurance premiums, in separate bank trust accounts and will disburse such funds only for the payment of or on account of such charges due and accruing under each individual mortgage and/or lease.

5. Once each year, the Trustee shall certify that all general property taxes and special assessments have been paid on any properties securing the Transaction being serviced. This certification shall be made within sixty (60) days after April 10 of each year. If it appears that any general property taxes or special assessments have become delinquent, the Trustee shall pay such taxes and special assessments out of funds on hand as collected from each mortgagor and/or lessee. Any penalties incurred because of such delinquency, if sufficient funds were on hand, shall also be paid by the Trustee at no expense to the Trust. However, in no event shall the Trustee be obligated to advance or pay general property taxes or special assessments from its own funds.

6. The Trustee shall give attention to delinquent payments in accordance with generally recognized prudent mortgage banking practices and will keep Beneficiaries informed monthly of the status of such delinquencies.

7. Each year, within three (3) months after the close of its fiscal year, the Trustee shall mail to each Beneficiary a copy of the Trustees' audited annual financial statements.

8. The Trustee shall allow any Beneficiary's authorized agent or agents a reasonable opportunity during normal business hours to examine its books and records insofar as they relate to or affect any mortgage or mortgages, leases or properties owned by the Trust; provided, there shall be no unreasonable interferences with or interruption of the Trustee's normal office routine; and provided no additional expense is incurred by the Trustee thereby.

9. The casualty and liability insurance on each mortgage and/or lease acquired by the Trust shall be in accordance with the requirements established in the mortgage and/or lease. At least thirty (30) days prior to the expiration of a mortgagor's and/or lessee's casualty and/or liability insurance policy, the Trustee shall obtain written evidence from the mortgagor's and/or lessee's insurance company that the insurance requirements will continue to be met after the expiration date of the current policy, by a renewal of said policy or by the issuance of a new policy. The Trustee will retain the original insurance policies endorsed with loss payable clause to the Trust.

The Trustee, on behalf of the Trust, shall be authorized to endorse all loss drafts. Prior to endorsing any loss drafts covering losses to buildings encumbered by any mortgage or mortgages owned by the Trust or covered by any lease owned by the Trust, the Trustee shall satisfy itself that the damage caused has been fully repaired; that the property has been placed in as good a condition, or better than, its condition prior to the loss; that all bills for labor and materials in repairing the damage have been paid or will be paid from the proceeds of such drafts; and that the damage has been repaired to the mortgagor's and/or lessee's satisfaction. In relation to losses in the amount of Five Thousand Dollars (\$5,000.00) or less, the Trustee shall not be required to make an inspection of the repairs but must obtain and retain evidence of the mortgagor's and/or lessee's satisfaction with said repairs.

10. The Trustee shall make inspection of any property covered by a mortgage and/or lease which is one (1) monthly payment in default and, as it becomes known to the Trustee, shall promptly call to the attention of each Beneficiary any lack of repair or other deterioration or waste suffered or committed in respect to the premises covered by the

mortgage and/or lease. Any loan in the process of foreclosure and any lease in the process of unlawful detainer proceedings shall be inspected by the Trustee on a monthly basis.

11. The Trustee shall promptly notify each Beneficiary if any of the following shall come to the Trustee's attention:

(a) A default under the terms of a mortgage and/or lease;

(b) An unauthorized transfer of the premises and/or assignment of the lease;

(c) An abandonment of the premises;

(d) Extensive damage to the premises as a result of any reason whatsoever.

12. The Trustee shall not accept prepayment of the principal of any mortgage owned by the Trust unless such prepayment is permitted by the terms of the note or mortgage or unless the acceptance thereof is authorized in writing by all of the Beneficiaries.

13. In case of default, the Trustee shall promptly institute foreclosure and/or unlawful detainer proceedings or proceed to acquire the premises by other means in accordance with applicable laws. Such steps shall not be taken until requested or approved in writing by the Beneficiaries. The Beneficiaries shall reimburse the Trustee for necessary costs and expenses, including reasonable attorneys' or trustee's fees, which fees shall correspond to those fees customarily charged in the area. The Trustee will make no other charge for its services in ordinary unopposed cases. In cases where: (a) the defaulting mortgagor contests the proceedings, (b) foreclosure is prosecuted by court proceedings, (c) there is an action for receivership, (d) there is an action in unlawful detainer, or (e) there are proceedings involving the bankruptcy court, the Trustee may charge a reasonable fee for the extra services necessitated thereby, but any such fees shall only be charged with the approval of the Beneficiaries. The Trustee shall commence and conduct all legal proceedings in the Trust's name as may be necessary in the Trustee's discretion to protect the interest of the Trust and shall take title to the premises in the name of the Trust.

In the event foreclosure proceedings are commenced or a deed to the mortgaged premises in lieu of foreclosure is obtained or the premises are re-acquired by unlawful detainer proceedings, the Trustee shall, unless otherwise directed by the Beneficiaries, promptly manage and protect the premises in such manner and to such extent as is

customarily embraced in the proper management of property in the locality involved, including but not limited to the renting or leasing of the premises, the collection of rents, attending to insurance on the premises, management and supervision of repairs and maintenance of the premises, and the rendering to the Beneficiaries of such reports as the Beneficiaries may reasonably require. The Trustee shall segregate and hold for the Beneficiaries until paid over to them all rentals and other monies in respect of said premises which may come into the Trustee's possession. The Trust shall compensate the Trustee for property management in accordance with the standard prevailing rate in the locality in which the premises are located. In any event, the Trustee will make periodic inspections of the premises and report to the Beneficiaries with recommendations of action to be taken, including sale or other disposition, if any, to the end that the premises will be safeguarded to the fullest extent possible and disposed of as soon as practicable, taking into consideration, among other things, the market conditions which exist at the time, the condition of the premises, and the then existing investment objectives of the Trust.

14. The Trustee shall maintain a fidelity bond having broad coverage with a responsible surety company on all employees handling the Trust's funds, monies, documents and/or papers, which bond shall protect the Trustee against losses, including theft, embezzlement, fraud and misplacement.

15. The Beneficiaries may, by express writing, but not otherwise, waive the performance or may reasonably control the performance of acts to be performed by the Trustees, so long as such control does not require added expenses to be incurred by the Trustee.

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