

**DECLARATION OF TRUST AND AGREEMENT
ESTABLISHING
THE CALIFORNIA TEACHERS ASSOCIATION
EMPLOYEES' RETIREMENT BENEFITS TRUST**

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**DECLARATION OF TRUST AND AGREEMENT
ESTABLISHING
THE CALIFORNIA TEACHERS ASSOCIATION
EMPLOYEES' RETIREMENT BENEFITS TRUST**

I. INTRODUCTION.

- A. *Name and Effective Date.*** The official name of the Trust created hereby, which is generally referred to hereafter as the “*Trust*,” is “THE CALIFORNIA TEACHERS ASSOCIATION EMPLOYEES’ RETIREMENT BENEFITS TRUST.” Its effective date is the date this trust agreement (the “*Agreement*”) is signed by the Association and the Unions.
- B. *Purpose.*** It is the purpose of this Trust to use and invest the Contributions received by it for the exclusive purpose of funding pension benefits and other benefits incidental thereto which are permitted to be provided under the Trust to eligible Members and their Beneficiaries and defraying reasonable expenses of administration. This purpose shall be accomplished in accordance with all applicable laws, specifically including the EMPLOYEE RETIREMENT INCOME SECURITY ACT of 1974, as amended from time to time (“*ERISA*”). The Trust shall be irrevocable, although it may be terminated as provided in Article X(C), and no part of its corpus or income shall ever revert to or inure to the benefit of any contributing Employer, except for the return of erroneous contributions as provided in Article V(I).
- C. *Objectives.*** The Unions and the Association enter into this Trust to achieve the following objectives:
1. The Unions and the Association desire to provide retirement benefits to the eligible Members and their Beneficiaries.
 2. The Unions and the Association desire to ensure the assets of the Fund are held in a fiscally sound and responsible manner.

II. DEFINITIONS.

The following words and phrases have the special meanings indicated. Certain other words and phrases with special meanings are defined where they first appear unless their meaning is apparent from the context. Capitalized words and phrases that are not defined in this Agreement shall have the special meanings indicated in the Plan document.

A. ***“Accounting Services”*** and ***“Accountant”*** mean or refer to any person, firm or corporation:

1. Selected by the Board of Trustees and appointed for the purpose specified in this Agreement;
2. Qualified and doing business in the State of California;
3. Conducted by, or under the supervision of, a certified public accountant with at least three (3) years of experience in performing accounting services for large group employee benefit plans; and
4. Agreeing in writing to adhere to standards of accounting which meet or exceed “generally accepted accounting practices” and such other standards as may, from time to time, be promulgated by the applicable regulatory agencies, professional associations or other bodies which establish standards of practice for the accounting industry.

B. ***“Actuarial Services”*** and ***“Actuary”*** mean or refer to any person, firm or corporation:

1. Selected by the Board of Trustees and appointed for the purpose specified in this Agreement;
2. Qualified and doing business in the State of California;
3. Conducted by, or under the supervision of an actuary, who:
 - a. Is enrolled under the terms of Subtitle C of Title III of ERISA; and
 - b. Has at least three (3) years of experience in performing actuarial services for large group employee benefit plans; and

4. Agreeing in writing to adhere to actuarial standards which meet or exceed “actuarial standards of practice” and such other standards as may, from time to time, be promulgated by the applicable regulatory agencies, professional associations or other bodies which establish standards of practice for the actuarial industry.
- C. **“Administration”** means the day-to-day management of the Fund, but not extraordinary matters involving the structure of the Fund, the latter being reserved to the Association and the Unions through the collective bargaining process.
- D. **“Administrator”** means any person, firm or corporation:
1. Selected by the Board of Trustees and appointed for the purpose specified in this Agreement;
 2. Qualified and doing business in the State of California; and
 3. Acting under the direction of the Board of Trustees, to:
 - a. Administer the office or offices of the Trust and of the Board;
 - b. Collect, verify and analyze such data and other information as may be needed by the Board in the administration of the Trust, the Fund and the Plan;
 - c. Coordinate and administer accounting, bookkeeping and clerical services for the Fund;
 - d. Provide for the coordination of Actuarial Services furnished by the Actuary;
 - e. Prepare (in cooperation, where appropriate, with the Accountant, the Actuary, the Auditor, the Benefits Consultant and the Attorney) all reports and other documents to be prepared, filed or disseminated by or on behalf of the Trust in accordance with applicable law;
 - f. Assist in the collection of Contributions required to be paid to the Fund; and/or

- g. Perform such other duties and furnish such other services as may be assigned, delegated or directed or as may be contracted by or on behalf of the Board.
- E. **“Association”** means the *California Teachers Association* and any successor thereto.
- F. **“Association Trustee”** means, collectively, the Trustees appointed by the Association.
- G. **“Auditing Services”** and **“Auditor”** mean or refer to any person, firm or corporation:
 - 1. Selected by the Board of Trustees and appointed for the purpose specified in this Agreement;
 - 2. Qualified and doing business in the State of California;
 - 3. Conducted by, or under the supervision of, a certified public accountant with at least three (3) years of experience in conducting and/or supervising auditing services for large group employee benefit plans; and
 - 4. Agreeing in writing to adhere to auditing practices which meet or exceed “generally accepted auditing standards” and such other standards as may, from time to time, be promulgated by the applicable regulatory agencies, professional associations or other bodies which establish standards of practice for the accounting industry.
- H. **“Bad Faith”** means any action, tactic or conduct that is:
 - 1. Intended to cause unnecessary delay; and/or
 - 2. Frivolous, in that it is:
 - a. Without merit; or
 - b. Taken for the purpose of harassing the opposing Trustee unit.
- I. **“Benefits Consulting Services”** and **“Benefits Consultant”** mean or refer to any person, firm or corporation:

1. Selected by the Board of Trustees and appointed for the purpose specified in this Agreement;
 2. Qualified and doing business in the State of California;
 3. Conducted by, or under the supervision of, either a certified employee benefits specialist or an enrolled actuary with at least three (3) years of experience in performing benefits consulting services for large group employee benefit plans; and
 4. Acting under the direction of the Board of Trustees to (a) collect, verify and analyze such data and other information as may be needed by the Board in the administration of the Trust, the Fund and the Plan; and/or (b) perform such other duties and furnish such other services as may be assigned, delegated or directed or as may be contracted by or on behalf of the Board.
- J.** *“Board of Trustees” or “Board”* means, collectively, the Association Trustee and the Union Trustee.
- K.** *“Claimant”* means any individual who (1) is (or claims to be) a Member or Beneficiary, and (2) has duly submitted a claim for benefits under the terms and conditions of the Plan.
- L.** *“Contributions”* means any payments made to the Fund by an Employer (including employee-paid contributions) in accordance with the relevant collective bargaining agreements and/or Participation Agreements with the Fund, under the terms established by Article V and as required by applicable law.
- M.** *“Effective Date”* means January 1, 1999.
- N.** *“Employer”* means:
1. The Association; and/or
 2. Any affiliate of the Association or the National Education Association:
 - a. Whose participation in the Trust is permissible under applicable law; and

- b. That has become an Employer pursuant to Article IV and contributes to the Fund (or is obligated to contribute to the Fund) in accordance with the relevant collective bargaining agreements and/or Participation Agreements with the Board of Trustees.
- O. **“Fund”** means *The California Teachers Association Employees’ Retirement Benefits Fund* and the assets of that Fund established by and maintained under this Agreement, as amended from time to time.
- P. **“Fund Custodian”** means any financial institution that is a bank (within the meaning of Section 581 of the INTERNAL REVENUE CODE of 1986, as amended from time to time (the “Tax Code”)):
 - 1. Selected by the Board of Trustees and appointed for the purpose specified in this Agreement;
 - 2. Qualified and doing business in the State of California; and
 - 3. Subject to the supervision of the Comptroller of the Currency, the Federal Reserve Board or the Superintendent of Banks of the State of California.
- Q. **“Investment Management Services”** and **“Investment Manager”** mean or refer to any person, firm or corporation:
 - 1. Selected by the Board of Trustees and appointed for the purpose specified in this Agreement;
 - 2. Registered as an investment adviser under the INVESTMENT ADVISERS ACT of 1940, as amended; qualified as an “investment manager” under Section 3(38) of ERISA; and qualified and doing business in the State of California;
 - 3. Who, acting as a fiduciary under the direction of the Board, has or exercises the power to:
 - a. Manage, acquire or dispose of any assets of the Fund;
 - b. Collect, verify and analyze such data and other information as may be needed by the Board in managing the assets of the Fund;

- c. Advise the Board on the appropriateness, profitability, rate of return, or risk of loss of investments; and/or
 - d. Perform such other duties and furnish such other investment services as may be contracted by or on behalf of the Board; and
4. Agreeing in writing to accept the delegation of fiduciary status from the Board.

R. *“Labor Organization”* means any labor organization (within the meaning of Section 2(2) of the NATIONAL LABOR RELATIONS ACT, as amended (the “NLRA”).

S. *“Legal Services”* and *“Attorney”* mean or refer to any person, firm, professional corporation or general or limited liability partnership:

- 1. Selected by the Board of Trustees and appointed for the purpose specified in this Agreement;
- 2. Qualified and practicing law in the State of California;
- 3. Rendered by, or under the supervision of, an attorney who is admitted to practice in the State of California and has had at least three (3) years of experience in providing legal services for large group employee benefit plans; and
- 4. Agreeing in writing to adhere to standards of professional conduct which meet or exceed the standards of care, skill, prudence and diligence under the circumstances then prevailing that a reasonable attorney experienced in providing legal services to large group employee benefit plans would use in similar circumstances, and such other standards as may, from time to time, be promulgated by the courts, applicable regulatory agencies, professional associations or other bodies which establish standards of practice for the legal profession.

T. *“Participation Agreement”* means the written agreement(s) approved by the Board of Trustees that:

1. Establish(es) the terms for the provision of Plan benefits to Eligible Employees of an Employer who become Members and their Beneficiaries; and
 2. Require(s) Contributions to be made to the Fund by the Employer.
- U. **“Plan”** means *The California Teachers Association Employees’ Retirement Benefits Plan*, which is an employee pension benefit plan (within the meaning of Section 3(2) of ERISA) and a multiemployer plan (within the meaning of Section 4001(a)(3) of ERISA) adopted by the Association and the Unions (effective as of January 1, 1999) for the purpose of providing pension benefits and other benefits incidental thereto which are permitted to be provided under the Plan to eligible Members and their Beneficiaries on and after the Effective Date; *provided, however,* that the specific benefits to be provided by the Plan and funded by the Trust, and the eligibility requirements therefor, shall be consistent with applicable provisions of the collective bargaining agreements between the Employer and the Unions.
- V. **“Plan Year”** means the twelve (12)-month fiscal year ending each December 31, which shall be the fiscal year on which the records of both the Fund and the Plan are kept.
- W. **“Policy”** means any policy or contract of insurance issued by an insurance company which has been accepted by the Board of Trustees and which provides for the payment or provision of any of benefits set forth in the Plan. The term “Policy” shall include any amendments of or riders to any such Policy.
- X. **“Separate Account”** means a bookkeeping account established or maintained by the Board of Trustees under which Contributions, income, gains, and losses, costs, and/or expenses, whether or not realized, from the portion of the Trust Corpus allocable to the account, are credited to or charged against an Employer, in accordance with the applicable Participation Agreement.
- Y. **“Termination Liability Charges”** means those reasonable charges required to ensure that the termination or reduction of any Employer’s participation in the

Trust will not impose any actual, additional or unanticipated costs or other financial burdens upon the Fund. Termination Liability Charges include any Withdrawal Liability an Employer may owe to the Fund.

- Z.** ***“Trust Corpus”*** means the aggregate of (1) the amount initially transferred to the Trust, effective as of 12:01 a.m. (PST) on the Effective Date, pursuant to the merger of The California Teachers Association Staff Retirement Plan Trust with and into this Trust; (2) Contributions made to the Fund pursuant to Article V; and (3) the investment yields on those amounts that are made and held by the Board of Trustees pursuant to this Agreement.
- AA.** ***“Trustee”*** means an individual designated as a trustee pursuant to Article VII and the successors in office of such individual as may occur from time to time.
- BB.** ***“Unions”*** means the *California Staff Organization*, the *California Associate Staff*, or any other Labor Organization that is the exclusive representative (within the meaning of Section 9(a) of the NLRA) of a collective bargaining unit composed of employees of the Association.
- CC.** ***“Union Trustee”*** means, collectively, the Trustees appointed by the Unions.
- DD.** ***“Withdrawal Liability”*** means amounts deemed by the Board of Trustees to be owed to the Fund by an Employer because of its termination of participation under this Agreement or withdrawal from the Trust, as described in Article IV(B)(1), IV(B)(2) or IV(B)(4).

III. PURPOSE OF FUND.

- A.** ***Formation.*** The Fund shall be comprised of the Trust Corpus, including all monies received by the Board of Trustees as Contributions or as income or earnings from investments made by the Board or otherwise, and any other funds or property received and/or held by the Board for the uses and purposes set forth in this Agreement, including, but not limited to, all contingency funds, surpluses, and other monetary reserves of any kind held by any insurance company and/or the Association or any other Employer, related to the provision of benefits to eligible Members and their Beneficiaries.

- B. *Exclusive Purpose Statement.*** The Fund is created and shall be maintained for the exclusive purposes of:
1. Funding such pension and other permissible incidental benefits to eligible Members and their Beneficiaries as are specified in the Plan, the collective bargaining agreement(s) between the Association and the Unions and/or in the applicable Participation Agreements;
 2. Financing the objectives of the Trust; and
 3. Defraying the reasonable expenses of administering the Trust, the Fund and the Plan in accordance with this Agreement and ERISA, the Tax Code and other applicable law.
- C. *Tax-Exempt Status.*** It is intended that the Fund shall be tax-exempt under Section 501(a) of the Tax Code. The Board of Trustees shall take all such action as may be necessary or appropriate to secure and maintain recognition of the tax-exempt status of the Fund.

IV. PARTICIPATION IN THE TRUST.

- A. *Participation in the Trust.*** Any affiliate of the Association or the National Education Association[, if it is Labor Organization located in California,] may become an Employer and thereby participate in the Trust.
1. ***Bargaining Unit Participation.*** Where a Labor Organization has been recognized as the exclusive representative of any group of employees of an Employer, both the Employer and the respective Labor Organization(s) may participate in the Trust by:
 - a. Executing this Agreement, or a written acceptance thereof, in a form approved by and filed with the Board of Trustees;
 - b. Contracting, through the execution of a collective bargaining agreement, to (1) authorize entry into the Trust and (2) set Contribution rate(s) for the Employer and, if applicable, the Eligible Employees who are to become Members; and

- c. Contracting, through the execution of a Participation Agreement with the Board of Trustees, to establish the terms of their participation in the Trust.
2. ***Non-Bargaining Participation.*** Where no Labor Organization has been recognized as the exclusive representative of a group of employees of an Employer, unless its participation would likely jeopardize the status of the Trust as a tax-exempt trust or the Plan as a multiemployer plan (within the meaning of Section 4001(a)(3) of ERISA), the Employer may participate in the Trust by:
 - a. Executing this Agreement, or a written acceptance thereof, in a form approved by and filed with the Board of Trustees; and
 - b. Contracting, through the execution of a Participation Agreement with the Board of Trustees, to (1) authorize entry into the Trust; (2) set Contribution rate(s) for the Employer and, if applicable, the Eligible Employees who are to become Members; and (3) establish the terms of its participation in the Trust.
3. ***All-Or-None Rule.*** Notwithstanding any contrary provisions of this Agreement or the Plan, unless the Trustees approve an exception with respect to and enter into a corresponding Participation Agreement with an Employer, in no event may any Employer participate in this Trust or in the Plan unless its Participation Agreement specifies that all Eligible Employees of the Employer, whether or not represented by a Labor Organization, are eligible to become Members of the Plan upon satisfaction of the eligibility requirements specified in the Plan.

B. *Termination of Participation in the Trust.*

1. The Board of Trustees may involuntarily terminate the participation under this Agreement of any Employer participating in the Trust:
 - a. For its failure to make timely Contribution payments;

- b. For its failure to continue to meet the requirements for participation as set forth in this Agreement or its Participation Agreement;
 - c. For its failure to satisfy any of its obligations under this Agreement or the Plan; or
 - d. If the Board determines, at its discretion, that the Employer's continued participation under the Agreement jeopardizes (1) the tax qualification of the Plan under Section 401(a) and other relevant provisions of the Tax Code; and/or (2) the tax-exempt status of the Fund under Section 501(a) and other relevant provisions of the Tax Code.
2. Any Employer may voluntarily terminate its participation under this Agreement, effective on the last day of the current or any future Plan Year, by providing the Board of Trustees ninety (90) days' prior written notice ("*Notice of Termination*"). To be effective, the Notice of Termination shall:
- a. Include the Employer's consent to payment in full of its pro rata share of any Termination Liability Charges, including any Withdrawal Liability, on terms that comply with applicable provisions of this Agreement, the Plan and/or the law and any resolutions, rules and/or regulations adopted by the Board; and
 - b. Be executed by both the withdrawing Employer and any Labor Organization that is the exclusive representative of any Employees who are Members of the Plan.
3. The Board may adopt resolutions, rules and/or regulations to protect the Fund in the event that the participation of any Employer is terminated, whether voluntarily or involuntarily. Without limitation, these rules and regulations may provide for the curtailment, in whole or in part, of benefits attributable to or dependent upon employment with the

terminating Employer. Neither the terminating Employer, its current or former employee Members or their Beneficiaries or representatives shall have any right to the return of any Contributions or other monies paid to the Fund by the terminating Employer, all of which monies shall continue to be held in the Fund under this Agreement. Any terminated Employer shall remain liable to the Fund for any obligations incurred by the Trust prior to the effective date of its termination.

4. If an Employer (a) completely or partially withdraws (within the meaning of ERISA Section 4201) from the Trust; (b) is involuntarily terminated from participation under this Agreement (as described in Article IV(B)(1)); or (c) voluntarily terminates its participation under this Agreement (as described in Article IV(B)(2)), the Employer shall be liable to the Fund for the full amount of any Withdrawal Liability. The amount of an Employer's Withdrawal Liability shall be calculated using the method described in Section 4211(c)(4) of ERISA, including the ratio described in Section 4211(c)(4)(D)(i) of ERISA. Except to the extent required by Part 1 of Title IV(E) of ERISA, an Employer's Withdrawal Liability shall be calculated without the reduction described in Section 4209 of ERISA. The Board of Trustees shall:
 - a. In the case of a withdrawal, determine whether a complete withdrawal (within the meaning of ERISA Section 4203) or a partial withdrawal (within the meaning of ERISA Section 4205) has occurred with respect to an Employer;
 - b. Determine the date of such complete or partial withdrawal;
 - c. Determine the amount of an Employer's Withdrawal Liability;
 - d. Determine the schedule of payments of an Employer's Withdrawal Liability; and
 - e. Adopt any resolutions, rules and/or regulations and make any decisions as shall be necessary or appropriate for the

establishment, calculation, imposition or collection of Withdrawal Liability.

V. CONTRIBUTIONS TO THE FUND.

- A. *Amount of Employer Contributions.*** In order to effectuate the purposes of the Trust, Employers participating in the Trust shall make Contributions to the Fund in the amounts required by applicable collective bargaining agreements and/or their Participation Agreements. The Board of Trustees shall have no power to modify the amount or rate of Employer Contributions established by any applicable collective bargaining agreement or, except by means of an amendment thereto, Participation Agreement.
- B. *Terms Governing Employer Contributions.*** Employer Contributions shall be accepted only in accordance with the terms of the applicable collective bargaining agreements and/or Participation Agreements, except as otherwise provided in this Agreement. In no event shall Contributions, whether Employer- or employee-paid in the first instance, be accepted by or on behalf of the Board of Trustees from any person other than an Employer.
- C. *Manner of Employer Contributions.*** Contributions to the Fund shall be made in the manner and at the location established by the Board of Trustees.
- D. *Separate Employer Accounting.*** For cost allocation purposes, the Trust shall maintain a Separate Account to record the Contributions of each Employer. Notwithstanding the foregoing, the Plan shall be maintained as a single plan (within the meaning of Section 414(l) of the Tax Code) and all assets of the Fund shall be available to pay benefits to all eligible Members and their Beneficiaries on an ongoing basis.
- E. *Due Date.*** An Employer's Contributions for a month shall be due on the date specified in the applicable Participation Agreement or such other date as may be established by the Board of Trustees (the "*Due Date*").
- F. *Delinquent Contributions.*** It is recognized and acknowledged by each Employer that the regular and timely payment of Contributions is essential to the efficient

and fair administration of the Fund and the maintenance of Plan benefits. If Employers do not make timely payments, the Fund loses the investment return it should have received, and incurs additional administrative expense in the form of letters, telephone calls and other collection expenses. The Fund may also experience delays in, or be prevented from, processing claims for benefits under the Plan. The Fund's collection expenses and loss of return on investments constitute damages arising from an Employer's default in making timely payments, and these damages cannot be allowed to deplete the Contributions promptly paid by other Employers. Therefore, the following provisions shall apply with respect to delinquent Contributions:

1. ***When Employer Considered Delinquent.*** Any Employer shall be considered to be delinquent if late payment or underpayment occurs, whether because the Employer fails:
 - a. To submit a Contribution report form with the full Contribution amount within thirty (30) days after the Due Date;
 - b. To submit the full amount of Contributions required under its Participation Agreement;
 - c. Properly to compute the Contributions required under its Participation Agreement; or
 - d. Otherwise to meet its obligations under this Article V.
2. ***Liquidated Damages.*** It would be extremely difficult and impractical to fix the actual expense and damage to the Fund, over and above attorney's fees and interest on the delinquent Contributions, for each Employer's default. Therefore, the amount of liquidated damages to the Fund resulting from any Employer's default, over and above attorney's fees, other costs of collection, and interest on delinquent Contributions, shall be an amount equal to the greater of (a) the interest on the delinquent Contributions or (b) twenty percent (20%) of the delinquent Contributions (unless the Board of Trustees has set a lower rate), and shall be payable as

of the last day of the month in which the delinquency occurs, unless the required Contributions have been received by then. Such amount is due and payable to the Fund as liquidated damages (and not as a penalty), and such liquidated damages may be waived only pursuant to resolutions, rules or regulations adopted by the Board.

3. ***Interest.*** Delinquent Contributions, liquidated damages and any other sums owing to the Fund shall accrue interest from the first day after the Contribution delinquency date at the rate of one and one-half percent (1.5%) per month, or such other reasonable rate as the Board of Trustees may from time to time establish. Interest on either delinquent Contributions or liquidated damages may be waived, but only pursuant to resolutions, rules or regulations adopted by the Board.
4. ***Special Rules for Repeated Delinquencies.*** In the event of repeated delinquencies by the same Employer, the Board of Trustees may apply special rules in establishing the Due Date for that Employer's Contributions and may require the Employer to post a bond or other security to protect the Fund against further delinquencies.

- G. *Recordkeeping and Audits.*** Each Employer shall maintain such time records, checks, check stubs, quarterly or other pertinent withholding tax returns, or such other records relating to employment for which Contributions are payable under this Agreement and the applicable Participation Agreement, as are sufficient (1) to determine whether it has satisfied all obligations to the Fund, and (2) to permit the Fund to comply with all applicable laws. These records shall be maintained within California, for a period of not less than seven (7) years following the end of the calendar year in which the employment occurs. If an Employer fails to keep adequate records, the Board of Trustees, at its discretion, may waive all or part of such costs if the discrepancy is minor and not willful, or for other good cause shown. Each Employer is obligated to furnish to the Board, promptly on demand, the names of its Employees, their social security numbers, and such other information as the Board may require in connection with the administration

of the Fund. Each Employer is obligated to make available to the Board, and the Fund's Administrator, Attorney, Auditors or other designees, for inspection and copying at reasonable times at the premises of the Employer, its payroll records whenever the Board considers such an examination to be advisable.

H. *Collection Actions.*

1. ***Legal Proceedings.*** The Fund may institute legal or other proceedings to collect delinquent Employer Contributions, liquidated damages, interest, costs, reasonable attorney's fees and other costs of collection, including collection agency fees. Such proceedings may be instituted in the name of the Fund, the Trust or the Board of Trustees, or the claim may be assigned to a third person for collection. If legal proceedings are brought in state court, the county in which the particular Employer Contribution is payable (as determined under Article V(C)) shall be a proper county in which to institute such proceedings.
2. ***Costs.*** A delinquent Employer shall reimburse the Fund, or its assignee, for all reasonable attorney's fees, audit fees, court costs, collection agency fees, and other reasonable expenses of whatever nature incurred in connection with any suit or claim brought under this Article V(H), including any and all appellate proceedings therein. It is recognized by each Employer that the extent of legal services necessarily incurred in the collection of required Contributions may in certain cases have no relation to the fact that the amount of the delinquency is relatively small. In the event that an applicable collective bargaining agreement or Participation Agreement contains provisions relating to collections that specify additional remedies, or obligate the delinquent Employer to pay greater amounts of liquidated damages, interest, attorney's fees or other items than those set forth in this Article V, the Board of Trustees, at its discretion, may pursue the additional remedies or impose the greater charges.

3. ***Settlement.*** If the Board of Trustees, at its discretion, determines that it is prudent and in the interest of Members and their Beneficiaries, the Board may:
 - a. Forego the collection of any portion of the costs incurred in attempting to collect delinquent Contributions if it is apparent that the costs involved would exceed the amount likely to be recovered;
 - b. Cooperate with an Employer's other creditors in a contractual or court-supervised renegotiation of the Employer's indebtedness; or
 - c. Make any other practical collection decisions that are consistent with the Board's fiduciary duties and characteristic of a responsible creditor concerned with a maximizing its recovery net of costs.
 4. ***Compromises.*** If the Board of Trustees, at its discretion, determines that it is prudent and in the Beneficiaries' interest, the Board may adjust, compromise, settle or submit to arbitration any claim by the Fund for delinquent Contributions. Whenever the Board decides to compromise or settle any such claim, the Administrator may execute on behalf of the Board all documents that the Fund's Attorney determines are necessary or appropriate to implement the compromise or settlement.
- I. *Return of Contributions.*** Employer Contributions made to the Fund as a result of mistake of fact or law shall be returned to the Employer within six (6) months after the Administrator determines that the Contribution was made by reason of such a mistake. If a Contribution is made by or on behalf of an Employer from whom Contributions are not permitted or are not required under the Participation Agreement, the Fund's sole obligation with respect thereto shall be to return the erroneous Contribution to the extent permissible by applicable law. The Fund shall not be obligated to provide benefits dependent upon any such returned Contribution.

- J. *Cooperation With Board.*** Whenever requested by the Board of Trustees, an Employer shall distribute to all Members currently in its employ such information as the Board deems necessary to carry out the Board’s obligations. That distribution shall be made in such manner as the Board may specify and without charge or expense to either the Members or the Fund. Any Employer that willfully fails to comply with any such reasonable request of the Board shall be liable for any penalties or damages which are thereby incurred.

VI. FIDUCIARIES.

- A. *General Rules.*** The Board and the individual Trustees who are its members shall be the “named fiduciaries” referred to by Section 402(a)(1) of ERISA.

1. Other persons shall be fiduciaries only to the extent that they (a) have discretionary authority or discretionary control respecting management of the Fund or the Plan; (b) exercise any authority or control respecting management or disposition of Trust assets; (c) have any discretionary authority or discretionary responsibility in the administration of the Plan; or (d) render investment advice for a fee or other compensation, direct or indirect, or have any authority or responsibility to do so. Any person or group of persons may serve in more than one fiduciary capacity with respect to the Fund or the Plan.
2. It is not intended that any Employer, any firm or association representing any Employer, any Labor Organization, or any attorney, accountant, broker, actuary, office personnel, professional administrator or consultant (other than an Investment Manager) shall be a fiduciary (within the meaning of Section 3(21)(A) of ERISA) with respect to the Fund or the Plan simply as a result of performing services for the Fund pursuant to an agreement with the Board of Trustees. Therefore, such persons shall not perform acts of the type described in Article VI(A)(1) which would make them fiduciaries, except as specifically authorized by the Board.

- B. *Fiduciary Standards.*** All fiduciaries with respect to the Fund or the Plan (whether or not “named fiduciaries”) shall discharge their duties solely in the

interest and for the exclusive benefit of the Members and their Beneficiaries in furtherance of the Trust's purpose as set forth in Articles I and III and in accordance with the requirements of this Agreement, the Plan, ERISA, the Tax Code, and applicable collective bargaining agreements and Participation Agreements. In so doing, they shall use the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

C. *Allocation of Fiduciary Responsibilities.* Fiduciary responsibilities may be allocated or delegated as follows, so long as the allocation or delegation meets the fiduciary standards of Article VI(B) and is evidenced by an appropriate resolution of the Board of Trustees:

1. Any responsibility to manage or control Fund assets may be allocated only among the Board of Trustees and any Fund Custodian and/or Investment Manager.
2. Responsibilities for other matters relating to the Administration of the Fund may be allocated or delegated to the Administrator or any other person, but any Claimant whose claim for benefits is denied shall have the right to have the denial ultimately reviewed by the Board itself, except insofar as the claim review procedures, as set forth in the Plan or adopted by the Board pursuant to Section 503 of ERISA, authorize the Administrator or any other person to make a final decision on review.

D. *Liability of Fiduciaries.* In no event will a fiduciary be liable with respect to a breach of a fiduciary duty if such breach was committed before he or she became a fiduciary or after he or she ceased to be a fiduciary. Furthermore, to the fullest extent permitted by applicable law, no fiduciary shall be liable for any act or omission of any other person. Specifically:

1. If a specific responsibility, obligation or duty relating to control or management of Fund assets is allocated among the Board of Trustees and/or any Fund Custodian or Investment Manager, then one to whom

such a function has not been allocated shall not be liable, either individually or as a Trustee, for any loss to the Fund arising from any acts or omissions on the part of those to whom such function has been allocated.

2. Upon the proper allocation or delegation of any other fiduciary responsibility, the Board of Trustees shall not be liable for the acts or omissions of the person or persons to whom such responsibility has been allocated or delegated, *provided* that there has been no violation of the fiduciary standards set forth in Article VI(B) with respect to such allocation or delegation, with respect to the establishment or implementation of procedures relative thereto, nor in continuing the delegation.
3. Nothing in this Article VI(D) shall be construed as limiting a fiduciary's liability for a breach of fiduciary responsibility of another fiduciary with respect to the Fund if (a) such fiduciary knowingly participates in or undertakes to conceal an act of omission of such other fiduciary, knowing it is a breach; (b) by failing to comply with applicable fiduciary standards in the administration of their fiduciary responsibilities, such fiduciary enables such other fiduciary to commit a breach; or (c) such fiduciary has knowledge of a breach by such other fiduciary and fails to make reasonable efforts under the circumstances to remedy the breach.

VII. APPOINTMENT AND PROCEDURES OF BOARD OF TRUSTEES.

- A. ***Control Vested in Board of Trustees.*** The control, direction and management of the Trust and the Fund shall be vested in a Board of Trustees. Four (4) Trustees shall be appointed by the Association. Six (6) Trustees shall be appointed by the Unions.
- B. ***Appointment of Trustees.*** The Association Trustees shall be designated in writing by the Association. The Union Trustees shall be designated in writing by the appointing Unions. Such written designations shall be presented to the Board of Trustees and held by the Administrator.

- C. ***Selection of Disinterested Trustees.*** The Association and the Unions agree to use their best efforts to appoint Trustees who are free from any conflicts of interest. No Trustee who is also a Member or Beneficiary and otherwise eligible shall be prohibited from receiving benefits under the Plan, but he or she shall not, as a member of the Board of Trustees, act or pass upon any matters pertaining specifically to the benefits provided under the Plan to him or her, or to any other individual however related to him or her.
- D. ***Selection of Experienced Trustees.*** The Association and the Unions agree to use their best efforts to appoint Trustees who have experience or expertise in investment matters, retirement benefit trusts, and/or the provision of retirement benefits.
- E. ***Appointment of Alternates.*** The parties appointing Trustees may also appoint such alternates as they individually may determine, but neither the Association nor the Unions shall appoint a number of alternates which exceeds the number of Trustees that such party is entitled to appoint. Any such appointment shall be made by written instrument delivered to the Board of Trustees. In the event that a regular Trustee is absent from a Board meeting, or is not readily available to sign any written consent or to participate in any telephonic meeting authorized under this Agreement, an alternate Trustee who has been duly appointed by the same appointing party shall have full power and authority to act as a regular Trustee during such absence or unavailability.
- F. ***Removal of Trustees and Alternates.*** A Trustee may at any time be removed by the appointing party, with or without cause. A Trustee may resign by written notice addressed to the Chair of the Board of Trustees at least thirty (30) days prior to the effective date of such resignation. In the event of the resignation, removal or death of any Trustee, the Trustee's successor shall, within thirty (30) days, be appointed by the party who designated the former Trustee.
- G. ***Trust Property Held by Former Trustee.*** Any Trustee who resigns, is removed from office, or otherwise terminates service as a Trustee shall forthwith turn over to the Chair or the Co-Chair of the Board of Trustees, at the principal office of the

Trust, any and all records, books, documents, monies and other properties which belong to the Trust or which were received by the former Trustee in his or her capacity as a Trustee.

- H.** *Effect of Trustee Vacancy.* No vacancy or vacancies in the offices of the Trustees shall impair the power of the remaining Trustees, acting in the manner provided in this Agreement, to administer the affairs of the Fund and the Plan and to direct, control and manage the Trust.
- I.** *Term of Office.* Both regular and alternate Trustees shall serve from the effective date of their initial appointments by the Unions or the Association for an indefinite term until such time as they are removed in accordance with Article VII(F).
- J.** *Chairperson.* The Board of Trustees shall select its own Chair. The Trustee serving as Chair shall alternate, for successive periods of one (1) year, between a Union Trustee and an Association Trustee.
- K.** *Meetings.* The Board of Trustees shall meet at least four (4) times per year. Additionally, the Board may act on routine administrative matters by telephonic or other electronic means of communication, without a meeting being called or held.
- L.** *Minutes.* Minutes of all meetings of the Board of Trustees and written records of the substance of all actions taken by the Board without a meeting shall be prepared and held by the Administrator. Copies of such minutes and records shall be distributed to all members of the Board, as soon as practicable following any meeting or action by the Board.
- M.** *Quorum.* Except as otherwise provided in Article VII(N)(4), a quorum of at least two (2) Association Trustees and at least four (4) Union Trustees shall be required for any action to be taken, with or without a meeting, by the Board of Trustees.
- N.** *Voting.* The Board of Trustees will act by the vote or written consent of its members.

1. ***Seconds***. A motion made by any Trustee must be seconded by at least one (1) other Trustee, who may have been appointed by the same or the opposite party as the Trustee who made the motion.
2. ***Unit Voting***. All actions of the Board of Trustees shall be decided by unit voting. The Union Trustees shall be collectively entitled to cast one (1) vote, and the Association Trustees shall be collectively entitled to cast one (1) vote.
3. ***Determining Unit Vote***. In the event that either the Union Trustees or the Association Trustees who are present or participating cannot determine their respective unit vote among themselves by a majority decision (or a unanimous decision if vacancies have resulted in there being fewer than three (3) regular Association Trustees or six (6) regular Union Trustees), then the question at issue (a) shall remain status quo until the undecided unit of Trustees can cast the unit vote as described above, and (b) shall be presented at the next meeting of the Board of Trustees. If at such subsequent meeting, the particular unit of Trustees shall remain unable to decide how to cast its unit vote until the meeting is adjourned, the vote of the undecided Trustee unit shall be deemed automatically cast in opposition to the vote of the Trustee unit that has cast its one (1) vote, thereby causing a deadlocked vote among the Trustees which shall be subject to resolution in accordance with Article VII(O).
4. ***Nondiscretionary Matters***. The Board of Trustees may authorize in writing one (1) of the Union Trustees and one (1) of the Association Trustees to transmit jointly the Board's instructions to the Fund Custodian or others, or to take or authorize any other action not requiring the exercise of discretion; *provided, however*, that such authority shall not extend to the authorization or issuance of any check, draft, voucher or other withdrawal or disbursement from the Fund in an amount which exceeds ten thousand dollars (\$10,000).

5. ***Maintenance of Equal Representation.*** Notwithstanding any change in the number of Employers participating in the Trust or the Fund or any merger of the Trust or the Fund with any other fund established for similar purposes, the ratio of one (1) vote for the Association Trustee to one (1) vote for the Union Trustee shall be maintained.
- O. *Arbitration of Deadlocks.*** In the event that the Union and Association Trustees are unable to agree on a matter or reach a deadlocked (or tie) vote on any motion or resolution (including but not limited to the arbitrability of a dispute), the matter in dispute shall immediately become subject to arbitration under the terms of Article IX.
- P. *Proxies.*** No regular or alternate Trustee may give his or her proxy to any other regular or alternate Trustee. Instead, each regular or, if applicable under Article VII(E), alternate Trustee shall participate and cast his or her own vote as Trustee with respect to any matter coming before the Board of Trustees.
- Q. *Trustee Compensation and Expenses.***
 1. The Trustees shall receive no compensation for their services as Trustees.
 2. To the extent authorized by the Board of Trustees, all fiduciaries may be:
 - a. Reimbursed for expenses actually and properly incurred in accordance with the performance of their duties under this Agreement, pursuant to the terms governing the reimbursement of expenses under the collective bargaining agreement, contract and/or the policy governing the Trustee's employment relationship with the Association; or
 - b. Given an appropriate advance against such reimbursement, subject to immediate repayment if the advance should exceed the amount authorized by the Board.
 3. Expenses of alternate Trustees shall be borne by the Fund only when an alternate replaces a regular Trustee who is absent, or when otherwise approved in advance by the Board of Trustees.

4. Expenses for which reimbursement may be authorized shall include, without limitation, those incurred (a) in attendance at or participation in meetings or other functions of the Board of Trustees or its committees; (b) in attendance at institutes, seminars, conferences or work shops relating to matters of common interest to retirement trusts such as the Fund; or (c) in defending against legal actions which do not result in a judgment that the action taken or position advanced by the Trustee was taken in Bad Faith or involved a willful violation of ERISA or other applicable law.

R. *Bonds and Liability Insurance.*

1. No bonds or other security shall be required of any fiduciary or other person, except as required by Section 412 of ERISA or other applicable law, but the Board of Trustees may direct that such other bonds be obtained as it deems appropriate for itself or others.
2. The Board of Trustees may also direct the purchase of such fiduciary liability and/or non-fiduciary errors and omissions insurance coverage as it deems appropriate for regular and alternate Trustees or others; *provided, however,* that any such insurance that is purchased at the expense of the Fund, to insure against liability or losses occurring by reason of the act or omission of a fiduciary, shall permit recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary. Insurance to protect against such recourse liability may be purchased by any such fiduciary, *provided* that it is not purchased at the expense of the Fund.

VIII. *AUTHORITY OF BOARD OF TRUSTEES.*

- A. *General Authority.*** The Board of Trustees is hereby designated as the administrator (within the meaning of Section 3(16)(A) of ERISA) of the Fund and the Plan, and it shall have the sole discretionary authority to control and manage the operation and administration of the Fund and the Plan as a “named fiduciary” under Section 402(a)(1) of ERISA. In addition to those powers which are

mentioned elsewhere in this Agreement or in the Plan, the Board shall have all such powers, authority and discretion as are necessary or appropriate to permit it to perform its function of administering the Fund and the Plan. However, the Board shall not exercise its discretion in any manner which conflicts with or renders ineffectual any provision of this Agreement, any collective bargaining agreement providing for participation in the Trust, and/or any Participation Agreement.

B. *Trustee Management and Administrative Authority.*

1. ***Mandatory Trustee Duties.*** The Board of Trustees shall:
 - a. Adopt such policies and procedures as the Board deems necessary or appropriate to direct and administer the Trust and the Fund so as to comply fully, at all times, with all requirements of law applicable to a tax-qualified retirement trust (within the meaning of Section 501(a) of the Tax Code);
 - b. Exercise its authority and discretion in accordance with this Agreement, and with such by-laws, policies, rules and regulations for the Administration of the Trust, the Fund or the Plan as the Board shall adopt and as are not inconsistent with the terms and intent of this Agreement;
 - c. Except as may be inherent in their capacities as Members or Beneficiaries under this Agreement, not engage in conflict of interest or self-dealing of any kind, including but not limited to non-exempt transactions prohibited by Section 406(b) of ERISA;
 - d. Create and maintain suitable and adequate records of and for the administration of the Trust, the Fund and the Plan;
 - e. Adopt such policies and procedures as are necessary or appropriate to ensure that all records they receive in their capacity as Trustees are held and preserved as the property of the Trust;

- f. Enter into all contracts, investment management agreements, insurance Policies and/or other agreements only in the name of and issued to the Board of Trustees;
- g. Formulate and establish the terms and conditions of, and the Contribution amounts or rates under, all Participation Agreements;
- h. Prepare, sign and furnish such statements, reports, information and certificates as may be required by applicable law;
- i. Designate and/or contract for an individual, firm or corporation to serve as the custodian of all documents and other records of the Board and of the Fund;
- j. Pay the reasonable cost of the services rendered by the document custodian;
- k. Designate and contract for the services of an Attorney to provide Legal Services to the Board, jointly for benefit of the Association Trustees and the Union Trustees; *provided, however*, that if the Board is unable to agree upon an Attorney, the Association Trustees and the Union Trustees may each select an Attorney, as they may determine, and the Attorneys so selected shall cooperate and act to represent jointly the interests of the Members and their Beneficiaries;
- l. Pay the reasonable cost of the services rendered by the Attorney(s);
- m. Designate and contract for the services of a Benefits Consultant to provide Benefits Consulting Services to the Board;
- n. Pay the reasonable cost of the services rendered by the Benefits Consultant;
- o. Designate and contract for a financial institution to serve as the Fund Custodian for the purpose of receiving, holding and disbursing the assets of the Fund;

- p. Pay the reasonable cost of the services rendered by the Fund Custodian;
- q. Designate and contract for the services of an Actuary to provide actuarial services to the Fund;
- r. Pay the reasonable cost of services rendered by the Actuary;
- s. Designate and contract for the services of an Accountant to provide accounting services to the Fund;
- t. Pay the reasonable cost of services rendered by the Accountant;
- u. Designate and contract for the services of an Administrator to perform day-to-day management of the Fund;
- v. Pay the reasonable cost of services rendered by the Administrator;
- w. Designate and contract for the services of an Auditor to provide auditing services to the Fund;
- x. Pay the reasonable cost of services rendered by the Auditor;
- y. Designate and contract for the services of an Investment Manager or Investment Managers to manage the assets of the Fund;
- z. Pay the reasonable cost of services rendered by the Investment Manager(s);
- aa. Require any Employer, Member and/or Beneficiary to submit to the Board any information, data, report or document which is relevant and necessary or appropriate to the direction, control, management and/or administration of the Trust, the Fund or the Plan; and the Employers agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, report or documents, including verification of the accuracy of Contributions.

- 2. ***Trustee Discretionary Authority***. The Board of Trustees, at its discretion, may:

- a. Allocate fiduciary responsibilities and various administrative duties to committees or subcommittees of the Board;
- b. Except as otherwise mandated by this Agreement, contract for the provision of such accounting, actuarial, legal, investment and other consulting services as the Board may deem necessary or appropriate to administer the Trust, the Fund and the Plan;
- c. Delegate such responsibilities and duties to other persons as it may deem necessary or appropriate;
- d. Contract for policies of insurance to insure against the errors and omissions of the Board and employees of the Trust who engage in business and related activities for and on behalf of the Trust;
- e. Review, from time to time, the policies of insurance against errors and omissions and effect such adjustments in their coverage as are appropriate;
- f. Contract for policies of insurance to insure against injuries or property damage suffered by the Board and employees of the Trust who engage in business and related activities for and on behalf of the Trust;
- g. Review, from time to time, the policies of insurance against injuries or property damage and effect such adjustments in their coverage as are appropriate;
- h. Seek a judicial determination or declaratory judgment, which shall be binding upon all parties to, or claiming under, this Agreement, as to (1) any question of construction of, or for instructions as to any action under, this Agreement; (2) any question relating to the discharge of its duties and obligations under this Agreement, or in connection with the administration of the Trust, the Fund or the Plan; and (3) the distribution of assets of the Fund;

- i. Coordinate with other similar trust funds for the utilization of accounting, actuarial, legal, investment, consulting and administrative services;
- j. Adopt rules and regulations for the administration of the Trust, the Fund or any Plan which are not inconsistent with the terms and intent of this Agreement; and
- k. Perform such other administrative acts as the Board deems necessary or appropriate to accomplish the objectives of the Trust.

C. *Trustee Fiscal Authority.*

- 1. ***Mandatory Trustee Duties.*** The Board of Trustees shall:
 - a. Compute the amount of:
 - (1) Contributions payable to the Fund by any person, or
 - (2) Benefits payable under the Plan to any person;
 - b. Demand and enforce the prompt payment of Contributions to the Fund, as required by any applicable collective bargaining agreement and/or Participation Agreement, including delinquent Contribution payments;
 - c. Accept no Contributions from any Employer under any collective bargaining agreement, Participation Agreement or Employer policy that contains terms inconsistent with this Agreement;
 - d. In consultation with the Fund's Actuary, Accountant and/or Auditor, establish the amount of Termination Liability Charges, including any Withdrawal Liability, applicable to any Employer as are necessary or appropriate to ensure that termination or reduction of any Employer's participation in the Trust will not impose any actual, additional or unanticipated costs or other financial burdens upon the Fund;

- e. Pay benefits to Members or their Beneficiaries only in accordance with and to the extent authorized by the terms of the Plan;
- f. Grant no claim for benefits or other rights under the Plan the granting of which would unreasonably jeopardize the Fund's tax-exempt status under applicable provisions of the Tax Code or any regulations or rulings thereunder;
- g. In the event that any question or dispute shall arise as to the proper person or persons to whom any payments shall be made under this Agreement or the Plan, withhold such payment until there shall have been made an adjudication or resolution of such question or dispute which the Board, at its discretion, deems satisfactory, or until the Board shall have been fully protected against loss by means of such indemnification agreement or bond as the Board, at its discretion, deems to be adequate;
- h. Make all reasonable efforts to ensure that the Fund does not become insolvent;
- i. Make valuations and appraisals of the assets of the Fund;
- j. Exercise all such rights and privileges as are authorized by this Agreement or as the Board, at its discretion, deems necessary or appropriate to protect all property held by the Trust or the Fund;
- k. Designate and contract for the services of an Auditor to provide Auditing Services to the Board and to audit the books, accounts and records of the Board pertaining to the Trust, at least once during each Plan Year;
- l. Require any Employer seeking to terminate or reduce its participation in the Trust and the Fund pursuant to Article IV(B) to pay the full amount of any Termination Liability Charges;

- m. Pursuant to Section 412 of ERISA or other applicable law, secure fidelity bonding for all Trustees and employees of the Trust who handle the monies of the Fund;
 - n. Pay premiums on any fidelity bond mandated by Article VIII(C)(1)(m);
 - o. Pay premiums on any policies of fiduciary, errors and omissions or other liability insurance purchased pursuant to Article VII(R)(2) or mandated by this Article VIII; and
 - p. Make such accounting as is required by the terms of this Agreement and/or applicable law.
2. ***Trustee Discretionary Authority***. The Board of Trustees, at its discretion, may:
- a. Review, from time to time, the fidelity bonds mandated by Article VIII(C)(1)(m) and effect such adjustments in their coverage as are necessary or appropriate;
 - b. Establish and accumulate such reserve funds, as the Board deems necessary and desirable for the proper execution of the Trust;
 - c. Hold in cash in a non-interest bearing account such portion of the Fund assets as may be necessary or appropriate for the day-to-day administration of the Fund and disbursement of benefits, deposited in any bank (including any bank acting as Fund Custodian), subject to the rules and regulations governing such deposits;
 - d. Pay or provide for the payment out of the Fund of all reasonable, proper and necessary expenses of:
 - (1) Collecting the Employers' Contributions and payments and other monies and property to which the Trust may be entitled;
 - (2) Paying fees under service provider agreements;

- (3) Administering the affairs of the Trust, including the employment of administrative, legal, accounting, expert and clerical assistance;
 - (4) Purchasing or leasing such premises, materials, supplies and equipment, and the performance of such other acts, as the Board finds necessary or appropriate in the performance of its duties;
 - (5) To the extent permitted by applicable law, defending any Trustee in litigation arising out of the performance of any action in his or her capacity as a Trustee, which is not a result of willful misconduct or Bad Faith;
 - (6) Paying premiums on the policies of insurance against injuries or property damage, casualty and property damage, and other insurance permitted by the terms of this Agreement;
 - (7) Paying the fees and the expenses of one or more Investment Managers, to the extent permitted by applicable law; and
 - (8) Paying such other fees or costs as may be incurred by any Trustee pursuant to Article VII(Q), but not otherwise specified in this Article VIII;
- e. Demand and enforce interest and liquidated damages provisions mandated by Article V(F) or V(H);
 - f. File demands, suits, claims or other actions to enforce Contribution liability, interest and/or liquidated damages provisions mandated by Article V;
 - g. Compromise, settle or release claims or demands related to the enforcement of Contribution liability, liquidated damages and/or other debts or liabilities on such terms and conditions as the Board

may deem desirable; *provided, however*, that this clause shall not excuse any violation of this Agreement;

- h. Make appropriate allocations of common administrative expenses and disbursements shared or to be shared between the Trust and any other similar trust fund;
- i. Seek a judicial settlement of its accounts and/or judicial protection by any action or proceeding it determines necessary or appropriate; and
- j. Perform such other fiscal duties as the Board may deem necessary or appropriate to accomplish the objectives of the Trust.

D. *Trustee Investment Authority.*

- 1. ***Mandatory Trustee Duties.*** The Board of Trustees shall:
 - a. Diversify the assets of the Fund, so as to minimize the potential for loss;
 - b. Exercise all rights and privileges authorized under this Agreement to maximize the return on monies invested and to protect all property held under this Agreement;
 - c. In connection with any allocation or delegation of investment functions under this Article VIII(D), (1) adopt appropriate investment policies or guidelines, from time to time; and (2) contract that any delegation of investment authority may be terminated by the Board upon thirty (30) days' written notice; and
 - d. Not engage in any non-exempt prohibited transaction under Section 406 of ERISA.
- 2. ***Trustee Discretionary Authority.*** The Board of Trustees, at its discretion, may:
 - a. Invest and reinvest such funds as are not necessary for current expenditures or liquid reserves, as it may from time to time

determine, in such investments as are prudent for such purpose and permitted under Part 4 of Title I(B) of ERISA and other applicable law;

- b. Sell, exchange or otherwise dispose of such investments at any time and, from time to time;
- c. Purchase, hold and/or sell any securities issued by the United States Government; common or preferred stocks; bonds; other securities listed on any exchange or traded in an over-the-counter market (including shares of mutual funds or other registered investment companies); interests in pooled investment portfolios managed by insurance companies; promissory notes; mortgages; deeds of trust or other evidences of indebtedness; certificates of deposit of any bank (including those of the Fund Custodian); or other property, real or personal, including improved or unimproved real estate and equity interests in real estate, where such an investment appears to the Board, at its discretion and consistent with its fiduciary obligations, to be in the best interests of the Trust and the Beneficiaries, judged by then prevailing business conditions and standards;
- d. With respect to any stocks, bonds or other property, real or personal, held by the Board, to exercise all such rights, powers and privileges as might be lawfully exercised by any person owning similar stocks, bonds or other property in their own right;
- e. Allocate to a committee of Trustees such duties and responsibilities to invest and reinvest such Fund assets as it shall specify in such allocation;
- f. Delegate to one or more Investment Managers the fiduciary duty to invest such portions of the assets of the Fund, as the Board shall specify in such delegation;

- g. Appoint one or more Investment Managers who shall be responsible for the management, acquisition, disposition, investment and reinvestment of such portions of the assets of the Fund as the Board shall specify;
- h. Coordinate with other similar trust funds to maximize the investment opportunities available to the Fund; and
- i. Take such other actions as the Board, at its discretion, deems necessary or appropriate to protect, preserve and maximize the assets of the Fund.

E. *Trustee Claims Authority.*

- 1. ***Mandatory Trustee Duties.*** The Board of Trustees shall:
 - a. Contract with the Administrator, the Benefits Consultant and/or one or more other qualified consultants to compute the amount(s) of the benefit(s) payable under the terms of the Plan to any Member or Claimant or, subject to such reasonable limitations as the Board, at its discretion, may deem appropriate, any Member or the Beneficiary of any deceased Member;
 - b. Adopt and/or incorporate in the Plan document such policies and procedures as are necessary or appropriate, at all times, to comply with Section 503 of ERISA, and other applicable law relating to employee retirement benefits claim processing;
 - c. Adopt such policies and procedures as are necessary or appropriate to establish and maintain a reasonable claims procedure, which shall satisfy the minimum requirements of Section 503 of ERISA and:
 - (1) Provide standards and procedures for the initial submission of claims;

- (2) Require that all claims duly submitted are so processed as to ensure accurate payment, pursuant to the terms of the Plan;
- (3) Provide standards and time-lines for the payment or denial of all claims within a reasonable period of time;
- (4) Provide any Claimant an opportunity to review pertinent Plan documents;
- (5) Provide any Claimant whose claim for benefits is being denied, in whole or in part, written notice setting forth the specific reasons for the denial, stated in a manner likely to be understood by the Claimant;
- (6) Provide for a procedure for the reconsideration, at the request of the affected Claimant, of such claims as may be initially denied under the terms of the Plan;
- (7) Provide for a procedure under which any Claimant whose claim for benefits has been reconsidered and again denied, in whole or in part, may (a) submit issues and comments, in writing, to the Board or its designee; and (b) receive a full and fair review of the claim denial decision by the Board or its designee;
- (8) Provide Claimants notice and an opportunity to be heard in an appeal to the Board; and
- (9) Provide a final and binding arbitration procedure for the ultimate resolution of disputes between Claimants and the Board which have not been resolved through the foregoing claims procedures.

2. ***Trustee Discretionary Authority***. The Board of Trustees, at its discretion, may:

- a. Compromise, settle or release claims or demands in favor of or against the Fund on such terms and conditions as the Board may deem desirable; and
- b. Perform such other acts related to claims processing as the Board deems necessary or appropriate to accomplish the objectives of the Trust.

F. *Trustee Reporting Authority.*

- 1. ***Mandatory Trustee Duties.*** The Board of Trustees shall:
 - a. Deliver copies of the Fund's audited financial statements to the Unions, the Employers and each Trustee within thirty (30) days after the Auditor's report is received;
 - b. Make the Fund's audited financial statements available for inspection by interested persons at the principal office of the Trust and at such other suitable places as the Board may designate from time to time;
 - c. Make all such reports to governmental bodies and disclosures to Beneficiaries as are required by Part 1 of Title I(B) of ERISA or other applicable law;
 - d. Prepare and deliver periodic reports to the Unions and the Employers which shall include, but not be limited to, the investments, assets and administration of the Fund, the funding status of the Plan, and all reports required by applicable law;
 - e. Deliver such summary information as is necessary adequately to describe the financial condition of the Fund, including but not limited to the audited financial statements, to the Members and their Beneficiaries at least once each Plan Year; and
 - f. Immediately notify, in writing, the relevant Unions and Beneficiaries of the failure of the relevant Employer to make the full amount of all Contributions mandated by Article V.

2. ***Trustee Discretionary Authority.*** The Board of Trustees, at its discretion, may prepare and deliver such other reports to the Unions and the Employers, and/or the Members and their Beneficiaries, as the Board deems necessary or appropriate to accomplish the objectives of the Trust.

G. *Miscellaneous Powers.* The Board of Trustees shall have and, at its discretion, may exercise all other lawful discretionary and nondiscretionary powers appropriate to the exercise of its authority under this Agreement or the Plan, including the following discretionary powers:

1. To interpret the provisions of this Agreement and the Plan, to exercise general supervision over the administration of the Trust, the Fund and the Plan, and to determine any questions arising under this Agreement or the Plan, or in connection with the administration or operation thereof; and
2. To determine all questions affecting the eligibility of any employee or dependent to become or remain a Beneficiary under the Plan.

IX. RESOLUTION OF DISPUTES AMONG TRUSTEES.

A. *Arbitration of Deadlocks of the Board of Trustees.* In the event of a deadlock of the Association Trustees and the Union Trustees on any matter within their power, the dispute, including the arbitrability of the dispute, shall be subject to final and binding arbitration.

B. *Arbitration Procedure.* The following procedure shall govern arbitration under this Article IX.

1. After twenty (20) days of the occurrence of a deadlock, the dispute may be referred by either the Association Trustee or the Union Trustee units to an impartial arbitrator for a final and binding decision.
2. Either the Union Trustee unit may serve upon the Association Trustee unit, or vice versa, a written demand for arbitration, which shall initiate the arbitration process. The arbitration demand shall state whether the arbitration shall be conducted under the procedures of the Labor

Arbitration Rules or under the Expedited Labor Arbitration Procedures of the American Arbitration Association.

3. If, within ten (10) days after the service of the demand for arbitration, the Union Trustee and the Association Trustee units fail to agree on who shall be arbitrator:
 - a. Arbitration shall commence pursuant to Rule 7 of the Labor Arbitration Rules of the American Arbitration Association; and
 - b. Pursuant to Rule 12 of the Labor Arbitration Rules, the American Arbitration Association shall submit to both the Union Trustee and the Association Trustee units a single list of at least five (5) arbitrators. From the panel submitted, the Union Trustee and the Association Trustee units shall each alternatively strike one (1) name until all but one name remains. The person whose name remains shall be the arbitrator.
4. Within twenty (20) days after the service of the demand for arbitration, the Union Trustee and the Association Trustee units shall jointly submit to the American Arbitration Association a statement of the issue or issues to be decided and the remedy or remedies sought. If the Trustees cannot agree on a written submission statement, the Union Trustee and the Association Trustee units shall each submit to each other and to the American Arbitration Association their respective statements of the issue or issues in dispute.

C. ***Decision of the Arbitrator.*** The decision of the arbitrator shall be final and binding upon the Trustees, the Employers, and the Members and their Beneficiaries.

1. The arbitrator shall decide the issue or issues in dispute and order a remedy or remedies in the form of a written opinion:
 - a. Within ten (10) days after the close of the hearing, if the arbitration is conducted under the Expedited Arbitration Procedure; or

- b. Within thirty (30) days after the close of the hearing, if the arbitration is conducted under the Labor Arbitration Rules.
2. The arbitrator shall have jurisdiction to:
 - a. Decide any dispute regarding the submission statements of the Union Trustee and Association Trustee units;
 - b. Decide any arbitrability claim;
 - c. Decide the merits of any dispute submitted to the arbitrator; and
 - d. Find that any Trustee has acted in Bad Faith.
3. The arbitrator shall:
 - a. Base any award on the terms of this Agreement and, if applicable, the Plan or any Participation Agreement;
 - b. Be bound by the terms of this Agreement, the Plan, and any applicable collective bargaining agreement and/or Participation Agreement;
 - c. Make no award which alters or amends any of the terms of any applicable collective bargaining agreement and/or Participation Agreement; *provided, however*, that the arbitrator shall have the authority to interpret any of the terms of those agreements;
 - d. Make no award which alters or amends any of the terms of this Agreement or the Plan; *provided, however*, that the arbitrator shall have the authority to interpret any of the terms of this Agreement or the Plan; and
 - e. Make no award which establishes or fixes a rate of Contribution to be paid by Employers participating in the Trust.
4. The decision of the arbitrator shall be enforceable under applicable law.

D. *Issue and Claims Preclusion Under Collective Bargaining Agreements.* No issue or claim which has been arbitrated under this Article IX shall be subject to

the arbitration procedure provided in an applicable collective bargaining agreement or to any judicial proceeding alleging breach of contract to enforce an applicable collective bargaining agreement.

E. *Cost of Arbitrating Deadlocks of the Board of Trustees.*

1. The following fees and reasonable expenses of arbitrating disputes among the Trustees shall be paid by the Trust:
 - a. The fees and reasonable expenses of the arbitrator, including the cost of any hearing room and the original reporter's transcript;
 - b. The reasonable costs and expenses incurred by the opposing Union and Association Trustee units in the preparation and arbitration of disputes; *provided, however*, that no Trustee unit shall be reimbursed for:
 - (1) A total amount in excess of ten thousand dollars (\$10,000) in connection with any single arbitration proceeding; and
 - (2) The arbitration costs and expenses incurred by a Trustee unit in arbitrating any claim or issue, if the arbitrator affirmatively finds that the Trustee or Trustee unit acted in Bad Faith in:
 - a) Causing the deadlock to occur;
 - b) Pressing any issue or claim to arbitration;
 - c) Arguing or otherwise presenting the merits of any issue or claim which is the subject of the arbitration proceeding; or
 - d) Any other matter related to the resolution of a deadlock among the Trustees.
2. The decision and opinion of the arbitrator shall include an award of costs, fees and expenses in accordance with this Article IX.

X. AMENDMENT AND TERMINATION.

A. *Elective Amendments.* This Agreement may be amended at any time by a written instrument signed by (1) the Association, (2) the Unions, (3) Association Trustees, and (4) the Union Trustees; *provided, however,* that the Association and Unions specifically reserve the right and authority, through the collective bargaining process and to the extent consistent with applicable law, to direct the Board of Trustees regarding (i) Plan design and retirement benefit levels, (ii) Employer- and employee-paid Contribution levels, and (iii) policies governing the Administration of the Fund. Failure to agree to a proposed amendment to this Agreement shall not be subject to arbitration under Article IX, except as provided in Article X(B). No amendment shall alter or negate (x) the purpose of the Fund as set forth in Articles I(B) and III or (y) any applicable and lawful provision of a collective bargaining agreement or, except on a prospective basis, a Participation Agreement which has been approved or accepted by the Board.

B. *Mandatory Amendments.* The Association and the Unions shall amend this Agreement and/or the Plan in the following situations:

1. If and to the extent necessary or appropriate to assure compliance with ERISA, the Tax Code, or other applicable law;
2. If and to the extent necessary or appropriate to assure that (a) the Fund remains tax-exempt; (b) Contributions to the Fund will not be deemed part of the “regular rate” at which an employee is employed for purposes of the FAIR LABOR STANDARDS ACT; and (c) Contributions will not be subject to deductions for purposes of the CALIFORNIA UNEMPLOYMENT INSURANCE ACT, the FEDERAL UNEMPLOYMENT INSURANCE ACT, the FEDERAL UNEMPLOYMENT TAX ACT, the FEDERAL INSURANCE CONTRIBUTIONS ACT, or any similar legislation, if such result is avoidable by amending this Agreement or the Plan.
3. If this Agreement or the Plan is not amended when so required under Article X(B)(2), the matter shall be submitted to arbitration under Article IX, and notwithstanding any contrary provision of this Agreement,

the Board shall be bound to execute such amendment of this Agreement or the Plan as the arbitrator deems necessary to satisfy the requirements of this Article X(B).

- C. ***Termination***. The Fund or the Plan may be terminated at any time.
1. The Fund shall not be terminated without terminating the Plan, but the Plan may be wholly or partially terminated without terminating the Fund. Termination shall be accomplished in the same manner as amendment and shall be effected in compliance with applicable provisions of Title IV of ERISA and the Tax Code.
 2. Upon termination of the Fund, all obligations shall first be satisfied and funds sufficient to satisfy disputed claims shall be reserved until such claims are resolved. The Board shall thereupon apply the remaining Fund assets in such manner as the Plan may provide.
- D. ***Assets Transferred to or From Other Benefit Trusts***. Notwithstanding any contrary provision of this Agreement:
1. The Board of Trustees may, (a) if the Fund is wholly or partially terminated, transfer the Fund assets or any portion thereof to the trustees of any other trust or trusts which are tax-exempt under and provide benefits permitted under Section 501(a) of the Tax Code; or (b) receive assets transferred from any other such trust which is wholly or partially terminated. However, failure of the Board to agree on any such action shall not be subject to arbitration under Article IX.
 2. Neither the Trust nor the Plan shall be merged or consolidated with, or transfer its assets or liabilities to, any other plan or trust unless each Member or Beneficiary under the Plan would (if the Plan terminated) be entitled to receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation or transfer if the Plan had terminated.

XI. GENERAL PROVISIONS.

- A. *Agreement Controls Authority of Trustees.*** The powers, duties and liabilities of any Trustee under this Agreement shall be determined solely by the express provisions of this Agreement and no further power, duties or liabilities shall be implied or imposed.
- B. *Reliance.*** The Board of Trustees, to the extent permitted by applicable law, shall be permitted rely upon the advice, computations and reports of the Board's professional consultants and advisors. The Board shall be fully protected in respect of any action taken or suffered by them in good faith in reliance upon any such tables, valuations, certificates, reports, opinions or other advice of any Accountant, Actuary, Attorney or Benefits Consultant. Any action so taken or suffered by the Board shall be conclusive upon each Trustee, the Employers, the Unions and all Members and their Beneficiaries. The Board shall be deemed to have relied, without detriment, on the following professional sources:
1. All tables, valuations, certificates and reports furnished by any Actuary;
 2. All certificates and reports made by any Accountant and/or Auditor;
 3. All opinions rendered by any Attorney; and
 4. Any advice given by any Benefits Consultants.
- C. *Rights of the Parties.***
1. ***Rights of the Parties Governed by This Agreement.*** The rights and duties of all parties, including the Employers, the Unions, the Members, the Beneficiaries and other persons claiming any interest under the Trust, the Fund or the Plan, shall be governed by the provisions of this Agreement and the Plan.
 2. ***Grantors Not Liable for Validity of This Agreement.*** Neither the Employers nor the Unions shall be liable or responsible for the validity of this Agreement or the Plan.

3. ***Grantors Not Liable for Benefit Claims.*** Neither the Employers nor the Unions shall be liable or responsible in respect of any failure or omission by the Board of Trustees to pay any benefits under the Plan for any reason.
 4. ***Grantors Not Liable For Acts of Trustees.*** Neither the Employers nor the Unions shall be liable in any respect of any of the obligations, acts or omissions of the Board of Trustees, nor any member of the Board, for any conduct in which the Trustees may engage in their official capacity as Trustees under this Agreement.
- D. *Parties' Liability Limited.*** The Employers and the Unions shall have only such liabilities to the Fund as are set forth or authorized under this Agreement, the Plan or their respective Participation Agreements. The parties shall have no other liabilities for the operation or obligations of the Fund, nor for the failure of other Employers to fulfill their obligations to the Fund, except as specifically imposed under ERISA or other applicable law. However, non-payment by an Employer of any Contribution or Termination Liability charge or other monies owed to the Fund shall not relieve any other Employer from its obligations to make its required payments to the Fund.
- E. *Benefit Claims Limited.*** No Member nor Beneficiary shall have any right or claim to benefits under the Plan except as specified in the Plan.
- F. *Rights and Remedies Limited.*** No person shall have any right, title or interest in or to Fund assets except as otherwise required by law or otherwise specifically provided in this Agreement.
- G. *Rights Not Transferable.*** Except to the extent permitted by ERISA and approved in advance by the Board of Trustees, all benefits provided to Members and Beneficiaries under the Plan shall be paid directly to them and shall not otherwise be subject to or liable for the Members' or Beneficiaries' debts or other obligations or assigned, alienated or used as security by them, and shall not be subject to attachment, execution or other legal proceedings, except to the extent authorized under Section 401(a)(13) of the Tax Code with respect to federal tax liabilities or qualified domestic relations orders (within the meaning of Section

414(p) of the Tax Code). Notwithstanding the foregoing sentence, if at any time any person entitled to receive payments from the Fund has already received payments in excess of what he or she was entitled to receive as of that date, to the extent not prohibited by ERISA or other applicable law, the Board may withhold from future payments due to or in respect of such person such amounts as are necessary to reimburse the Fund for such excess payments.

H. *Employer-Employee Relationship Not Affected.* Nothing in this Agreement shall give any employee the right to be retained in the employment of any Employer, and any employer-employee relationship relating to the Trust, the Fund or any Plan shall continue in the same manner as though the Trust, the Fund and the Plan had not been executed.

I. *Effect of Trust Instruments.*

1. The name of the Trust may be used to designate the Trustees collectively, and all instruments may be executed by the Board of Trustees in that name.
2. Every instrument executed by the Board of Trustees or at its direction shall:
 - a. Be signed by at least one (1) Association Trustee and one (1) Union Trustee.
 - b. Conclusively establish the following facts in favor of every person who relies on it:
 - (1) At the time of the delivery of the instrument, this Agreement was in full force and effect;
 - (2) The instrument was executed in accordance with the terms and conditions of this Agreement; and
 - (3) The Board of Trustees was duly authorized to execute the instrument or direct its execution.

3. The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram, facsimile transmission, or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person. Any Trustee, to the extent permitted by applicable law, may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees or in accordance with Article XI(I)(2)(a) as conclusive evidence of the fact that the Board of Trustees has taken the action stated to have been taken in such instrument.

J. *Notice Required by the Agreement.* Any notice required to be given under the terms of this Agreement shall be deemed to have been duly served if delivered personally to the person to be notified in writing, or if mailed in a sealed envelope, postage prepaid, to such person at the last known address as shown in the records of the Trust.

K. *Conflicts of and Controlling Law.*

1. All questions pertaining to this Agreement, the Trust, the Fund or the Plan and their validity, administration and construction shall be determined in accordance with applicable provisions of ERISA, the Tax Code and other federal law and, to the extent not preempted, the laws of the State of California.

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

L. *Severability.* If any provision of this Agreement, the Plan, any resolution, rule or regulation adopted by the Board of Trustees pursuant thereto, or any step in the Administration of the Trust, the Fund or the Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of this Agreement, the Plan, the mode of Administration, or such resolutions, rules

and regulations, unless such illegality or invalidity prevents or, in substantial degree unfavorably affects, the accomplishment of the objectives and purposes of this Agreement or the Plan. In the event of any such occurrence, the parties will immediately commence negotiations or attempt to remedy any such defect.

- M.** *Fund Office.* The principal office of the Fund, which may be the principal office of the Administrator, shall be the situs of this Trust. The Board of Trustees may change the principal office of the Fund at any time upon notice to the Association and the Unions.

EXECUTION

In Witness Whereof, (a) the Association and the Union have executed this Agreement to create the Trust, and (b) the Trustees have executed this Agreement to evidence (1) their acceptance of the Trust created by this Agreement, and (2) their agreement to be bound by the terms of this Agreement and any collective bargaining agreement relating to participation in the Trust. This Agreement may be executed in two or more counterparts, each of which shall be deemed originals, and all of which taken together shall constitute one instrument.

CALIFORNIA STAFF ORGANIZATION

By: _____

Dated: _____

CALIFORNIA TEACHERS ASSOCIATION

By: _____

Dated: _____

CALIFORNIA ASSOCIATE STAFF

By: _____

Dated: _____

UNION TRUSTEES:

By: _____

Name: Debby Diaz

Dated: _____

By: _____

Name: Maureen Keating

Dated: _____

ASSOCIATION TRUSTEES:

By: _____

Name: Ernie Ciarrocchi

Dated: _____

By: _____

Name: Carolyn Doggett

Dated: _____

UNION TRUSTEES (cont'd):

By: _____

Name: Bob Lindquist

Dated: _____

By: _____

Name: Dan Saling

Dated: _____

By: _____

Name: Joan Stout

Dated: _____

By: _____

Name: David D. Unruhe

Dated: _____

ASSOCIATION TRUSTEES (cont'd):

By: _____

Name: Wayne Johnson

Dated: _____

By: _____

Name: Lois Tinson

Dated: _____

An extra section break has been inserted above this paragraph. Do not delete this section break if you plan to add text after the Table of Contents/Authorities. Deleting this break will cause Table of Contents/Authorities headers and footers to appear on any pages following the Table of Contents/Authorities.