

AGREEMENT AND DECLARATION  
OF  
TRUST ESTABLISHING  
THE AMERICAN FEDERATION  
OF  
MUSICIANS AND EMPLOYERS'  
PENSION FUND

(As Amended And Restated Effective as of April 1, 2005)

**AGREEMENT AND DECLARATION OF TRUST  
ESTABLISHING THE AMERICAN FEDERATION  
OF MUSICIANS AND EMPLOYERS’  
PENSION FUND**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS .....	3
1.1 Administrative Committee.....	3
1.2 Agreement or Trust Agreement .....	3
1.3 Audit Committee.....	3
1.4 Authorized Person.....	3
1.5 Beneficiary .....	3
1.6 Board.....	3
1.7 Code .....	3
1.8 Collective Bargaining Agreement.....	4
1.9 Collective Trust.....	4
1.10 Committee.....	4
1.11 Covered Employee or Employee .....	4
1.12 Custodian .....	5
1.13 Employer, Employers or Contributing Employers .....	5
1.14 Employer Trustee.....	5
1.15 ERISA .....	5
1.16 Executive Director .....	5
1.17 Foreign Securities .....	5
1.18 Instruct or Instructions .....	5
1.19 Investment Committee .....	5
1.20 Investment Manager.....	5
1.21 Investment Manager Account .....	6
1.22 National Collective Bargaining Agreement.....	6
1.23 Plan .....	6
1.24 Real Property or Interests in Real Property .....	6
1.25 Securities or Security .....	6
1.26 Trust, Trust Fund, or Fund.....	7
1.27 Trustee(s) .....	7
1.28 Union.....	7
1.29 Union Trustee.....	7
ARTICLE II NAME, PURPOSE AND OPERATION OF TRUST.....	8
2.1 Name .....	8
2.2 Purpose.....	8
2.3 Operation.....	8
2.4 Participation by Contributing Employers .....	8
2.5 Obligations of Contributing Employers.....	9

ARTICLE III TRUSTEES .....	10
3.1 Composition of Trustees .....	10
3.2 Acceptance of Trust and Trusteeship.....	10
3.3 Selection of Trustees.....	10
3.4 Written Appointments and Acceptances.....	10
3.5 Term of Office .....	10
3.6 Resignations.....	11
3.7 Removal of Employer Trustees .....	11
3.8 Removal of Union Trustees .....	11
3.9 Successor Employer Trustees.....	11
3.10 Successor Union Trustees .....	11
3.11 Powers of Successor Trustees.....	11
3.12 Use of Corporate Trustee.....	12
ARTICLE IV PLAN OF BENEFITS.....	14
4.1 Benefits.....	14
4.2 Written Plan of Benefits.....	15
4.3 Insurance Contracts.....	15
4.4 Exclusive Benefit.....	15
4.5 No Assignment of Benefits.....	16
ARTICLE V POWERS AND DUTIES OF TRUSTEES .....	17
5.1 Receipt of Payments.....	17
5.2 Payment of Benefits.....	17
5.3 Expenses.....	17
5.4 Insurance Contracts.....	18
5.5 General Powers.....	19
5.6 Committees.....	27
5.7 Standard of Care .....	28
5.8 Reliance on Written Instruments and Advice of Professionals.....	28
5.9 Indemnification.....	28
5.10 Bonding.....	29
5.11 Fiduciary Insurance.....	29
5.12 Deposit and Withdrawal of Funds.....	30
5.13 Delegation of Power .....	30
5.14 Discretionary Authority.....	30
5.15 Execution of Documents.....	31
ARTICLE VI MEETINGS AND DECISIONS OF TRUSTEES .....	32
6.1 Officers.....	32
6.2 Calling of Meetings.....	32
6.3 Quorum .....	32
6.4 Vote of Trustees.....	32
6.5 Minutes of Meetings .....	33
6.6 Arbitration.....	33

ARTICLE VII ALLOCATION OF RESPONSIBILITIES .....	35
7.1 The Executive Director.....	35
7.2 The Board.....	36
7.3 Administrative Committee.....	37
7.4 Investment Committee.....	39
7.5 Audit Committee.....	41
ARTICLE VIII INVESTMENT MANAGERS .....	44
8.1 Appointment of Investment Managers.....	44
8.2 Authorization.....	44
8.3 Acknowledgments.....	45
8.4 Direction by Investment Manager .....	45
8.5 Review by Board.....	45
8.6 Issuance of Orders.....	45
8.7 Investment Guidelines .....	46
8.8 Proxies or Other Ancillary Rights.....	46
ARTICLE IX PAYMENTS TO THE FUND .....	47
9.1 Employer Contributions.....	47
9.2 Effective Date of Employer Contributions .....	47
9.3 Mode of Payment.....	47
9.4 Default in Payment.....	48
9.5 Enforcement Actions .....	50
9.6 Payments Required by Court Award .....	50
9.7 No Waiver of Other Rights.....	50
9.8 Remittance Reports.....	51
9.9 Audits.....	51
ARTICLE X AMENDMENT; TERMINATION; AND TRANSFER OF ASSETS .....	54
10.1 Amendment.....	54
10.2 Limitation of Amendments.....	54
10.3 Termination.....	54
10.4 Transfer of Assets.....	55
ARTICLE XI ACCOUNTS OF THE BOARD.....	57
11.1 Board to Maintain Trust Accounts.....	57
11.2 Valuation.....	57
ARTICLE XII MISCELLANEOUS.....	58
12.1 Situs.....	58
12.2 Choice of Law.....	58
12.3 Counterparts.....	58
12.4 Titles; Plurals; and Gender.....	58
12.5 Service of Process.....	58
12.6 Validity of Trustees' Accounts and Instruments .....	58
12.7 Definitions.....	59

12.8	Notices .....	59
12.9	Severability .....	59
12.10	Legal Compliance .....	59
12.11	Successor Provisions of Law .....	60
12.12	Entire Agreement .....	60
12.13	Construction .....	60
12.14	Inurement .....	60
12.15	Rights In Fund.....	60
12.16	Trust Grants No Interest to Employees.....	60
12.17	Duration of Agreement .....	60
12.18	Interpretation of Agreement.....	60
ARTICLE XIII WITHDRAWAL LIABILITY .....		62
13.1	In General.....	62

**AGREEMENT AND DECLARATION OF TRUST  
ESTABLISHING THE AMERICAN FEDERATION  
OF MUSICIANS AND EMPLOYERS'  
PENSION FUND**

**THIS AGREEMENT AND DECLARATION OF TRUST**, amended and restated as of the 1st day of April 2005, establishing the AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND (the "Fund"), by and among (a) HAROLD BRADLEY, HAL ESPINOSA, WILLIAM L. FOSTER, THOMAS F. LEE, DAVID LENNON, WILLIAM MORIARITY, MELINDA WAGNER, ED WARD and PHIL YAO (who, with their successors designated in the manner provided herein, are hereinafter collectively referred to as the "Union Trustees") on behalf of THE AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA, AFL-CIO (collectively, the "Union") and as Union Trustees; and (b) IRVING W. CHESKIN, J. NICHOLAS COUNTER, III, ARNOLD KAPLAN, JOANN KESSLER, MARION PRESTON, ALAN H. RAPHAEL, JEFFREY RUTHIZER, NORMAN K. SAMNICK and HARRIET SLAUGHTER (who, with their successors designated in the manner provided herein, are hereinafter collectively referred to as the "Employer Trustees") on behalf of the Employers contributing to the Plan (collectively, the "Employers") and as Employer Trustees (the Union Trustees and the Employer Trustees being hereinafter collectively referred to as the "Board" or the "Trustees").

**WITNESSETH:**

**WHEREAS**, the Employers and the Union have executed, and it is expected that from time to time hereafter they will execute, collective bargaining agreements, participation or similar agreements (collectively, “Collective Bargaining Agreements”) which, among other things, require periodic Employer contributions to the Fund; and

**WHEREAS**, the Employers and the Union became parties to an Agreement and Declaration of Trust establishing the Fund, dated October 2, 1959 and as amended and restated as of February 13, 1992, September 29, 1994, and September 25, 1997, and as from time to time thereafter amended (the “Existing Trust”), the assets of which have been and will continue to be used for the exclusive purpose of (a) providing retirement and related benefits to certain employees of the Employers (“Covered Employees”) eligible to participate in the American Federation of Musicians and Employers’ Pension Plan, as amended (the “Plan”) and their dependents or beneficiaries (“Beneficiaries”); and (b) defraying the reasonable administrative and other expenses attributable to the operation of the Fund and the Plan; and

**WHEREAS**, it was and continues to be mutually agreed among the Employers and the Union that the Fund and Plan shall be established, operated and administered by the Trustees; and

**WHEREAS**, the Trustees now desire to amend and restate the Existing Trust, to incorporate, inter alia, various amendments made to the Existing Trust since it was last amended and restated and other modifications desired by the Board.

**NOW, THEREFORE**, for and in consideration of the promises and mutual covenants herein contained, it is hereby mutually understood and agreed by the Trustees (and, through them, the Employers and the Union) as follows:

## **ARTICLE I**

### **DEFINITIONS**

Whenever used in this Agreement, unless the context otherwise requires, the following words shall have the respective meanings set forth below:

**1.1 “Administrative Committee”** shall mean the Committee described in Section 7.3.

**1.2 “Agreement”** or **“Trust Agreement”** shall mean this Agreement and Declaration of Trust, as may from time to time hereafter be amended, which establishes the funding vehicle for the Plan for the benefit of Covered Employees and certain of their Beneficiaries, and sets forth the respective rights, obligations and responsibilities of the Executive Director, the Board, and any Committees duly authorized by the Board to take any actions hereunder.

**1.3 “Audit Committee”** shall mean the Committee described in Section 7.5.

**1.4 “Authorized Person”** shall mean, with respect to the Trust Fund, the Co-Chairs of the Board, any individual Trustee or member of any Committee of Trustees duly authorized by the Board to execute documents or otherwise represent the Board or said Committee, and the Executive Director where the Executive Director has been duly authorized by the Board to represent the Board or the Trust Fund in connection with a specific matter. With respect to an Investment Manager Account, the term “Authorized Person” shall mean any officer (or partner) of the Investment Manager or any other person or persons as may be duly designated pursuant to advance written notice by such officer (or partner) to the Board. With respect to a Custodian, the term “Authorized Person” shall mean any officer of said Custodian.

**1.5 “Beneficiary”** shall mean a Covered Employee’s spouse, or such other person or entity entitled under the terms of the Plan to receive benefits, if any, under the Plan following the death of the Covered Employee.

**1.6 “Board”** shall mean the individuals from time to time acting collectively as the Board of Trustees under this Agreement, which shall also be the “named fiduciary” (as that term is defined in Section 402(a)(2) of ERISA) and the “administrator” (as that term is defined in Section 3(16)(A) of ERISA) of the Plan, appointed to control and manage the operation and overall administration of the Plan and the Trust Fund.

**1.7 “Code”** shall mean the Internal Revenue Code of 1986, as from time to time amended, and all rules and regulations promulgated pursuant thereto.

**1.8 “Collective Bargaining Agreement”** shall mean any collective bargaining, participation, or other written agreement between an Employer and the Union or between an Employer and the Trust Fund (or, where the Trust Fund is the employer, written minutes of a meeting of the Board) requiring an employer to make contributions to this Trust Fund on behalf of its Covered Employees, which is in force and effect and is acceptable to the Board (through Board approval or otherwise in accordance with procedures it establishes). Any such Collective Bargaining Agreement shall be deemed to specifically incorporate the terms and conditions of this Agreement and the Plan and, by executing such Collective Bargaining Agreement, each Employer that is a party to such agreement thereby agrees to comply with and be legally bound by each and every provision of the Plan and this Agreement (as such documents may from time to time be amended by the Board) as if the Employer actually executed such documents.

**1.9 “Collective Trust”** shall mean any group, pooled, common, commingled or collective trust fund maintained by a bank, trust company or broker-dealer, in which assets of employee benefit plans subject to ERISA and the Code may be invested. The trustees of such Collective Trust shall become trustees of the allocable share of the Trust Fund assets transferred and deposited with such Collective Trust, and shall have sole and exclusive authority and discretion to manage and control (including the power to invest and reinvest) such Collective Trust assets. The Board shall not be liable for any act or omission of any trustee or other fiduciary of a Collective Trust, or be under any obligation to invest or otherwise manage any assets of the Trust Fund that have been transferred thereto. The provisions of the agreement establishing such Collective Trust shall be deemed to be incorporated by reference into this Agreement (to the extent that the provisions thereof are not inconsistent with the terms of this Agreement or violative of ERISA, the Code or other applicable law).

**1.10 “Committee”** shall mean the Administrative Committee, the Audit Committee, the Investment Committee, or any other committee or subcommittee duly appointed and authorized by the Board to act pursuant to this Agreement.

**1.11 “Covered Employee” or “Employee”** shall mean an individual employed by an Employer to render services pursuant to the terms of a Collective Bargaining Agreement, including a shareholder of a corporation or an owner of a limited liability company (“LLC”) duly organized and operated under the laws of a State of the United States who is employed by that corporation or LLC to render service as a musician. Notwithstanding the foregoing, a Covered Employee or Employee may in no event mean: (i) a self-employed person or sole proprietor that is an Employer (including, without limitation, a band leader) who is acting as his or her own employee; (ii) the spouse of a person described in (i); (iii) a partner of a partnership that is an Employer who is acting as an employee of such

partnership; or (iv) an owner of an LLC who was a member of the plaintiff class in the *Rochetti* action that was settled in 1991.

**1.12 “Custodian”** shall mean one or more banks, trust companies, or broker-dealers selected by the Board as a “Corporate Trustee” (as that term is defined in Section 3.12) and/or custodian of Trust Fund Securities.

**1.13 “Employer”, “Employers” or “Contributing Employers”** shall mean any employer acceptable to the Board (through Board approval or otherwise in accordance with procedures it establishes) that heretofore or hereafter is required or otherwise undertakes to contribute to the Plan and/or the Trust Fund on behalf of its Covered Employees pursuant to a Collective Bargaining Agreement. The term “Employer”, “Employers” or “Contributing Employers” shall not include unincorporated self-employed persons or sole proprietorships with no other employees, or partnerships that have no employees other than partners.

**1.14 “Employer Trustee”** shall mean each individual named in Section 3.3(a) or designated as an Employer Trustee pursuant to the procedures set forth in Section 3.9.

**1.15 “ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as from time to time amended, and all rules and regulations promulgated pursuant thereto.

**1.16 “Executive Director”** shall mean any individual, person or entity that has been appointed by the Board pursuant to Section 7.1 to control the day-to-day administration of the Plan and operation of the Trust Fund.

**1.17 “Foreign Securities”** shall mean any securities described in Section 404(b) of ERISA and 29 C.F.R. § 2550.404b-1.

**1.18 “Instruct” or “Instructions”** shall mean written communications signed by an Authorized Person (including, without limitation, instructions received by facsimile, electronic mail or any other electronic system, whereby the receiver of such communication is able to verify with a reasonable degree of certainty the identity of the sender of such communication).

**1.19 “Investment Committee”** shall mean the Committee described in Section 7.4.

**1.20 “Investment Manager”** shall mean any person or entity that has been appointed by the Board pursuant to this Agreement to manage, acquire or dispose of any Securities or other property of the Trust Fund who is, and has acknowledged in writing to the Board that it is, (a) a fiduciary (within the meaning of Section 3(21) of ERISA) with respect to the assets held in its

Investment Manager Account; and is (b) either (1) an investment manager registered in good standing under the Investment Advisers Act of 1940, (2) a bank (as defined in said Act) located within the United States, or (3) an insurance company qualified under the laws of more than one state to manage, acquire or dispose of employee benefit plan assets. The Board shall have the right, in its sole and absolute discretion, to appoint the Custodian as an Investment Manager for all or a portion of the Trust Fund Securities or other property.

**1.21 “Investment Manager Account”** shall mean that portion of the Trust Fund which has been segregated by the Board for investment management by one or more Investment Manager(s), each of which shall constitute a separate Investment Manager Account.

**1.22 “National Collective Bargaining Agreement”** shall mean any Collective Bargaining Agreement to which the American Federation of Musicians of the United States and Canada, AFL-CIO is a party.

**1.23 “Plan”** shall mean the detailed rules and regulations of the American Federation of Musicians and Employers’ Pension Plan, and any amendments or modifications thereto from time to time adopted by the Board, setting forth the basis on which the eligibility for benefits and the nature, type, form, amount and duration of benefits shall be made to Covered Employees and Beneficiaries, which shall be funded under the Trust Fund.

**1.24 “Real Property” or “Interests in Real Property”** shall mean, in general, all real property and interests therein of whatever nature and personal property, both tangible and intangible, directly or indirectly associated or connected with the use of real property (including, without limitation, direct or indirect equity or other investments in real estate, interests in partnerships and other joint ventures having an interest in real property, participating or convertible mortgages or other debt instruments convertible into interests in real property by the terms thereof, options to purchase real estate, leaseholds, leasebacks, investments in group, collective or commingled real estate funds, and investments in securities issued by real estate investment trusts). For purposes of this definition, real property includes any property treated as real property either by local law or state law or for Federal income tax purposes.

**1.25 “Securities” or “Security”** shall mean, except as may otherwise be provided in a written agreement or investment guidelines between the Board and an Investment Manager, all Trust Fund securities of any and every kind wherever situated, and any rights or interests therein, including, but not limited to, (a) common and preferred stocks, including the stock of an Employer (or any parent, subsidiary or other person associated or affiliated therewith) to the extent permitted by ERISA; (b) obligations of the United States Government or any

government of a state of the United States (and any of their agencies and instrumentalities); (c) bonds, debentures, notes and other evidences of indebtedness, including bonds, debentures or notes of an Employer (or any parent, subsidiary or other person associated or affiliated therewith) to the extent permitted by ERISA; provided, however, that the making of such investment will not result in more than 3% of the Trust Fund (calculated as of the time of the investment) being invested in bonds, notes or debentures of such Employer; (d) savings and time deposits (including, without limitation, any deposits bearing a reasonable rate of interest that the Custodian, or a bank or similar financial institution appointed as a trustee or custodian hereunder by the Board, makes in itself or in any parent, subsidiary or other person associated or affiliated therewith, to the extent permitted by law); (e) bankers' acceptances; (f) commercial paper (including participations in pooled commercial paper accounts); (g) Collective Trusts; (h) Foreign Securities (including, without limitation, American Depository Receipts); (i) participation units or certificates issued by investment companies or investment trusts; (j) collateral trust notes; (k) equipment trust certificates; (l) life insurance, retirement income, guaranteed investment, annuity and other forms of insurance policies or contracts; (m) bank investment contracts; (n) private equity, venture capital, hedge funds, fund of funds limited liability companies, partnerships, limited partnerships and other forms of alternative investments; and (o) any options, warrants or other instruments representing rights to receive, purchase, or subscribe for the same or evidencing or representing any other rights or interest therein appurtenant to such Securities.

**1.26** “Trust,” “Trust Fund,” or “Fund” shall mean all cash, Securities and other property which at the time of reference shall have been deposited in the trust account established pursuant to this Agreement or held by a Custodian, including any portion thereof which has been segregated in an Investment Manager Account or held under a group trust or Collective Trust, and any Real Property or Interest in Real Property at any time held by the Trust Fund.

**1.27** “Trustee(s)” shall mean collectively the individual Employer Trustees and the individual Union Trustees.

**1.28** “Union” shall mean the American Federation of Musicians of the United States and Canada, AFL-CIO, and any local unions (and certain related entities) duly affiliated therewith; provided, however, that for all purposes of Articles III and X, the term Union shall mean solely the American Federation of Musicians of the United States and Canada, AFL-CIO.

**1.29** “Union Trustee” shall mean each individual named in Section 3.3(b) or designated as a Union Trustee pursuant to the procedures set forth in Section 3.10.

## ARTICLE II

### **NAME, PURPOSE AND OPERATION OF TRUST**

**2.1 Name.** The Trust shall be known as the “American Federation of Musicians and Employers’ Pension Trust.”

**2.2 Purpose.** The Trust is established for the exclusive purpose of providing certain pension and related benefits to Covered Employees and their Beneficiaries under the Plan, and shall further provide the means for financing and maintaining the operation and administration of the Trust and the Plan in accordance with this Agreement, the Plan, and applicable law.

**2.3 Operation.**

(a) It is intended that this Trust shall be established and operated in a manner that shall qualify it as an organization exempt from income taxation under Section 501(a) of the Code. Notwithstanding anything to the contrary contained herein, the Trust shall be operated exclusively for such purposes as will comply with Section 501(a) of the Code. To the extent that anything herein is inconsistent with the Code, this Agreement shall be deemed amended in such fashion as will implement the purposes of this Trust while continuing to comply with the requirements of the Code.

(b) It is further intended that this Trust shall be established and operated in a manner that complies with ERISA. To the extent that anything herein is inconsistent with ERISA, this Agreement shall be deemed amended in such fashion as will implement the purposes of this Trust while continuing to comply with the requirements of ERISA.

(c) The Trust shall also be established and operated as a “jointly-administered” pension fund within the meaning of, and in accordance with, Section 302(c) of the Labor Management Relations Act of 1947, as amended. To the extent that anything herein is inconsistent with said Act, this Agreement shall be deemed amended in such fashion as will implement the purposes of this Trust while continuing to comply with the requirements of said Act.

**2.4 Participation by Contributing Employers.** Any Employer may participate in the Trust and the Plan by:

(a) Executing a Collective Bargaining Agreement, or otherwise establishing a consistent pattern of contributing to the Trust Fund on behalf of its employees pursuant to a Collective Bargaining Agreement;

- (b) Designating a date on which such participation shall become effective;
- (c) Designating the categories of employment and its Covered Employees for participation in the Plan; and
- (d) Acceptance by the Board of the participation by such Employer in the Plan and Trust.

**2.5 Obligations of Contributing Employers.** By executing or complying with the terms of a Collective Bargaining Agreement, each Employer shall be deemed (without any further action) to have:

- (a) Reviewed, understood, adopted and agreed to all provisions of this Agreement and the Plan (and any amendments to such Agreement or Plan), which documents shall be deemed to have been incorporated by reference into such Collective Bargaining Agreement;
- (b) Authorized the Employer Trustees to act as its agent and execute this Agreement and the Plan on its behalf;
- (c) Agreed to comply with and be bound unconditionally to said Plan and Trust, any amendments thereto, as well as all of the decisions of the Trustees and the Executive Director; and
- (d) Agreed to pay the costs of the Plan by means of periodic contributions to the Fund on behalf of its Covered Employees as set forth in a Collective Bargaining Agreement, as well as any additional payments to the Fund required pursuant to the decision of the Trustees, the terms of this Agreement, the Plan or a Collective Bargaining Agreement.

## ARTICLE III

### TRUSTEES

**3.1 Composition of Trustees.** The number of Trustees under this Agreement shall be designated by the Board from time to time, provided that there shall be at least seven (7) Employer Trustees and at least seven (7) Union Trustees and no more than ten (10) Employer Trustees and ten (10) Union Trustees. There shall always be an equal number of Employer Trustees and Union Trustees (except in situations in which a Trustee vacancy is pending and waiting to be filled).

**3.2 Acceptance of Trust and Trusteeship.** The Trustees appointed hereunder hereby accept the Trust created and established by this Agreement and consent to act as Trustees thereof by assuming the responsibility for the operation and administration of the Trust. By their signature to this Agreement, or any counterpart or copy hereof, each Trustee hereby agrees to accept the trusteeship and to act in their capacities as trustees and fiduciaries of the Trust Fund in accordance with the provisions of this Agreement.

**3.3 Selection of Trustees.**

(a) The current Employer Trustees shall be: IRVING W. CHESKIN, J. NICHOLAS COUNTER, III, ARNOLD KAPLAN, JOANN KESSLER, MARION PRESTON, ALAN H. RAPHAEL, JEFFREY RUTHIZER, NORMAN K. SAMNICK and HARRIET SLAUGHTER. In no event shall the Union or a Union Trustee be entitled to designate an Employer Trustee.

(b) The current Union Trustees designated by the Union shall be: HAROLD BRADLEY, HAL ESPINOSA, WILLIAM L. FOSTER, THOMAS F. LEE, DAVID LENNON, WILLIAM MORIARITY, MELINDA WAGNER, ED WARD and PHIL YAO. In no event shall the Employers or an Employer Trustee be entitled to designate a Union Trustee.

**3.4 Written Appointments and Acceptances.** Except for the appointments of the initial Trustees under this Agreement, copies of the written appointments of successor Trustees shall be provided to the Board as soon as practicable after the appointments. Each Trustee shall signify his or her acceptance of the trusteeship in writing and in person at a meeting of the Board.

**3.5 Term of Office.** Each Trustee appointed under this Agreement shall continue to serve as such until his or her death, incapacity, resignation or removal as herein provided.

**3.6 Resignations.** A Trustee may resign, and shall be fully discharged (to the extent permitted by law) from further duty or responsibility hereunder, upon giving at least sixty (60) days advance written notice to the Board, or such shorter notice as the Board may accept as sufficient, in which notice there shall be stated a date when such resignation shall take effect; and such resignation shall take effect on the date specified in the notice, unless a successor Trustee shall have been appointed (as provided by Section 3.9 or Section 3.10) at an earlier date, in which event such resignation shall take effect immediately upon the successor Trustee taking office.

**3.7 Removal of Employer Trustees.** Any Employer Trustee may be removed from office at any time, with or without cause, (a) by a majority vote of the Employer Trustees then in office; or (b) in accordance with the procedure described in Section 3.9(b).

**3.8 Removal of Union Trustees.** Any Union Trustee may be removed from office at any time, with or without cause, in the sole discretion of the Union, by an instrument in writing signed by the duly authorized President of the Union and filed with the Board.

**3.9 Successor Employer Trustees.**

(a) In the event that any Employer Trustee shall die, become incapable of acting hereunder, resign, or be removed pursuant to Sections 3.7 or 3.9(b) (by a petition which omits to name a successor) or, in the event of an increase in the number of Trustees, the Employer Trustees then in office may by majority vote designate a person to fill the position of Employer Trustee thus made available.

(b) An Employer Trustee may be removed and a successor Employer Trustee appointed by the filing of a petition with the other Employer Trustees containing the signatures of Employers that were responsible for 50% or more of the contributions made to the Trust Fund by all Employers during the last complete six (6) month period ended June 30 or December 31 immediately preceding the submission of such petition.

**3.10 Successor Union Trustees.** In the event that any Union Trustee shall die, become incapable of acting hereunder, resign, or be removed pursuant to Section 3.8, or in the event of an increase in the number of Trustees, the duly authorized President of the Union shall designate a successor Union Trustee by the filing with the Board of a certificate in writing.

**3.11 Powers of Successor Trustees.** Any successor Trustee under this Agreement shall immediately, upon his or her designation as a successor Trustee and his or her acceptance of the trusteeship in writing filed with the Board,

become vested with all rights, powers, privileges and duties of a Trustee hereunder with like effect as if originally named as Trustee.

### **3.12 Use of Corporate Trustee.**

(a) At any time and from time to time, the Board may appoint, as a Corporate Trustee or Custodian, a bank, trust company or broker-dealer located within the United States.

(b) The Board may, pursuant to Instructions, delegate to the Corporate Trustee or Custodian:

(1) the power to hold the Fund or a portion of it as sole trustee of a trust separate from the Fund created by this Trust Agreement (and not as an agent of the Trustees or as co-trustee hereunder with the Trustees);

(2) the power to invest and reinvest the Fund (or applicable portion) in the Corporate Trustee's sole discretion (pursuant to the powers set forth in Section 5.5 as may be duly delegated to it by the Board);

(3) the power to lend Trust Fund Securities (pursuant to Section 5.5(u));  
and

(4) such other duties and powers as the Board may deem advisable.

(c) The Board may enter into and execute a trust, custodial or other written agreement with the Corporate Trustee or Custodian, which agreement shall contain such provisions as the Board may deem advisable. Upon execution of such agreement with the Corporate Trustee or Custodian, the Board may transfer and convey to the Corporate Trustee or Custodian any part or all of the Securities, Real Property or Interest in Real Property, or other property of the Fund acceptable to the Corporate Trustee or Custodian, and thereupon the Board shall be forever released and discharged from any responsibility or liability with respect to such assets so transferred as to any period subsequent to such transfer and with respect to the investment and reinvestment thereof by the Corporate Trustee or Custodian. Notwithstanding such transfer, the Board shall continue to carry on its administrative and supervisory functions under the Plan in accordance with the provisions of the Plan and this Agreement.

(d) The Board may, at any time, remove the Corporate Trustee or Custodian in the manner provided in the trust or other agreement between the Board and the Corporate Trustee or Custodian. In the event that a Corporate Trustee or Custodian is appointed, such Corporate Trustee or Custodian shall, if and when removed by the Board, cause to be transferred to the Board any Trust Fund Securities, real, personal or other property or records then in its possession, along

with a final accounting of the Securities or other property of the Fund held and/or managed by the Corporate Trustee or Custodian pursuant to said agreement.

## **ARTICLE IV**

### **PLAN OF BENEFITS**

#### **4.1 Benefits.**

(a) The Board (or its duly authorized designee) shall have the full and exclusive right, power and authority, in its sole and absolute discretion, to determine all questions of the nature, type, form, amount and duration of benefits (including, without limitation, matters pertaining to the interpretation and application of reciprocity and portability agreements with other funds and plans) to be provided to Covered Employees and their Beneficiaries. However, no benefits other than pension, retirement, disability and such other related benefits as the Board may from time to time determine, may be provided to Covered Employees and Beneficiaries or paid for under the Trust.

(b) Payment of benefits under the Plan shall be made directly from the Fund by the Board (or the Executive Director, the Custodian, or other duly authorized agent) or may be provided for by the purchase and delivery of such insurance contracts, policies or certificates, to such persons, in such manner, and at such time as the Board shall decide.

(c) The Board (or its agents) shall be fully protected in making, discontinuing or withholding benefit payments from the Fund, or purchasing or delivering insurance contracts, policies or certificates (or instructing the insurers with respect thereto), all in reliance upon information received from the Contributing Employer respecting the status of any Covered Employee employed by such Employer. Each Contributing Employer shall indemnify and hold harmless the Fund, the Board, each Trustee and each of the Fund's employees and agents from the consequences of relying on any information or directions furnished to the Board, the Executive Director, any Committee member or their agents by such Contributing Employer.

(d) If for any reason (including, without limitation, mistake of fact or law, or reliance on any false or fraudulent statements, information or proof submitted by a claimant) benefit payments are made to any person from the Fund in excess of the amount which is due and payable under the Plan, the Board (or the Executive Director or any Committee or other designee duly authorized by the Board) shall have full authority, in its sole and absolute discretion, to recover the amount of any overpayment (plus interest and costs). That authority shall include, but shall not be limited to, (1) the right to reduce benefits payable in the future to the person who received the overpayment, (2) the right to reduce benefits payable to a surviving spouse or other beneficiary who is, or may become, entitled to receive payments under the Plan following the death of that person, and/or (3) the right to

initiate a lawsuit or take such other legal action as may be necessary to recover any overpayment (plus interest and costs).

(e) When any benefit payment, or the purchase or delivery of any insurance contract, policy or certificate (or any payment thereunder) is to be made in accordance with the terms of the Plan when the person entitled to receive such benefit maintains or attains a given age or status, or when a certain condition exists regarding such person, any such payment, purchase, delivery or instruction made, discontinued or withheld by the Board in good faith, without actual knowledge or notice of the prescribed change in the age, status or condition of the payee, shall be considered to have been properly effected by the Board.

**4.2 Written Plan of Benefits.** The specific detailed basis upon which the eligibility for benefits, types and forms of benefits payable (and any restrictions thereon), and the payment of benefits to Covered Employees and Beneficiaries, is to be specified in (and determined under) the Plan, as amended by the Board from time to time.

**4.3 Insurance Contracts.** The written plan of benefits comprising the Plan may consist, in part, of contracts with one or more insurance companies.

**4.4 Exclusive Benefit.**

(a) Notwithstanding anything to the contrary contained in this Agreement, it shall be impossible at any time prior to the satisfaction of all liabilities with respect to the Covered Employees under the Plan (or their Beneficiaries) for any part of the Trust Fund, other than such part as is required to pay taxes, fees and expenses of the administration and operation of the Plan, to be used for or diverted to purposes other than for the exclusive benefit of Covered Employees (or their Beneficiaries); provided, however, that to the extent permitted by the Code, ERISA and other applicable law, in the event that any Employer contribution to the Trust Fund has been (1) made by a mistake of fact or law (including, without limitation, any contribution to the Trust Fund inadvertently made on the basis of overscale wages), (2) conditioned on the qualification of the Plan under Sections 401 or 501 of the Code, and the Plan receives an adverse determination with respect to its qualification, or (3) conditioned upon the deductibility thereof under Section 404 of the Code, and all or a part of such deduction has been disallowed; then the Board may (but shall not be required to) in its sole and absolute discretion, return such contribution (or the value thereof, if less) to the Employer prior to the expiration of six months after a determination by the Audit Committee (or its duly authorized designee) as to (1) above, one year following the adverse determination under (2) above, or one year following the disallowance of the deduction under (3) above (but only to the extent of the disallowance).

(b) The determination as to whether an Employer has made a contribution or other payment to the Trust Fund by a mistake of fact or law, and whether such contribution or payment should be returned to the Employer, shall be made in the sole and absolute discretion of the Board or the Audit Committee (or either of their duly authorized designees) in accordance with ERISA and other applicable law, taking into account all of the evidence submitted by such Employer to demonstrate that such contribution or payment was made by mistake; provided, however, that the Employer shall have the burden of proving that such contribution or payment was made by mistake. The decision of the Board or the Audit Committee (or either of their duly authorized designees) as to whether such contribution or payment was made by mistake, and whether it should be returned to the Employer, shall be final and binding on the Employer.

**4.5 No Assignment of Benefits.** Except with respect to “qualified domestic relations orders” (as defined in Section 206(d)(3) of ERISA), voluntary and revocable assignments (as permitted by Section 206(d)(2) of ERISA), or as may otherwise be provided in the Plan, ERISA or the Code:

(a) No benefit payable at any time under the Plan prior to receipt thereof by a Covered Employee (or Beneficiary or estate), shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment or encumbrance of any kind, nor shall any retirement benefit, until actually paid to the Covered Employee (or Beneficiary or estate), be in any manner subject to the debts or liabilities of said Covered Employee (or Beneficiary or estate);

(b) Any attempt to alienate, sell, transfer, assign, pledge or otherwise encumber any such benefit, prior to receipt thereof by the Covered Employee (or Beneficiary or estate), in violation of the restrictions set forth in the preceding sentence shall be void and of no effect;

(c) Benefit payments (or portions thereof) under the Plan or Trust shall not in any way be subject to any legal process, execution, attachment or garnishment, be used for the payment of any legal claim against any such person, or be subject to the jurisdiction of any bankruptcy court or, insolvency proceedings by operation of law or otherwise.

## ARTICLE V

### **POWERS AND DUTIES OF TRUSTEES**

#### **5.1 Receipt of Payments.**

(a) The Board (or such other person or entity acting on behalf of, and duly authorized by, the Board) is hereby designated as the entity authorized to receive the Employer contributions hereafter made to the Trust, and is hereby vested with all rights, title, and interest in and to such monies and all interest accrued thereon and appreciation thereof.

(b) The Board agrees to receive all Employer contributions and to hold them in trust hereunder for the uses and purposes of the Trust and the Plan, and may deposit all or a portion of such monies with such Custodians as they may designate for this purpose.

**5.2 Payment of Benefits.** The Board shall pay out of the Trust, at the time or times and in the manner specified in the Plan, the benefits provided for therein. The payment of benefits shall be in accordance with the written Plan referred to in Section 4.2.

#### **5.3 Expenses.**

(a) The Board shall use and apply the assets of the Trust for the following purposes:

(1) To pay from the Trust Fund, or provide for the payment of, all reasonable and necessary expenses of collecting Employer contributions and administering the affairs of the Trust, including, without limitation, all expenses which may be incurred in connection with the maintenance, operation and administration of the Plan and the Trust, including, but not limited to:

(A) the fees and compensation of consultants, actuaries, accountants, attorneys and any other persons employed by the Board or the Executive Director to render services to the Fund or the Plan;

(B) the payment of fees, expenses and other costs of holding or investing the assets of the Fund;

(C) the fees and expenses of any Investment Manager or Custodian as may be appointed by the Board;

(D) any taxes;

(E) the expense of maintaining mailboxes, bank accounts and safety deposit boxes (if any);

(F) the cost of implementing and maintaining any accounting, auditing, computer, recordkeeping and any other systems which the Board has determined to be necessary or appropriate for the establishment, operation or administration of the Trust Fund or the Plan.

(2) To pay from the Trust Fund or provide for the payment of, subscriptions, charges, deposits or other payments under benefits contracts; and to pay or provide for the payment of premiums on the policy or policies of insurance, if, when and to the extent such premiums shall become due.

(b) The Trustees shall not receive any compensation from the Trust for the performance of their duties as Trustees, but shall be reimbursed from the Trust Fund for all reasonable, actual and necessary expenses which they incur in the performance of their duties as Trustees hereunder, including, without limitation, in connection with their education as fiduciaries of the Plan and Trust Fund.

#### **5.4 Insurance Contracts.**

(a) The Board may enter into such insurance contracts and policies, including group annuity contracts, make such premium or other payments thereon, make such elections thereunder, agree to any alteration, modification or amendment thereof, and take such actions with respect thereto as the Board shall, in its sole discretion, determine. With respect to any such insurance contract the Board is, in its discretion, authorized to assume all the rights, privileges and benefits thereunder and ownership thereof, and to take all actions required of or permitted thereunder, and the insurance carrier or organization with which such group contracts are in effect shall not be required to inquire into the authority of the Board.

(b) In no event shall any insurance company issuing any contract or contracts to the Board under this Agreement be considered a party or parties to this agreement nor to any modification or amendment thereto or any agreement supplemental thereto. Nothing in this Agreement nor in any modification, amendment or supplement thereto shall in any way be construed to enlarge, change, vary or in any way affect the obligations of an insurance company except as expressly provided in a contract issued by it.

(c) Any insurance company may deal with the Board in accordance with the terms and conditions of the contract between the insurance company and the Board and in such manner as the Board and the insurance company shall therein agree, without the consent of any other person or persons interested in this Trust.

**5.5 General Powers.** Notwithstanding any limitations imposed generally by any present or future state statute or rule of law concerning investments by trustees (and in addition to, and not by way of limitation of, such other powers as are set forth herein or otherwise conferred by law), the Board is hereby empowered, in its sole and absolute discretion:

(a) To purchase, sell (for cash or on credit), receive, subscribe for, invest and reinvest Trust Fund assets in any Securities and any Real Property or Interest in Real Property, free from any limitations imposed by state law on investments of trust funds, and to retain such Securities or Real Property or Interest in Real Property in the Trust Fund, or exchange any such Securities or Real Property or Interest in Real Property for other property (or interests therein), or grant options to acquire such Securities or Real Property or Interest in Real Property; and the Board may determine the prices and terms of all such sales, exchanges and options and may execute any and all contracts, conveyances and other instruments containing covenants and warranties binding upon the Plan or the Fund and containing provisions excluding the personal liability of the Trustees;

(b) To use or cause to be used the facilities of the Depository Trust Company or the Federal Reserve Book-Entry System, subject to such rules, regulations and orders as may be adopted by the Securities and Exchange Commission thereunder; including, without limitation, the right to

(1) hold, receive, exchange, release, deliver and otherwise deal with the Securities and other property of the Trust Fund (including stock dividends, rights and other items of like nature), and to receive and remit all income and other payments thereon and take all steps necessary and proper in connection with the collection thereof;

(2) register such Securities in the name of any nominee or nominees used by the Depository Trust Company or the Federal Reserve Book-Entry System;

(3) pay for Securities purchased and sold through the clearing medium employed by the Depository Trust Company or the Federal Reserve Book-Entry System for transactions of participants acting through it; and

(4) register any Securities or other property held in the Trust Fund in the name of a nominee or nominees with or without the addition of words indicating that such Securities or other property are held in a fiduciary capacity, provided, however, that said nominee be a bank, trust company or broker-dealer;

(c) To cause any Securities, Real Property or Interest in Real Property, or other property at any time held by the Trust Fund to be registered in its own name as

trustees, or in the name of a Custodian, trustee or nominee (with or without the disclosure of any fiduciary relationship), and to hold in bearer form any Securities or other property at any time held in the Trust Fund so that they will pass by delivery;

(d) To:

(1) sell for cash or on credit, grant options, convert, exchange for other Securities or property, redeem, transfer and dispose of any Securities or other property in the Trust Fund, by private agreement or public auction, for cash, Securities or other property and/or credit; and

(2) make delivery of Securities or other property that have been sold for the Trust Fund upon receipt of payment therefor; provided that all payments for such Securities or property to be made in cash, by a certified check, a treasurer's or cashier's check of a bank, by effective bank wire transfer through the Federal Reserve Wire System or, if appropriate, outside of the Federal Reserve Wire System and for credit to the Trust Fund;

(e) To release and deliver Trust Fund Securities to the issuer thereof (or its agent) when such Securities are called, redeemed, retired or otherwise become payable; provided, however, that, in any case, the cash or other consideration for such release and delivery is in the Trust Fund or is to be delivered to the Board simultaneously with the delivery of such securities;

(f) To exercise voting rights, either in person by limited or general power of attorney, or by proxy, with respect to all Securities or other property, and generally to exercise with respect to Trust Fund assets all other rights, powers, and privileges as may be lawfully exercised by any person owning similar property in its own right, unless the responsibility for exercising such rights, powers, or privileges has been delegated by the Board or its Investment Committee to an Investment Manager (pursuant to Section 8.8 of this Agreement);

(g) To:

(1) exercise any conversion privilege and/or subscription right available in connection with any Securities or other property at any time held in the Trust Fund, and to make any payments in connection with such exercise;

(2) join in, dissent from or oppose the reorganization, consolidation, merger, recapitalization, liquidation, sale, mortgage, pledge or lease of corporate property with respect to any corporations in which the Trust Fund may be interested (including the exercise of options, the making of agreements or

subscriptions and the payment of expenses, assessments or subscriptions, which may be necessary or advisable in connection therewith), and to hold and retain any Securities or other property which it may so acquire;

(3) deposit any Securities or other property with any protective, reorganization or similar committee, and to pay or agree to pay part of the expenses and compensation of any such committee and any assessments levied with respect to such Securities or property so deposited; and

(4) exercise all other ancillary rights or duties necessary to implement any of the powers contained herein;

(h) To:

(1) pool all or a portion of the Trust Fund in one or more Collective Trusts and to transfer and deposit, at any time and from time to time, all or a portion of the assets of the Trust Fund to any Collective Trust; and

(2) withdraw any portion of the Trust Fund so transferred, and to execute such documents and other instruments as, from time to time, may be necessary to implement the foregoing;

(i) To invest all or part of the Trust Fund in deposits which bear a reasonable interest rate in any bank, trust company, broker-dealer or similar financial institution supervised by the United States or any State (including deposits of a Custodian, to the extent permitted by ERISA);

(j) To:

(1) compromise, compound, submit to arbitration or settle any debt or obligation owing to or from the Trust Fund;

(2) enforce or abstain from enforcing any right, claim, debt or obligation;

(3) reduce or increase the rate of interest on extension, or otherwise modify, foreclose upon default, or enforce any such obligation; and

(4) sue or defend suits or legal proceedings against the Fund, the Plan, the Trustees or their agents or employees, or to protect or enforce any interest in the Fund and to represent the Fund, the Plan, the Trustees or the Executive Director in any suits, arbitrations or other dispute resolution proceedings in connection with any matter in any court or before any administrative agency, body or tribunal;

(k) To apply for, purchase, receive, retain, administer, surrender, transfer or assign any life insurance, retirement income, endorsement or annuity policy or contract, and pay the premium and exercise the rights, privileges, options and benefits contained in any such contract;

(l) To organize or acquire an interest in corporations, partnerships, limited partnerships, limited liability corporations, and/or joint-ventures under the laws of the United States, any State or other jurisdiction to acquire and hold title to any Securities or Real Property or Interest in Real Property, or to acquire an interest in another such entity holding such Securities or Real Property or Interest in Real Property, held in connection with the Plan or the Trust Fund;

(m) To take any and all actions, including the filing of requests for determinations, rulings and other forms of administrative guidance with the United States Department of Labor (including requests for exemptive or other administrative relief from the provisions of Section 406 of ERISA and Section 4975 of the Code, or other provisions of ERISA or the Code), the Internal Revenue Service, or the Pension Benefit Guaranty Corporation, and the commencement of and participation in lawsuits in connection therewith; all as the Board determines to be necessary, appropriate or desirable to carry out any of the foregoing powers or otherwise in the best interests of the Plan or the Trust Fund;

(n) To:

(1) lease or purchase such premises, materials, supplies and equipment, and employ and retain such administrative, secretarial, clerical, and other assistance or employees as the Board or the Executive Director may deem necessary or proper, and to pay their reasonable expenses and compensation and all other expenses attributable to the operation of the Plan out of the Trust Fund;

(2) implement and maintain any accounting, auditing, computer, recordkeeping and any other systems which the Board has determined to be necessary or appropriate for the establishment, operation or administration of the Trust Fund or the Plan;

(3) retain attorneys, investment advisers, accountants, actuaries, appraisers, architects, banks, contractors, engineers, consultants, property managers, insurance brokers and any other persons or entities in connection with the operation, management, or administration of the Trust Fund or the acquisition, sale or other disposition of any property for or by the Trust Fund, and pay, as expenses of the Trust Fund, any of their necessary and reasonable fees; and

(4) retain one or more Custodians or other banks, trust companies, broker-dealers, or similar depositories to act as a trustee and/or custodian of Trust

Fund Securities and property, and to define the scope and responsibilities of each such trustee or custodian;

(o) To appoint ancillary or subordinate trustees or custodians to hold title to or other indicia of ownership of Foreign Securities or other property of the Plan or Trust Fund in those jurisdictions, domestic or foreign, in which the Board is not authorized to do business, and to define the scope of the responsibilities of each such ancillary or subordinate trustee or custodian; provided, however, that such ancillary or subordinate trustees or custodians shall comply with all requirements of Section 404(b) of ERISA, and the regulations promulgated pursuant thereto, in the event that assets of the Trust Fund are invested or reinvested in Foreign Securities;

(p) To establish and implement a funding policy for the Plan and create, accumulate and maintain as part of the Trust Fund such margins or reserves as the Board determines to be prudent or desirable in connection with the sound and efficient administration of the Plan and the Trust Fund (including, without limitation, reserves for existing and potential obligations and liabilities of the Trust Fund and administrative expenses);

(q) To:

(1) delegate to other fiduciaries (including Committees) the responsibilities or duties involved in the operation and administration of the Plan under the direction of the Board (other than trustee responsibilities, as defined in Section 405(c)(3) of ERISA) to the extent consistent with ERISA; and

(2) engage an Executive Director or such other person or persons as it may deem necessary or desirable to conduct the day to day operations of the Plan and the Fund and delegate such of its administrative duties to such persons, agents, or organizations as it may deem advisable (including, without limitation, to a duly appointed Committee).

(r) To enter into agreements among themselves allocating their responsibilities, obligations and duties with respect to the administration of the Plan and the management and control of the Trust Fund assets; provided, however, that the remaining Trustees comprising the Board shall not be liable for any loss resulting to the Trust Fund resulting from the acts or omissions of those Trustees accepting the allocation of such specified fiduciary responsibilities (except as may otherwise be required by ERISA);

(s) To enter into agreements with other pension or retirement plans and trusts providing for the reciprocity of pension credits and portability of pension accruals as between this Plan and such other plans and trusts and to merge the Trust Fund

and Plan with other employee pension benefit plans (provided that the Trustees determine that such merger is prudent and would further the interests of Covered Employees and Beneficiaries); provided, however, that in the case of any merger or consolidation with, or transfer of assets and liabilities to, any other pension or retirement plan or trust, provisions shall be made so that each Covered Employee affected thereby on the date thereof would receive a benefit immediately after the merger, consolidation or transfer (as if the Plan or the Trust then terminated) that is equal to or greater than the benefit that he or she would have been entitled to receive immediately prior to the merger, consolidation or transfer (as if the Plan or the Trust then terminated);

(t) To:

(1) borrow monies from any person or persons on behalf of the Plan or the Trust Fund, or on behalf of any corporation, partnership or joint venture in which the Plan or the Trust Fund has an interest;

(2) pledge all or a portion of the Trust Fund as security or collateral to any person or persons in order to obtain financial accommodations (including agreements to issue letters of credit or other forms of credit) from a bank, trust company, broker-dealer or other financial institution (including the Custodian, to the extent permitted by ERISA) on behalf of the Plan or the Trust Fund, or on behalf of any corporation, partnership, or joint venture in which the Plan or the Trust Fund has an interest; and

(3) for any sums so borrowed or accommodations or credit obtained, issue one or more promissory notes (or other instruments or documents), and/or pledge, hypothecate, assign or otherwise transfer all or any part of the Plan or the Trust Fund assets as collateral and/or issue guaranties in order to obtain such loan, credit or other form of credit;

(u) To:

(1) lend any Trust Fund Securities to banks, trust companies, or nationally-recognized brokers or dealers;

(2) secure the same in any manner;

(3) receive compensation therefor out of any amounts paid by or charged to the account of the borrower; and

(4) during the term of any such loan, permit the loaned Securities to be transferred into the name of and voted by the borrower or others; provided, however, that such loans are fully consistent with ERISA and the Code and that cash or other collateral satisfactory to the Board, having a fair market value (as of

the close of business on the business day immediately preceding the date of such loan) equal to at least one hundred two (102%) percent of the then fair market value of the Securities loaned, is pledged to the Trust Fund by the borrower, and continues to be maintained in such manner until such loan is repaid;

(v) To:

(1) retain, manage, administer, operate, lease for any length of time, develop, improve, repair, alter, demolish, mortgage, pledge, grant options with respect to, or otherwise deal with any Real Property or Interest in Real Property at any time held by the Trust Fund;

(2) modify, extend, renew or otherwise adjust any mortgage or lease, including the waiver of rentals;

(3) purchase or otherwise acquire, sell, exchange or otherwise dispose of any such Real Property or Interest in Real Property at public or private sale, at such prices, at such time or times upon such terms, and for such purposes as may be necessary or desirable;

(4) borrow money, and for the purpose of securing the repayment thereof, to pledge, mortgage, grant a security interest in or otherwise encumber any Real Property or Interest in Real Property of the Trust Fund;

(5) purchase, take and hold any Real Property or Interest in Real Property subject to mortgages or other liens or encumbrances, irrespective of by whom the same were made;

(6) foreclose, to reduce the rate of interest on, and to consent to the extension of or make any other modification of loans, whether or not secured by mortgages on any Real Property or Interest in Real Property or on any personal property, or to accept a deed in lieu of foreclosure;

(7) join a voluntary partition of any Real Property or Interest in Real Property;

(8) demolish or cause to be demolished any structures on any Real Property or Interest in Real Property if such action is necessary or desirable;

(9) make loans of any type (including, without limitation, variable, participating, convertible or indexed loans), whether secured or unsecured, in connection with any Real Property or Interest in Real Property of the Trust Fund;

(10) enter into joint ventures or otherwise own or participate in entities that own or acquire any Real Property or Interest in Real Property (including

associations, corporations, general or limited partnerships, or trusts), and to acquire stock, ownership interests, or securities in such entities, including by means of a tender offer;

(11) hold any Real Property or Interest in Real Property either in the name of the Trust Fund or in a separate nominee trust without disclosing the ownership of the Trust Fund;

(12) operate through one or more corporations or other entities, wholly or partially owned by the Trust Fund, whether or not exempt from Federal income taxation or other taxes;

(13) keep and maintain any property in good state of repair and upkeep, to obtain insurance for any Real Property or Interest in Real Property, and to pay the taxes, upkeep, repairs, carrying charges, maintenance and premiums of insurance with respect to any Real Property or Interest in Real Property;

(14) organize or acquire one or more corporations, wholly or partly owned by the Trust, each of which shall be exempt from Federal income taxation under Section 501(c)(2) or (c)(25) of the Code and each of which shall have been organized for the exclusive purpose of holding title to any Real Property or Interest in Real Property, collecting income therefrom and turning over the entire amount thereof, less expenses, to the Trust or other entities exempt from Federal income taxation under Section 501 of the Code; and

(15) retain, monitor and terminate property managers, accountants, attorneys, developers, mortgage bankers, environmental consultants and others providing services with respect to any Real Property or Interest in Real Property, which persons, to the extent permitted or not prohibited by ERISA, may be affiliates of an Investment Manager or other service provider to the Trust Fund (such services to include, without limitation, matters of compliance of such properties with all applicable laws, rules and regulations);

(w) To effect insurance for any Real Property or Interest in Real Property or any other physical properties and assets of the Trust Fund in such amounts and against such risks as, in the Board's good faith judgment, shall be in accordance with customary and sound business practices applicable to such properties or assets in the appropriate geographic area;

(x) To attend to legal matters in connection with the making of investments for the Trust Fund by taking or causing to be taken such acts as, in the sole discretion of the Board, are necessary or appropriate to comply with all applicable laws, rules and regulations in connection with the making, validity or enforceability of such investments;

(y) To:

(1) make, execute and deliver any and all conveyances, indemnities, waivers, releases or other instruments in writing necessary or desirable for the operation of the Fund or the Plan, or the accomplishment of any of the foregoing powers; and

(2) execute written agreements with any person or entity (including, without limitation, any Employer and/or the Union) which the Board may deem prudent, necessary or desirable for the operation of the Fund or the Plan, the accomplishment of any of the foregoing powers, or the protection of the assets of the Trust Fund; and

(z) Generally, to perform all acts (whether or not expressly authorized herein) which the Board may deem necessary and prudent for the protection of the assets of the Trust Fund.

#### **5.6 Committees.**

(a) In addition to the Administrative Committee (established pursuant to Section 7.3), the Investment Committee (established pursuant to Section 7.4), and the Audit Committee (established pursuant to Section 7.5), the Board may delegate one or more of its fiduciary responsibilities (other than trustee responsibilities, as defined in Section 405(c)(3) of ERISA) to one or more other Committees. Where the Board has elected to hold a joint meeting with a Committee, unless otherwise agreed by the Board, all actions taken by the Trustees attending such meeting will be taken in accordance with Section 6.4(a) and will be considered ratified without further Board action.

(b) Each such Committee shall comprise two or more Trustees and shall comprise an equal number of Employer Trustees and Union Trustees to the extent the Committee may be exercising authority delegated by the Board. The Employer Trustees shall designate Employer Trustees to serve on such Committee and the Union Trustees shall designate Union Trustees to serve on such Committee.

(c) Except as otherwise provided by ERISA, to the extent that such responsibilities are so delegated, the remaining Trustees comprising the Board shall not be liable for any loss to the Trust Fund resulting from the acts or omissions of any Committee.

(d) No more than one representative of each Contributing Employer shall be permitted to serve on each Committee.

**5.7 Standard of Care.** In exercising any and all powers, duties and responsibilities under this Agreement, the Board shall discharge its duties and responsibilities hereunder with 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, and shall diversify Trust Fund assets so as to avoid the risk of large losses (unless, under the circumstances, it is clearly prudent not to do so), consistent with the requirements of ERISA.

**5.8 Reliance on Written Instruments and Advice of Professionals.**

(a) Each Trustee shall be fully protected in acting upon any instrument, certificate, or paper believed by him or her to be genuine and to be signed or presented by a duly authorized person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

(b) Each Trustee shall be entitled to rely conclusively upon, and shall be fully protected in any action taken by him or her in good faith in relying upon, any opinions or reports furnished to him or her by any actuaries, accountants, attorneys, consultants or specialists appointed or designated by the Board in connection with the administration of the Plan or the Fund (or the investment of Fund assets).

**5.9 Indemnification.** Except as may otherwise be required by ERISA or other applicable law:

(a) The Trustees shall not be personally answerable for any liabilities or debts of the Plan or the Trust Fund incurred by them as Trustees, but said debts and liabilities shall be paid out of the Trust Fund;

(b) No Trustee shall be personally liable for any error of judgment or for any Claims (as that term is defined in paragraph (e) below) arising out of any act or omission of such Trustee or for any acts or omissions of any other Trustee, or any agent elected or appointed by or acting for the Trustees, except as provided in paragraph (e) below;

(c) The Trustees shall not be personally liable for the proper application of any part of the Trust Fund or for any other liabilities arising in connection with the administration of the Plan or the Trust Fund, except as provided in paragraph (e) below;

(d) The Trustees may from time to time consult with legal counsel and shall, to the extent permitted by ERISA or other applicable law, be fully protected in acting upon the advice of said counsel with respect to legal questions affecting the Plan or the Trust Fund; and

(e) To the extent not covered by insurance, the Trust Fund shall protect, indemnify and hold harmless the Board, each individual Trustee, each Committee member, and the Executive Director (and their employees and other agents), from and against any and all liabilities, damages, taxes, judgments, debts, assessments, penalties, losses, expenses, costs and claims, including, without limitation, (1) reasonable attorneys' fees and court costs; (2) actuarial and related consulting costs; (3) accounting and auditing costs; (4) investment management, trustee and custodian costs; (5) insurance premiums and related costs; and (6) other professional fees (hereinafter collectively referred to as "Claims") incurred by any such person(s) as a result of any act, omission or conduct committed by said person(s) in connection with the performance of his or her powers, duties, responsibilities or obligations under the Plan, the Trust, this Agreement, ERISA, the Code or other applicable laws, except with respect to Claims arising from such person's own fraud or willful misconduct.

**5.10 Bonding.** Any person required to be bonded under the provisions of ERISA, including without limitation, the Trustees, Executive Director, Investment Managers, Custodians (and any employees, agents or other representatives of the Trust handling monies, Securities and negotiable paper on behalf of the Trust or otherwise entrusted with any portion of the Trust Fund), shall be bonded under a fidelity bond issued by an insurance carrier in an amount no less than that required by Section 412 of ERISA. The Board shall, in its sole discretion, have the authority to require the bonding of any other employee, agent, representative or fiduciary of the Trust (including, without limitation, an Investment Manager or Custodian) and to require bonds above the minimum amount. The cost of premiums for such bonds for the Trustees, the Executive Director and any other Fund employee shall be paid out of the Trust Fund.

**5.11 Fiduciary Insurance.** The Board may purchase with Fund assets and maintain a policy or policies of fiduciary liability (or errors or omissions) insurance covering the Trust Fund, the Trustees, the Executive Director and, if the Board so determines, any other person to whom a fiduciary responsibility with respect to the Plan or Fund has been allocated or delegated, to protect such persons against any and all Claims (as that term is defined in Section 5.9(e)) arising out of such fiduciary's breach of his or her fiduciary responsibility to the Plan or the Trust Fund (the proceeds of which may be used to satisfy the obligations of the Trust Fund set forth in Section 5.9). The insurance contemplated herein shall permit recourse in consideration of the insurer against the fiduciary in case of a breach of his or her fiduciary obligations or

responsibilities to the Trust Fund (although the insurer shall have the right to eliminate such recourse by the payment of an additional premium by such fiduciary or by the organization that appointed such fiduciary to the Board).

**5.12 Deposit and Withdrawal of Funds.**

(a) All monies received by the Board hereunder shall be deposited with the Custodian, or such other banks or trust companies (insured by the Federal Deposit Insurance Corporation) or other broker-dealers or similar financial institutions (insured by the Securities Investor Protection Corporation) as the Board may designate as Custodians or other trustees of all or a portion of the assets of the Trust.

(b) The requisite signature authority required for all checks, drafts, vouchers or other withdrawals of monies from such account or accounts shall be in accordance with resolutions from time to time adopted by the Board, and the Board may delegate such authority to any two Trustees (one of whom must be an Employer Trustee and the other a Union Trustee), to the Executive Director, or to any other person as the Board, in its sole discretion, shall determine.

**5.13 Delegation of Power.** Except as otherwise provided by ERISA, the Board may delegate any of its ministerial powers or duties hereunder to any one or more agents or employees and/or to one or more Trustees.

**5.14 Discretionary Authority.**

(a) The Board or, where applicable, a Committee (or either of their duly authorized designees) shall have the exclusive right, power, and authority, in its sole and absolute discretion, to administer, apply and interpret this Agreement, the Plan and any other Plan or Trust documents and to decide all matters arising in connection with the operation or administration of the Plan or the Trust and the investment of Plan assets.

(b) Without limiting the generality of the foregoing, the Board or, where applicable, a Committee (or either of their duly authorized designees) shall have the sole and absolute discretionary authority to:

(1) take all actions and make all decisions with respect to the eligibility for, and the amount of, benefits payable under the Plan to Covered Employees or their Beneficiaries;

(2) formulate, interpret and apply rules, regulations and policies necessary to administer this Agreement, the Plan or other Plan documents in accordance with their terms;

(3) decide questions, including legal or factual questions, relating to the calculation and payment of benefits under the Plan or other Plan documents;

(4) resolve and/or clarify any ambiguities, inconsistencies and omissions arising under this Agreement, the Plan or other Plan documents; and

(5) process, and approve or deny, benefit claims and rule on any benefit exclusions.

All determinations made by the Board (or, where applicable, the Executive Director or any Committee duly authorized by the Board) with respect to any matter arising under the Plan, Trust Agreement and any other Plan documents shall be final and binding on all parties affected thereby.

#### **5.15 Execution of Documents.**

(a) The Co-Chairs are authorized to collectively execute on behalf of the Board all documents necessary for the accomplishment of any action taken by the Board; provided, however, that such action is reflected in written minutes of a Board meeting.

(b) The Board may authorize by resolution any Union Trustee and any Employer Trustee (or any group composed of an equal number of Union and Employer Trustees), or an employee of the Trust Fund, to execute any Instructions, notices or other instruments in writing; and any such Instruction, notice or instrument so signed shall have the same force and effect as though signed by the Board.

(c) All persons, corporations, partnerships, groups or associations may accept any notice or instrument signed in accordance with this Section 5.15 as duly authorized and binding on the Board.

(d) The Board may, in its sole and absolute discretion, designate and authorize an employee or employees of the Trust Fund to sign documents or checks upon such separate and specific bank account or bank accounts as the Board may designate and establish for such purpose.

## ARTICLE VI

### **MEETINGS AND DECISIONS OF TRUSTEES**

#### **6.1 Officers.**

- (a) The Board shall elect two (2) Co-Chairs from among the Trustees, one of whom shall be a Union Trustee and the other an Employer Trustee.
- (b) The term of such officers shall commence on the date of their election and continue until their successors are elected.
- (c) During even-numbered calendar years, the Co-Chair who is a Union Trustee shall preside over meetings of the Board. During odd numbered calendar years, the Co-Chair who is an Employer Trustee shall preside over meetings of the Board.

#### **6.2 Calling of Meetings.**

- (a) The Board shall endeavor to meet at least three (3) times per year, and at such other times as the Board may reasonably decide; except that either Co-Chair may call a special meeting of the Board, at any time, by giving at least five (5) business days advance written notice of the time and place thereof to the other Co-Chair and all other Trustees.
- (b) Any two (2) Employer Trustees and two (2) Union Trustees may likewise call a meeting of the Trustees, at any time, by giving at least ten (10) business days advance written notice of the time and place thereof to the Co-Chairs and to all other Trustees.
- (c) Meetings of the Board may be held at any time by telephone conference with proper advance notice (as prescribed by either paragraph (a) or (b) above).
- (d) Meetings of the Board may also be held at any time, without notice, in person or by telephone conference; provided, however, that a majority of the Employer Trustees and a majority of the Union Trustees consent thereto in writing.

**6.3 Quorum.** Four Employer Trustees and four Union Trustees shall constitute a quorum for the purpose of transacting business.

#### **6.4 Vote of Trustees.**

- (a) Except as otherwise provided in this Section 6.4, all actions of the Board shall be taken by either (1) a vote of two to zero, or (2) a vote of one and one abstention. The Employer Trustees, as a unit, shall have one vote, and the Union

Trustees, as a unit, shall have one vote. The Employer Trustees shall determine how they cast their vote on any matter, except as provided elsewhere in this Section 6.4, by a majority vote of the Employer Trustees present and attending the meeting. The Union Trustees shall determine how they cast their vote on any matter, except as provided elsewhere in this Section 6.4, by a majority vote of the Union Trustees present and attending the meeting.

(b) The vote of any absent Trustee may be cast in accordance with a written proxy delivered to any other Trustee present at the meeting of the Trustees (or a Committee meeting); provided that such authorization and proxies shall be valid only at the Trustee (or Committee) meeting immediately succeeding its execution.

(c) In addition to decisions made at meetings, each Trustee may also be polled with respect to an issue by the Executive Director or either Co-Chair (or any of their designees) either in writing (including e-mail) or by telephone without the necessity of having a meeting; provided however, that any action taken in a telephone poll must be consented to in writing (including e-mail) by each Trustee who voted for the action taken either before or as soon as practicable following the vote (but no later than thirty (30) days after the vote).

(d) In the event that any matter presented for decision by the Board cannot be decided due to a deadlock (as defined in Section 6.6(b)), the matter shall then be resolved by arbitration (as provided by Section 6.6).

**6.5 Minutes of Meetings.** The Board, Committee or the Executive Director (or their duly authorized designees) shall maintain minutes of all Board and Committee meetings, but such minutes need not be verbatim. Copies of such minutes shall be provided to all Trustees.

**6.6 Arbitration.**

(a) Whenever the Board is unable to decide a question during a meeting due to a deadlock among the Trustees (as defined in Section 6.6(b)), either Co-Chair shall submit the question for decision to such impartial arbitrator as the Board shall select (pursuant to the voting procedures contained in Section 6.4) or, if it is unable to agree on such selection within fifteen (15) business days after the deadlock arose, either Co-Chair or a majority of either the Employer Trustees or Union Trustees may petition the American Arbitration Association (hereinafter, the "AAA") for the appointment of an arbitrator pursuant to the Labor Rules of the AAA. If neither Co-Chair nor a majority of the Employer Trustees or Union Trustees petitions the AAA, then any two (2) Trustees may petition the United States District Court for the Southern District of New York for the appointment of an impartial umpire.

(b) A deadlock for purposes of this Agreement shall mean either:

(1) a majority of the Employer Trustees or a majority of the Union Trustees cannot agree upon the manner in which their unit should cast its vote and do not agree to abstain as a unit; or

(2) one unit of the Board votes for a motion and the other unit votes against it; or

(3) the inability to take an action with respect to an issue presented due to the lack of a necessary quorum at two successive meetings.

(c) The failure of any Trustee to attend the arbitration hearing as scheduled and noticed by the AAA or by the arbitrator shall not delay the arbitration, and the arbitrator is authorized to proceed to take evidence and issue his or her decision as though such Trustee were present.

(d) In the event that such arbitrator, having been selected, shall resign or for whatever reason shall fail or refuse to act within a reasonable time after his or her selection, the AAA shall be requested to appoint another arbitrator; provided, however, that should the AAA fail to act within fifteen (15) business days after the request, or should the Board be unable to agree on another arbitrator within fifteen (15) business days after the AAA is requested to act, an arbitrator shall be appointed by the United States District Court for the Southern District of New York upon the petition of any two (2) Employer Trustees or two (2) Union Trustees.

(e) The arbitrator, after hearings, of which all interested parties as stated in the submission shall have due notice and opportunity to be heard, shall promptly announce his or her award in writing to the Trustees and such award shall be final and binding on all parties concerned as though it was embodied in a resolution duly adopted by the unanimous vote of the Board.

(f) All hearings of the arbitrator shall take place in the City of New York unless otherwise specifically mutually agreed upon.

(g) All reasonable expenses of the arbitration (including, without limitation, the fees of the AAA, attorneys and the arbitrator) shall be paid from the Trust Fund.

## **ARTICLE VII**

### **ALLOCATION OF RESPONSIBILITIES**

#### **7.1 The Executive Director.**

(a) Where the Board has employed an Executive Director, the Executive Director shall have the responsibility and authority to control the day-to-day administration of the Trust Fund, subject to the terms of this Agreement, the Plan, any written agreement between the Board and the Executive Director, and any policies, procedures and other rules that may from time to time be established by the Board.

(b) Such responsibilities shall include, without limitation, the following:

(1) functions assigned to the Executive Director under the terms of this Agreement, the Plan, or any written agreement between the Board and the Executive Director;

(2) functions assigned to the Executive Director by the Board;

(3) determinations as to the eligibility for, and the amount of, benefits for Covered Employees (and their Beneficiaries), and the certification thereof to the Board;

(4) hiring of administrative, clerical, legal, actuarial, accounting, and other professional persons to provide necessary services to the Trust Fund and the Plan (with the advance approval of the Board);

(5) payment of any fees, taxes, expenses, charges or other costs incidental to the operation and management of the Trust Fund and the Plan;

(6) preparation and filing of all government and other reports required to be filed by the Plan and the Trust under ERISA or the Code (including, without limitation, the Plan's annual Form 5500 and Summary Annual Report, Summary Plan Descriptions, and Summaries of Material Modifications); and

(7) maintenance of all records of the Trust Fund and the Plan, other than those required to be maintained by Investment Managers, Custodians and other persons duly designated by the Board, and provision of regular reports to the Board (or its Committees).

## **7.2 The Board.**

(a) The Board shall have the authority and responsibility for the overall design and operation of the Plan and Trust Fund and the investment of the assets attributable thereto (except to the extent that such responsibility has been delegated by the Board to the Executive Director, a Custodian or an Investment Manager).

(b) Such responsibilities shall include, without limitation, the following:

(1) design of the Trust, including the right to amend, modify or terminate this Agreement at any time;

(2) design of the Plan, including the right to amend, modify or terminate such Plan (in whole or in part) at any time;

(3) maintenance of the qualification of the Plan, and the tax-exempt status of the Trust, under the Code;

(4) designation of fiduciaries of the Trust Fund and Plan (including, without limitation, the Executive Director, Investment Managers, Custodians, and members of the Administrative Committee, Investment Committee, Audit Committee and other Committees);

(5) retention of all accounting, actuarial, administrative, clerical, legal and other professionals to provide service to the Fund;

(6) exercise of those fiduciary functions provided for in the Plan, or this Agreement, or those necessary for the prudent operation or administration of the Plan (except such functions as are delegated to a Committee, the Executive Director, an Investment Manager or Custodian, or to other fiduciaries of the Trust or the Plan); and

(7) generally, exercise of those functions and responsibilities which the Board deems necessary and appropriate for the prudent operation and administration of the Plan or Trust, and the protection of Trust Assets, which functions have not been duly delegated to the Executive Director, a Committee or another fiduciary of the Plan or the Trust Fund.

(c) The Board may, by the adoption of a written resolution, delegate to any Committee or a specific Trustee or group of Trustees the authority to act on behalf of the Board to the extent, and within the time limitations set forth, in any said resolution. If said resolution delegates the right to take discretionary action to the Executive Director, a Committee or a specific Trustee or group of Trustees, then the action taken pursuant to said resolution shall constitute conclusive evidence of

the proper exercise of the discretion granted to the Executive Director, such Committee or a specific Trustee or group of Trustees.

### **7.3 Administrative Committee.**

(a) The Board shall appoint an Administrative Committee consisting of at least four (4) Trustees (or such other number of Trustees as the Board shall, in its sole discretion, determine), having an equal number of Employer Trustees and Union Trustees, who shall serve at the sole pleasure of the Employer Trustees and Union Trustees, respectively. Employer Trustee members of the Administrative Committee shall be appointed by the Employer Trustees, and Union Trustee members of the Administrative Committee shall be appointed by the Union Trustees. The members of the Administrative Committee shall select a Chairperson from their number.

(b) Subject to the actions of the Board and the provisions of the Plan, the functions of the Administrative Committee shall be to:

(1) establish procedures for the administration and operation of the Plan, including the acceptance and processing of applications for pension benefits;

(2) determine the eligibility of Covered Employees and Beneficiaries for retirement benefits, and the amount and form of payment of such benefits;

(3) calculate (or to authorize the Trust's Executive Director, staff, actuaries or other service providers to calculate) pension benefit amounts;

(4) review, and approve (or deny), appeals for pension payments, or other benefit claims, submitted by Covered Employees and Beneficiaries that have been denied by the Executive Director or appeals to review state domestic relations orders which have been determined by the Executive Director not to be qualified;

(5) prepare, approve and adopt the administrative expense and operating budget of the Fund office, including determining the salaries and fringe benefits of all Fund employees (other than the three highest paid employees of the Fund office, whose compensation and fringe benefits shall be fixed by the Board);

(6) adopt and administer a pension plan for the staff of the Fund and serve as the "named fiduciary" and "administrator" of such plan for purposes of ERISA;

(7) approve the attendance by, and reimburse the reasonable expenses of, individual Trustees at educational conferences or other meetings in accordance

with trustee travel and expense guidelines established from time to time by the Board;

(8) review, approve and pay all reasonable and necessary expenses for the establishment, operation and administration of the Trust and the Plan (including, without limitations, the payment of the clerical, administrative, legal, actuarial, accounting, and other professional expenses); and

(9) generally, exercise those functions and responsibilities which the Administrative Committee deems necessary and desirable for the prudent administration of the Plan or Trust, and to make recommendations to the Board with respect to such other matters as relate to the administration or operation of the Plan.

(c) The Administrative Committee shall endeavor to meet at least three (3) times per year, upon such notice as it may from time to time determine. A quorum of the Administrative Committee shall consist of at least two (2) Employer Trustees and two (2) Union Trustees who are members of the Administrative Committee. All decisions of a quorum shall be agreed to by either (1) a vote of two to zero, or (2) a vote of one and one abstention. The Employer Trustees, as a unit, shall have one vote, and the Union Trustees, as a unit, shall have one vote. The Employer Trustees shall determine how they cast their vote by a majority vote of the Employer Trustees who are members of the Administrative Committee and who are present and attending the meeting. The Union Trustees shall determine how they cast their vote by a majority vote of the Union Trustees who are members of the Administrative Committee and who are present and attending the meeting. In addition to decisions made at meetings, the Administrative Committee may also be polled either in writing (including by facsimile or electronic mail) or by telephone by the Executive Director or the Chairperson (or his or her designee) without the necessity of having a meeting, in which event, any action to be taken must be carried by the same vote as that required at a meeting of the Administrative Committee and, if polled by telephone, must be confirmed in writing by each member of the Administrative Committee who participated in the poll as soon as practicable following the vote (but no later than thirty (30) days after the vote). If a matter cannot be agreed upon due to failure to reach the required vote, it shall be referred for decision to the Board at its next meeting.

(d) All actions of the Administrative Committee shall be reported to the Board at its next meeting, and the Board shall ratify or repudiate such actions, or take such other action as the Board deems appropriate.

(e) The Administrative Committee shall refer all questions of interpretation and application of the Plan, and questions that may arise in connection with the

operation of the Plan, which it cannot resolve itself to the Board for final resolution.

(f) Any member of the Administrative Committee may resign by delivering his or her written resignation to the Board and to the other members of the Administrative Committee, and the Employer Trustees or Union Trustees, as applicable, thereafter shall have the right to appoint another Trustee in his or her place; provided, however, that there shall always be an equal number of Employer Trustees and Union Trustees appointed to such Committee.

#### **7.4 Investment Committee.**

(a) The Board shall appoint an Investment Committee consisting of at least six (6) Trustees (or such other number of Trustees as the Board shall, in its sole discretion, determine), having an equal number of Employer Trustees and Union Trustees, who shall serve at the sole pleasure of the Employer Trustees and Union Trustees, respectively. Employer Trustee members of the Investment Committee shall be appointed by the Employer Trustees, and Union Trustee members of the Investment Committee shall be appointed by the Union Trustees. The members of the Investment Committee shall select a Chairperson from among their number.

(b) Subject to the actions of the Board and the provisions of the Plan, the functions of the Investment Committee shall be to:

(1) formulate and coordinate general policies respecting the investment of the cash, Securities and Real Property or Interests in Real Property of the Fund, including the promulgation of investment directions, guidelines or objectives (as authorized by Section 8.7);

(2) develop a continuing and prudent overall investment strategy and financial policy for the Trust Fund;

(3) implement such policies as may be adopted by the Board concerning Trust investments;

(4) coordinate with the Custodian (and any sub-custodian) a reporting procedure between the Custodian (and any sub-custodian) and the Board (and its Investment Committee);

(5) recommend to the Board such Custodians, sub-custodians, Investment Managers and such other consultants to ensure that the cash, Securities and Real Property or Interests in Real Property of the Fund are invested prudently and suitably diversified, as well as to carry out the investment program;

(6) monitor and evaluate (using one or more professional investment evaluation firms, if necessary) the performance of such Custodians, sub-custodians, Investment Managers, insurance carriers, and other investment consultants and investment products in which Trust Fund assets are invested;

(7) where necessary, recommend to the Board that it terminate the services of any such Custodian, sub-custodian, Investment Manager, insurance carriers, and other investment consultant; and

(8) generally, exercise those functions and responsibilities which are prudent and appropriate for the supervision of the Trust Fund's investment program and the investment of Trust Fund assets.

(c) The Investment Committee shall endeavor to meet at least three (3) times per year, upon such notice as it may from time to time determine. A quorum of the Investment Committee shall consist of at least two (2) Employer Trustees and two (2) Union Trustees who are members of the Investment Committee. All decisions of a quorum shall be agreed to by either (1) a vote of two to zero, or (2) a vote of one and one abstention. The Employer Trustees, as a unit, shall have one vote, and the Union Trustees, as a unit, shall have one vote. The Employer Trustees shall determine how they cast their vote by a majority vote of the Employer Trustees who are members of the Investment Committee and who are present and attending the meeting. The Union Trustees shall determine how they cast their vote by a majority vote of the Union Trustees who are members of the Investment Committee and who are present and attending the meeting. In addition to decisions made at meetings, the Investment Committee may also be polled either in writing or by telephone by the Executive Director or the Chairperson (or his or her designee) without the necessity of having a meeting, in which event, any action to be taken must be carried by the same vote as that required at a meeting of the Investment Committee and, if polled by telephone, must be confirmed in writing by each member of the Investment Committee who participated in the poll as soon as practicable following the vote (but no later than thirty (30) days after the vote). If a matter cannot be agreed upon due to failure to reach the required vote, it shall be referred for decision to the Board at its next meeting.

(d) All actions of the Investment Committee shall be reported to the Board at its next meeting, and the Board shall ratify or repudiate such actions, or take such other action as the Board deems appropriate.

(e) Any member of the Investment Committee may resign by delivering his or her written resignation to the Board and to the other members of the Investment Committee, and the Employer Trustees or Union Trustees, as applicable, shall have the right to appoint another Trustee in his or her place; provided, however,

that there shall always be an equal number of Employer Trustees and Union Trustees appointed to such Committee.

#### **7.5 Audit Committee.**

(a) The Board shall appoint an Audit Committee consisting of at least six (6) Trustees (or such other number of Trustees as the Board shall, in its sole discretion, determine), having an equal number of Employer Trustees and Union Trustees, who shall serve at the sole pleasure of the Employer Trustees and Union Trustees, respectively. Employer Trustee members of the Audit Committee shall be appointed by the Employer Trustees, and Union Trustee members of the Audit Committee shall be appointed by the Union Trustees. The members of the Audit Committee shall select a Chairperson from their number.

(b) Subject to the action of the Board and the provisions of the Plan, the functions of the Audit Committee shall be to:

(1) monitor the actions of the Fund's internal and outside auditors and coordinate with the Fund's internal and outside auditors, including the establishment and carrying out of a reporting procedure between such auditors and the Audit Committee;

(2) develop a compliance audit program with respect to all matters related to Employer contributions to the Fund, and supervise the Fund's internal and outside auditors in conducting such compliance audits;

(3) develop procedures and guidelines with respect to the form and manner of the remittance or other reports Employers are required to file with the Fund;

(4) except where such determination is made by the Board, determine, in its sole and absolute discretion (or duly authorize the Executive Director to determine, in the Executive Director's sole and absolute discretion), whether an Employer has made a contribution or other payment to the Fund by mistake of fact or law, and whether such contribution or payment should be returned to the Employer (pursuant to Section 4.4);

(5) establish, in consultation with the Board, procedures with respect to all matters related to the determination and collection of delinquent Employer contributions (unless such function is delegated to another Committee), and take all actions permitted or required under such procedures;

(6) establish, in consultation with the Board, and carry out, procedures with respect to all matters related to the enforcement of the rules set forth in this

Agreement and in the Plan regarding Employer contributions to the Fund, and the collection of delinquent Employer contributions;

(7) recommend to the Board to terminate, on a prospective basis, the participation of a Contributing Employer in the Plan and Fund; and

(8) assess an Employer all reasonable costs and expenses (including, without limitation, all audit, accounting, and legal fees) incurred in collecting its contributions or other payments due to the Fund (in accordance with the provisions of Article IX).

(c) The Audit Committee shall endeavor to meet at least three (3) times per year, upon such notice as it may from time to time determine. A quorum of the Audit Committee shall consist of at least two (2) Employer Trustees and two (2) Union Trustees who are members of the Audit Committee. All decisions of a quorum shall be agreed to by either (1) a vote of two to zero, or (2) a vote of one and one abstention. The Employer Trustees, as a unit, shall have one vote, and the Union Trustees, as a unit, shall have one vote. The Employer Trustees shall determine how they cast their vote by a majority vote of the Employer Trustees who are members of the Audit Committee and who are present and attending the meeting. The Union Trustees shall determine how they cast their vote by a majority vote of the Union Trustees who are members of the Audit Committee and who are present and attending the meeting. In addition to decisions made at meetings, the Audit Committee may also be polled either in writing or by telephone by the Executive Director or the Chairperson (or his or her designee) without the necessity of having a meeting, in which event any action to be taken must be carried by the same vote as that required at a meeting of the Audit Committee and, if polled by telephone, must be confirmed in writing by each member of the Audit Committee who participated in the poll as soon as practicable following the vote (but no later than thirty (30) days after the vote). If a matter cannot be agreed upon due to failure to reach the required vote, it shall be referred for decision to the Board at its next meeting.

(d) All actions of the Audit Committee shall be reported to the Board at its next meeting, and the Board shall ratify or repudiate such actions, or take such other action as the Board deems appropriate.

(e) The Audit Committee shall refer all questions of interpretation and application of the Plan, and questions that may arise in connection with the operation of the Plan, which it cannot resolve itself to the Board for final resolution.

(f) Any member of the Audit Committee may resign by delivering his or her written resignation to the Board and to the other members of the Audit

Committee, and the Employer Trustees or Union Trustees, as applicable, thereafter shall have the right to appoint another Trustee in his or her place; provided, however, that there shall always be an equal number of Employer Trustees and Union Trustees appointed to such Committee.

## **ARTICLE VIII**

### **INVESTMENT MANAGERS**

#### **8.1 Appointment of Investment Managers.**

(a) In its sole and absolute discretion, the Board may, from time to time, by notice to the Custodian, appoint one or more Investment Managers to manage and invest (including the power to acquire and dispose of) all or a portion of the assets of the Trust Fund. Such appointments shall generally be made in consultation with the Investment Committee.

(b) In the event that more than one Investment Manager is appointed, the Board or the Investment Committee shall separately segregate, or request the Custodian or sub-custodian to segregate, each portion of the assets constituting the account to be managed by each respective Investment Manager into a separate Investment Manager Account.

(c) The Board or the Investment Committee may also supervise and direct the investment of any portion of the Trust Fund that is not subject to the management and control of an Investment Manager, by exercising any of the powers set forth in Section 5.5 with respect to the Securities or Real Property or Interests in Real Property of the Trust Fund so invested.

#### **8.2 Authorization.**

(a) Any appointment of an Investment Manager shall be authorized by the Board, and shall become effective as of the date specified by the Board or the Investment Committee. The Investment Manager shall also identify to the Board or the Investment Committee the person or persons authorized to give Instructions or directions to the Board on behalf of the Investment Manager.

(b) The Investment Manager shall have full discretion and authority, to the extent required, permitted or not prohibited by ERISA and other applicable law, to invest and reinvest the portion of Trust Fund assets allocated to it by the Board, without further notice, consent or approval of any party, except as expressly provided to the contrary in this Agreement or any agreement between the Board and the Investment Manager, and subject to any directions or guidelines as may be delivered from time to time to the Investment Manager by the Board (pursuant to Section 8.7).

(c) The duties, responsibilities and compensation of each Investment Manager shall be expressed in writing in a written agreement to be entered into and executed on behalf of the Board and by such Investment Manager.

(d) The Board or the Investment Committee shall meet periodically with any Investment Manager appointed hereby for the purpose of reviewing the activities of the Investment Manager, monitoring its investment performance (including the voting of any proxies that the Investment Manager has been delegated the right to vote), its compliance with any Investment Guidelines that may have been promulgated by the Board or Investment Committee (pursuant to Section 8.7).

**8.3 Acknowledgments.** The Board or the Investment Committee may require any Investment Manager to furnish it with a certificate acknowledging that it:

(a) is a fiduciary (within the meaning of Section 3(21) of ERISA) with respect to its Investment Manager Account; and

(b) complies with the requirements of an investment manager (as set forth in Section 3(38) of ERISA).

**8.4 Direction by Investment Manager.** Each Investment Manager shall have the exclusive authority to manage, acquire and dispose of any Securities or other property held in its Investment Manager Account and, subject to its written agreement with the Board and any Investment Guidelines, may exercise with respect to such Securities or other property all of the powers set forth in Section 5.5, except subsections (j) through (z) (unless the Board or the Investment Committee has explicitly consented in writing to the Investment Manager exercising the powers set forth in such subsections).

**8.5 Review by Board.** Notwithstanding anything to the contrary contained in this Agreement, neither the Board, the Investment Committee nor any Trustee shall be responsible or liable for any acts or omissions of any Investment Manager or be under any obligation to invest or otherwise manage any assets contained in an Investment Manager Account, except those assets over which it has specifically assumed investment management duties.

**8.6 Issuance of Orders.** Subject to the terms of the investment management agreement between the Board and each Investment Manager:

(a) Each Investment Manager shall have the power and authority, to be exercised in its sole discretion at any time and from time to time, to issue orders and Instructions for the purchase or sale of Securities held in its Investment Manager Account directly to a broker-dealer; and

(b) All transactions by an Investment Manager shall be made upon such terms and conditions, and from or through such principals and agents, as the Investment Manager shall direct (consistent with the provisions of ERISA).

**8.7 Investment Guidelines.** The investment powers of any Investment Manager may be subject to any general or specific investment directions or guidelines that from time to time may be delivered to it by the Board or the Investment Committee (in its sole discretion), expressing the investment objectives, restrictions and policies of the Board or the Investment Committee with respect to the Securities and other property contained in an Investment Manager Account. Notwithstanding the preceding sentence, the issuance of any specific investment directions or guidelines by the Board or the Investment Committee shall not in any manner be construed as an acceptance by the Board or Investment Committee of any investment management or supervisory powers in connection with Trust Fund assets managed by an Investment Manager (and neither the Board nor the Investment Committee shall, as a result of issuing such directions or guidelines, be liable for any acts or omissions of an Investment Manager with respect to such assets, or be under any obligation to invest or otherwise manage such assets).

**8.8 Proxies or Other Ancillary Rights.**

(a) The Board or the Investment Committee may delegate to an Investment Manager the sole right to exercise (as it deems prudent and solely in the interest of Covered Employees and Beneficiaries), any proxies, conversion privilege or subscription right, and any other right to make an investment decision with respect to the Investment Manager Account assets (including, without limitation, the voting of proxies and exercise of all other rights of shareholders appurtenant to Investment Manager Account assets) as from time to time the Investment Manager in its discretion deems prudent.

(b) Each Investment Manager to whom such right has been delegated shall issue to the Investment Committee a set of policy guidelines explaining the Investment Manager's positions and likely voting pattern pertaining to proxies.

(c) Such Investment Manager shall also issue a report to the Investment Committee, at least annually, indicating the proxies that were voted on the Trust Fund's behalf and an explanation as to why they were voted in such manner.

(d) Such Investment Manager shall also give the Custodian such instructions or directions as may be necessary, and thereupon execute and complete all such certificates, proxies, consents and other documents necessary or appropriate to effectuate any proxy voting powers or other ancillary rights delegated to it under this Agreement.

## ARTICLE IX

### PAYMENTS TO THE FUND

#### **9.1 Employer Contributions.**

(a) In order to carry out the purpose hereof, each Employer shall contribute to the Trust Fund the amount required by the applicable Collective Bargaining Agreements at any time in force and effect, and nothing in this Trust Agreement shall be deemed to change, alter or amend any of the terms or provisions of any such Collective Bargaining Agreements regarding the rate and amount of contributions except as may otherwise be provided in this Section 9.1.

(b) In addition, each Employer shall contribute to the Trust Fund on behalf of each employee whose exclusion from participation in the Fund is later determined by the Board, or a governmental agency or court or administrative tribunal, to violate the terms of the Plan or to result in the Trust Fund's failure to satisfy the requirements of the Code applicable to tax-qualified pension plans, including without limitation part-time employees on behalf of whom the Employer is required to make contributions under Section 410 of the Code and employees for whom the Employer has maintained a waiting period in violation of Section 1.12 of the Plan. Contributions shall be at the rate set forth in the Collective Bargaining Agreement for similarly situated employees commencing as of the first date on which contributions would have been required, but for the exclusion of participation.

(c) The rate and amount of contribution shall at all times be based solely on, and no more than, the scale wages (as defined in the Collective Bargaining Agreement) received by Covered Employees. The minimum contribution rate shall be 4% of scale wages and the maximum contribution rate shall be 15% of scale wages; provided that the Board shall review proposed contribution rates of less than 4% or greater than 15% and may approve variances in such minimum and maximum contribution rates, on a case-by-case basis, in its sole and absolute discretion.

**9.2 Effective Date of Employer Contributions.** All contributions shall be made effective as of the date specified in the applicable Collective Bargaining Agreements between the Union and the Employer, and said contributions shall continue to be paid as long as the Employer is so obligated pursuant to said Collective Bargaining Agreements.

**9.3 Mode of Payment** All contributions shall be made payable to "American Federation of Musicians and Employers' Pension Fund," or shall be paid in such other manner and form as may be prescribed by the Board.

#### **9.4 Default in Payment.**

(a) Employer contributions to the Trust Fund are due no later than:

(1) with respect to contributions due under any National Collective Bargaining Agreement, or any other Collective Bargaining Agreement that becomes effective before June 1, 2005:

(a) the due date for such contributions as set forth in the applicable Collective Bargaining Agreements, but no later than the last day of the month immediately following the calendar quarter in which the Covered Employee performed the services for which such contributions are due and payable to the Trust Fund; or

(b) if the Collective Bargaining Agreement does not specify a due date for Employer contributions to the Trust Fund, the last day of the month immediately following the month in which the Covered Employee performed the services for which such contributions are due and payable to the Trust Fund; or

(2) with respect to contributions due under any Collective Bargaining Agreement, other than a National Collective Bargaining Agreement, that becomes effective on or after June 1, 2005 (or that become effective earlier, but are renewed or extended effective on or after that date), the last day of the calendar month immediately following the calendar month in which the Covered Employee performed the services for which such contributions are due and payable to the Trust Fund; or

(3) notwithstanding anything in Section 9.4(a)(1) or (2) of this Trust Agreement to the contrary, with respect to contributions (i) that are due from an Employer that has an outstanding delinquency to the Fund at the time the contribution obligation arises, and (ii) on which the Board (in its sole and absolute discretion) has determined the Employer is at risk of defaulting, any date on or after the due date for the payment of the wages on which the contributions are due, as prescribed by the Board, on a case-by-case basis, in its sole and absolute discretion. The Board shall notify an Employer as soon as reasonably practicable following the Board's determination that the provisions of this Section 9.4(a)(3) will be invoked and applied to the Employer.

(b) In addition to any other enforcement remedies that may exist under this Agreement or any applicable Collective Bargaining Agreements, the Board or the Audit Committee is authorized and empowered to initiate whatever actions or proceedings the Trustees determine, in their sole discretion, to be proper and necessary for the enforcement of an Employer's contribution obligations to the Trust (including, but not limited to, proceedings at law or in equity, arbitration, mediation, other dispute resolution mechanisms and any other remedies that

generally would be available for the enforcement of said obligation to contribute to the Trust Fund). Venue for such actions or proceedings shall be in New York County, New York or, in the sole discretion of the Board or the Audit Committee, in any other location authorized by law.

(c) In the event that any Employer shall fail to make required Employer contributions to the Trust Fund when due, the Board may and is empowered, in its sole and absolute discretion, to terminate, on a prospective basis, the participation of the Employer in the Plan and Trust Fund, and the crediting of future service credit to Employees of such terminated Employer. Nothing in this Section 9.4(c) shall affect or otherwise modify any other rights of the Board or the Audit Committee (as may be set forth in this Agreement, the Plan or any Collective Bargaining Agreement, or as may be provided by applicable law) against such Employer for the collection of any delinquent Employer contributions to the Plan or Trust Fund (including, but not limited to, those rights and actions set forth in this Article).

(d) A delinquent Employer shall be liable for all costs and expenses incurred in effectuating its contributions or other payments due to the Trust Fund including but not limited to:

- (1) The employer's audit costs (as provided in Section 9.9(g));
- (2) The Trust Fund's audit costs as provided in Sections 9.4(e) and 9.9(f);
- (3) attorneys' fees;
- (4) court costs;
- (5) other costs and expenses attributable to the collection of such contributions or other payments; and
- (6) interest for every calendar year (or portion thereof) during which the delinquent contribution remained unpaid, calculated at the annual prime rate of interest quoted in The Wall Street Journal on the first business day of that calendar year, plus five percent, compounded monthly, or, if greater, any minimum interest charge established by the Trustees.

(e) In addition to the right to assess an Employer with audit costs provided in Section 9.9(f), the Board or the Audit Committee shall also have the right to assess an Employer with all reasonable costs and expenses (including, without limitation, all audit, accounting, and legal fees) attributable to the audit of the Employer's payroll, wage, and related business records with respect to the contributions which the Employer is obligated to make to the Fund; provided,

however, that the Board or the Audit Committee has determined that such Employer has been delinquent in remitting such contributions or payments to the Fund, and the aggregate amount of such delinquency, plus all accrued interest thereon and the cost of the audit, exceeds twenty percent (20%) of the actual audited amount determined by the Fund's auditors to be due the Fund.

**9.5 Enforcement Actions.** In addition to any other remedies to which the Board or the Audit Committee may be entitled hereunder, in the event that an Employer fails to make required contributions to the Trust Fund, in accordance with the terms and conditions of this Agreement and any rules or guidelines promulgated by the Board or the Audit Committee pursuant hereto (hereinafter collectively referred to as "Unpaid Contributions"), the Board may bring an action on behalf of the Trust Fund pursuant to Sections 502(g)(2) and 515 of ERISA to enforce the Employer's obligation to contribute to the Trust Fund.

**9.6 Payments Required by Court Award.** In any action under this Article IX in which a judgment is awarded by a court in favor of the Plan, the Trust, or the Board, the Employer shall pay to the Trust, in accordance with the court's award, the following amounts:

- (a) all Unpaid Contributions due and payable; plus
- (b) interest on such Unpaid Contributions (computed in accordance with Section 9.4(d)); plus
- (c) an amount equal to the greater of:
  - (1) the interest on the Unpaid Contributions (computed in accordance with Section 9.4(d)), or
  - (2) twenty percent (20%) of the Unpaid Contributions; plus
- (d) attorneys' fees, costs of the action, reasonable expenses attributable to any audit of the Employer's payroll, wage, and related business records with respect to Unpaid Contributions or payments, and any other related expenses; and
- (e) such other legal or equitable relief as the court deems appropriate.

**9.7 No Waiver of Other Rights.**

- (a) The failure of any Employer to make Employer contributions to the Trust Fund when due shall not relieve any other Employer of its obligations to make Employer contributions to said Trust.

(b) Nothing in this Article IX shall be construed as a waiver or limitation on the right of the Plan, the Trust, the Board, or the Audit Committee to enforce an Employer's contribution obligation in any other type of proceeding, and the provisions of this Article IX shall be without prejudice to the rights of the Union to enforce the provisions of any Collective Bargaining Agreement to which it is a party.

(c) The Board or the Audit Committee (or either of their duly authorized designees) shall have the exclusive authority to compromise or discharge Employer contributions to the Trust and any other Employer obligations that arise under this Trust Agreement.

### **9.8 Remittance Reports.**

(a) All contributions must be accompanied by a remittance report form that includes the name of the Employer, the name, address and phone number of the payor, if different (*e.g.*, payroll company, affiliated entity), as well as all Employee first and last names, addresses, social security numbers, type of engagement(s) (*e.g.*, name of applicable Collective Bargaining Agreement and indication of original use, new use or re-use of recording), description of engagement(s) (*e.g.*, title of show, commercial, jingle or song and location of engagement), all engagement date(s), "scale wage" and contribution amount(s) and such other information as the Board may elect to prescribe in the future. The Employer shall submit to the Fund separate remittance or other reports for each type of engagement.

(b) If contributions due the Fund are not accompanied by a remittance form containing all of the information set forth in subsection (a) above, the Fund may assess a fee from the Employer in its sole discretion in an amount that the Audit Committee prescribes for each day following the contribution due date for which the remittance report is incomplete or not received by the Fund.

### **9.9 Audits.**

(a) The Board or the Audit Committee (or either of their duly authorized designees) shall be authorized and empowered to initiate on behalf of the Fund whatever action(s) or proceedings(s) it determines to be proper and necessary, in its sole and absolute discretion, for the enforcement of an Employer's contribution obligations to the Trust (including, but not limited to, periodic audits or other forms of examination of an Employer's books and records, enforcement and/or collection proceedings).

(b) The Board or the Audit Committee (or either of their duly authorized designees) shall have the right to designate an accountant, attorney or other

representative of the Fund (a “Fund Representative”) periodically to examine, copy and audit, the Employer’s accounts, books and records at the Employer’s place of business (or other mutually agreed upon location) which the Fund Representative determines is necessary to confirm that the Employer has fully satisfied its obligations to contribute to the Fund under the Employer’s Collective Bargaining Agreement, this Agreement, the Plan, the rules and policies of the Trustees, or under applicable law. The Employer must permit such Fund Representative to conduct such periodic examinations and audits.

(c) The Fund Representative shall have the right to examine all of the Employer’s accounts, books and records including, without limitation, all check registers; payroll registers; general, production cost and other ledgers; royalty statements; vouchers; payroll tax deductions; calculations supporting “scale wage” determinations; IRS Forms 1096, 1099, W-2 and W-3; state employment reports; evidence of unemployment insurance contributions; insurance company reports; supporting cancelled checks; disability insurance premiums; certification of workers’ compensation coverage; personnel files and/or other documentation supporting employee job classifications; and any other items concerning the Employer’s payroll(s) or contributions to the Fund deemed necessary by such Fund Representative to determine the accuracy, completeness, and timeliness of the Employer’s contributions and payments to the Fund (all of which are hereinafter collectively referred to as “Records”). The Employer’s Records shall be made available at the Employer’s place of business at all reasonable times for examination, audit, and copying (at the Employer’s expense) by such Fund Representative. In addition, the Records of any affiliate, subsidiary, alter ego, joint venture, successor or related company of the Employer (including, where applicable, payroll companies) shall also be made available at all reasonable times for examination and audit by the Fund’s Representative, at the request of said Fund Representative.

(d) The Employer shall retain, for a minimum period of six (6) years or such longer period as may be required by applicable law (whichever is greater), all Records necessary for the conduct of the examination and audit contemplated in this Article IX.

(e) An Employer shall be entitled to thirty (30) days’ advance written notice of any audit to be conducted under this Article IX. If, however, exigent circumstances exist for conducting the audit on shorter notice, the Fund Representative may do so, provided that it gives the Employer advance written notice of such audit. Except where the Fund Representative has determined that exigent circumstances require otherwise, the Employer shall be permitted to adjourn the audit for up to ten (10) business days upon demonstrating to the Fund, no less than ten (10) business days’ in advance of the scheduled commencement of the audit, a legitimate business need for such adjournment.

(f) In the event that the Fund Representative has provided proper and timely notice of the audit to the affected Employer in accordance with Section 9.9(e) above, but the Employer nonetheless fails to produce the Records necessary for an audit as set forth in this Article IX, and the Fund brings and prevails in a legal action against said Employer to obtain an audit of said Employer's Records, said Employer shall be obligated to pay the reasonable costs and attorneys' fees incurred in pursuing said action, together with the full cost of such audit (without regard to any of the limitations or other conditions on the amount that can be assessed against such Employer set forth in Section 9.4(e)). In any such action, the affected Employer consents to jurisdiction and venue in the Federal District Court for the Southern District of New York.

(g) The Employer shall bear all of its own costs of the audit.

## ARTICLE X

### **AMENDMENT; TERMINATION; AND TRANSFER OF ASSETS**

**10.1 Amendment.** This Agreement and the Plan may be amended, at any time and in any manner, by a vote of the Board (in the manner prescribed in Section 6.4), and the provisions of any such amendment may be made applicable to the Plan or the Trust Fund as constituted at the time of such amendment and to any part of the Trust Fund subsequently acquired, as well as to the Executive Director, all Trustees, all Contributing Employers, any Investment Manager, or Custodian, and all others whosoever; provided that the amendment:

- (a) is consistent with the purposes for which the Fund was established; and
- (b) will not cause the Plan to be disqualified under Section 401(a), or the Trust to lose its tax-exemption under Section 501(a), of the Code.

**10.2 Limitation of Amendments.** No amendment shall be made to this Trust Agreement or the Plan which shall divert the Fund to any purpose other than that of providing pension or related benefits or result in the return or diversion of any part of the Fund to any of the Contributing Employers except as otherwise permitted by ERISA.

### **10.3 Termination.**

(a) This Agreement, and the Trust Fund established hereunder, may be terminated:

(1) at any time, by a vote of the Board (in the manner prescribed in Section 6.4); or

(2) by an instrument in writing duly executed by the Union and by Employers which, in the aggregate, were responsible for 50% or more of the contributions paid to the Trust Fund by Employers during the last complete six (6) month period ended June 30 or December 31 immediately preceding the submission of such instrument; or

(3) automatically, in the event that the obligation of all Employers to make contributions to the Trust Fund shall terminate or there shall be no assets remaining in the Trust Fund.

(4) In the event of the termination of the Trust, the Board shall apply the assets of the Trust to pay or to provide for the payment of any and all obligations of the Trust and distribute or apply any remaining surplus in a manner consistent,

in their opinion, with this Agreement, the Plan, ERISA, the Code and any other applicable law; provided, however, that no part of the corpus or income of the Trust Fund shall be used for or diverted to purposes other than for the exclusive benefit of the Covered Employees (except as otherwise provided in Section 4.4); the payment of administrative expenses of the Trust Fund, or for other payments in accordance with the provisions of this Trust Agreement. Under no circumstances shall any portion of the corpus or income of the Trust Fund, directly or indirectly, revert or accrue to the benefit of any Employer or the Union except as otherwise permitted by ERISA.

(5) Upon termination of the Trust, the Board shall forthwith notify all necessary parties, and the Board shall continue to act as Trustees for the purpose of concluding the affairs of the Trust. The Board may take any action with regard to insurance policies or group contracts that may be required by the insurance carrier and which the Trustees, in their discretion, may deem appropriate.

#### **10.4 Transfer of Assets.**

(a) The Board may issue Instructions from time to time directing that all or a portion of the assets of the Trust Fund shall be transferred to another trust established and maintained for the custody or investment of assets of the Trust Fund.

(b) Nothing herein contained shall be deemed to prohibit the Board, in its sole and absolute discretion, from transferring any assets of the Fund to another pension fund established or maintained by any Contributing Employer for employees or former employees of the Contributing Employer who were participants in the Plan on such terms and under such conditions as the Board may determine; provided, however, that, in the case of any merger or consolidation with, or transfer of assets and liabilities to, any other pension plan or trust, provisions shall be made so that each Covered Employee affected thereby on the date thereof would (as if the Plan or Trust then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit that he or she would have been entitled to receive immediately prior to the merger, consolidation or transfer (as if the Plan or Trust then terminated).

(c) To the extent permitted by applicable law, and in accordance with the terms of the Plan and applicable law, the Executive Director shall direct the transfer of assets of the Fund directly to another retirement fund established or maintained by an employer in which an employee or former employee of a Contributing Employer who was a participant in the Plan participates, or to an individual retirement account established or maintained by a former Plan participant (or his

or her spousal beneficiary), pursuant to the written authorization of such participant (or his or her spousal beneficiary).

## ARTICLE XI

### ACCOUNTS OF THE BOARD

**11.1 Board to Maintain Trust Accounts.** Unless otherwise delegated to the Executive Director, Custodian, sub-custodian, Fund accountant, or another entity or person, the Board shall:

- (a) Act as a master recordkeeper for the Plan and Trust Fund, and its records shall constitute the official records of the Plan and Trust Fund for all purposes;
- (b) Maintain true, accurate and detailed books of account and records of all their transactions, which shall be open to the inspection of each Trustee, each Employer and the Union at the principal office of the Trust Fund at all reasonable times, and which shall be examined at least annually by a certified public accountant selected by the Board; and
- (c) Maintain such information as will enable the Board to determine the fair market value of each Security, and the aggregate fair market value of all other assets of the Trust.

**11.2 Valuation.** For all purposes of this Agreement (including, without limitation, the actuarial valuation of the Plan or an Investment Manager Account, and any accounts as hereinabove provided), all Securities and other property on any business day shall be valued at fair market value, computed in accordance with such commercially acceptable valuation method or methods determined by the Board (or, in the Board's discretion, the Custodian), with prudence and in good faith, to reflect their current fair market value.

## ARTICLE XII

### MISCELLANEOUS

**12.1 Situs.** The Board and the Fund shall have and maintain a principal office in the City of New York.

**12.2 Choice of Law.** This Agreement and the Trust Fund created hereby shall be construed, regulated, enforced and administered in accordance with the internal laws of the State of New York applicable to contracts made and to be performed within the County and State of New York (without regard to any conflict of laws provisions), to the extent that such laws are not preempted by the provisions of ERISA (or any other applicable laws of the United States).

**12.3 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall be considered the same instrument. The signature of a party on any counterpart shall be sufficient evidence of his or her execution thereof.

**12.4 Titles; Plurals; and Gender.** Titles, headings, and subheadings for sections and paragraphs are inserted for the convenience of reference only, and this Agreement shall not be construed by reference to them. Wherever required by context, the singular of any word used in this Agreement shall include the plural and the plural may be read in the singular. Words used in the masculine shall be read and construed in the feminine where they would so apply.

**12.5 Service of Process.** The Trustees are hereby designated as agents for service of legal process on the Trust or the Plan.

**12.6 Validity of Trustees' Accounts and Instruments.** No person, partnership, corporation or association dealing with the Board shall be obliged to see to the application of any funds or property of the Trust, to see that the terms of this Agreement and Declaration of Trust have been complied with, or be obliged to inquire into the necessity or expediency of any act of the Board. Every Certificate or other instrument executed by the Co-Chairs shall be conclusive in favor of any person, partnership, corporation or association relying thereon that:

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

(b) said instrument was effected in accordance with the terms and conditions of this Agreement; and

(c) the Co-Chairs were duly authorized and empowered to execute such instrument.

**12.7 Definitions.** All words and phrases defined in the Plan shall have the same meaning in this Agreement, except as otherwise expressly provided herein.

**12.8 Notices.** Unless otherwise specified herein, all notices, instructions and advice with respect to Securities transactions, or any other matters contemplated by this Agreement, shall be deemed duly given to the Board when deposited in first-class mail, hand delivered, or transmitted by facsimile or electronic mail, addressed as follows:

Board of Trustees  
American Federation of Musicians  
and Employers' Pension Fund  
One Penn Plaza, Suite 3115  
New York, New York 10119

or to such other address as the Board shall subsequently designate. Any notice or other communication shall be deemed to have been given to, or received by, the Board as of the date on which it is personally or electronically delivered or, if mailed, on the first (1st) business day after the date of the postmark applied by the United States Postal Service.

**12.9 Severability.** If any one or more of the covenants, agreements, provisions or terms of this Agreement (or any amendment hereto) shall be held contrary to any provision of law, or shall for any reason whatsoever be held invalid, then such covenants, agreements, provisions or terms (or amendments) shall:

- (a) be enforced only to the extent not contrary to law or invalid;
- (b) be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement; and
- (c) shall in no way affect the validity or enforceability of the other provisions of this Agreement or the rights of the parties hereto.

**12.10 Legal Compliance.** The Board, Executive Director, each Trustee, each Committee, the Custodian and each Investment Manager shall carry out its respective duties and responsibilities under this Agreement in accordance with, and be limited in the exercise of its rights and obligations by, the provisions of ERISA, the Code and other applicable law.

**12.11 Successor Provisions of Law.** Any references to a section of ERISA or the Code, or to any regulations or administrative pronouncements thereunder, shall be deemed to include a reference to any successor provision of ERISA or the Code (or of any successor federal law) or to any successor regulations or administrative pronouncements thereunder.

**12.12 Entire Agreement.** This Agreement sets forth the entire agreement of the parties hereto with respect to the subject matter hereof, is intended to be the complete and exclusive statement of the terms hereof, and may not be modified or amended except pursuant to the procedure set forth in Section 10.1.

**12.13 Construction.** Anything in this Agreement, or any amendment hereof, to the contrary notwithstanding, no provision of this Agreement shall be construed so as to violate the requirements of ERISA, the Code, or other applicable law.

**12.14 Inurement.** This Agreement shall inure to the benefit of the Board and its successors and assigns, and the Covered Employees (or their Beneficiaries).

**12.15 Rights In Fund.** No Employee, or other person, or group of persons, nor any organization (other than the Board), nor any person claiming through them, shall have any right, title or interest in any of the income or property of any character received or held by or for the account of the Fund (by reason of having been named a beneficiary or otherwise), and no person shall have any right to any benefit provided by the Plan, nor shall any person be entitled to any payment or other equity in the assets of the Fund unless and until the Board determines that he or she fulfills all the requirements for a benefit in accordance with the specific provisions of the Plan.

**12.16 Trust Grants No Interest to Employees.** Neither the creation of this Fund nor anything contained in this Agreement or the Plan shall be construed as giving any Covered Employee entitled to benefits hereunder or under the Plan any right to be continued in the employ of any Contributing Employer or any equity or other interest in the assets of the Fund, except as set forth in the Plan.

**12.17 Duration of Agreement.** This Agreement shall continue in effect without limit as to time; subject, however, to the provisions of this Agreement relating to amendment, modification and termination thereof set forth in Article X.

**12.18 Interpretation of Agreement.** Should any provision of this Agreement require interpretation or construction, it is agreed by the parties that

the court, administrative body or other entity interpreting or construing this Agreement shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that all parties, by their respective representatives and agents, have fully participated in the preparation of all provisions of this Agreement.

## **ARTICLE XIII**

### **WITHDRAWAL LIABILITY**

#### **13.1 In General.**

Each Employer shall pay to the Fund all amounts due as withdrawal liability resulting from a partial or complete withdrawal from the Fund in accordance with ERISA, as amended by the Multiemployer Pension Plan Amendments Act of 1980 and as it may be subsequently amended. The Trustees shall have full authority to adopt rules and regulations governing the determination and payment of withdrawal liability, consistent with the statute and any governmental regulations promulgated under it, and such rules and regulations adopted by the Trustees shall be binding on all Employers.

**IN WITNESS WHEREOF**, the undersigned do hereby cause this instrument to be executed as of the day and year first above written for and on behalf of all Contributing Employers or the Union (as the case may be) and as Trustees of the Fund.

WE HEREBY AGREE to act as Trustees in accordance with the terms and conditions of this Agreement and Declaration of Trust. By our signatures below, we hereby signify and acknowledge that we have read the foregoing instrument, fully understand the contents thereof and agree to comply with all of its terms and provisions.

EMPLOYER TRUSTEES (for and on behalf of all Contributing Employers, and as Employer Trustees of the Fund):

/s/ Irving Cheskin  
IRVING W. CHESKIN

/s/ J. Nicholas Counter III  
J. NICHOLAS COUNTER, III

/s/ Arnie Kaplan  
ARNIE KAPLAN

/s/ JoAnn Kessler  
JOANN KESSLER

/s/ Marion Preston  
MARION PRESTON

/s/ Alan H. Raphael  
ALAN H. RAPHAEL

/s/ Jeffrey Ruthizer  
JEFFREY RUTHIZER

/s/ Norman K. Samnick  
NORMAN K. SAMNICK

/s/ Harriet Slaughter  
HARRIET SLAUGHTER

UNION TRUSTEES (for and on behalf of the Union, and as Union Trustees of the Fund):

/s/ Harold Bradley  
HAROLD BRADLEY

/s/ Hal Espinoza  
HAL ESPINOZA

/s/ William L. Foster  
WILLIAM L. FOSTER

/s/ Thomas F. Lee  
THOMAS F. LEE

/s/ David Lennon  
DAVID LENNON

/s/ William Moriarity  
WILLIAM MORIARITY

/s/ Melinda Wagner  
MELINDA WAGNER

/s/ Ed Ward  
ED WARD

/s/ Phil Yao  
PHIL YAO

**AMENDMENT NUMBER ONE TO THE  
AGREEMENT AND DECLARATION OF TRUST ESTABLISHING  
THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS'  
PENSION FUND**

**(As Amended and Restated Effective as of April 1, 2005)**

**WHEREAS**, the Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") adopted the Agreement and Declaration of Trust Establishing the American Federation of Musicians and Employers' Pension Fund, as amended and restated effective as of April 1, 2005 (the "Trust Agreement"); and

**WHEREAS**, pursuant to Article X, Section 10.1 of the Trust Agreement, the Board reserves the right to amend the Trust Agreement at any time; and

**WHEREAS**, the Board, at its May 23, 2006 meeting, decided to amend the Trust Agreement in the manner set forth herein.

**NOW, THEREFORE**, Section 9.4(d)(6) of the Trust Agreement is hereby amended, effective July 1, 2006, to read as follows:

interest for every calendar year (or portion thereof) during which the delinquent contribution remained unpaid, calculated (and compounded monthly) at the greater of (i) the rate of 7.5%, or (ii) the annual prime rate of interest quoted in The Wall Street Journal on the first business day of that calendar year plus two percent, or, for interest that accrues before July 1, 2006, such prime rate plus five percent; or, if greater, the minimum interest charge (if any) established by the Trustees.

**IN WITNESS WHEREOF**, Board has executed this Amendment on this 20th day of September, 2006.

By: /s/ Norman K. Samnick

By: /s/ Thomas F. Lee

By: /s/ JoAnn Kessler

By: /s/ Hal Espinosa

By: /s/ Jeff Ruthizer

By: /s/ Melinda Wagner

By: /s/ Lovie Smith-Schenk

By: /s/ Philip Yao

By: /s/ Irving W. Cheskin

By: /s/ William Foster

By: /s/ Alan H. Raphael

By: /s/ Marion Preston

By: /s/ Arnie Kaplan

By: /s/ Harold Ray Bradley

By: /s/ Harriet Slaughter

By: /s/ David Lennon

By: /s/ J. Nicholas Counter

By: /s/ Gary Matts

**AMENDMENT NUMBER TWO TO THE**  
**AGREEMENT AND DECLARATION OF TRUST ESTABLISHING**  
**THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS'**  
**PENSION FUND**  
**(As Amended and Restated Effective as of April 1, 2005)**

**WHEREAS**, the Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") adopted the Agreement and Declaration of Trust Establishing the American Federation of Musicians and Employers' Pension Fund, as amended and restated effective as of April 1, 2005 (the "Trust Agreement"); and

**WHEREAS**, pursuant to Article X, Section 10.1 of the Trust Agreement, the Board reserves the right to amend the Trust Agreement at any time; and

**WHEREAS**, the Board desires to amend the Trust Agreement in the manner set forth herein.

**NOW, THEREFORE**, the Trust Agreement is hereby amended, effective June 1, 2007, to read as follows:

1. **Section 6.2 Calling of Meetings**, is amended by deleting the existing text in its entirety and replacing it with the following:

(a) The Board shall endeavor to meet at least three (3) times per year, and at such other times as the Board may reasonably decide. In addition, (i) either Co-Chair may call a special meeting of the Board, at any time, by giving at least five (5) business days advance written (including e-mail) notice of the time and place thereof to the other Co-Chair and all other Trustees; and (ii) the Co-Chairs may together call a special meeting of the Board at any time upon written (including e-mail) notice in the event that they determine, in their discretion, that exigent circumstances so require.

(b) Any three (3) Employer Trustees and three (3) Union Trustees may call a meeting of the Trustees, at any time, by giving at least ten (10) business days advance written (including e-mail) notice of the time and place thereof to the Co-Chairs and to all other Trustees.

(c) Meetings of the Board may be held at any time by telephone conference with proper notice (as prescribed by either paragraph (a) or (b) above).

(d) Meetings of the Board may also be held at any time, without notice, in person or by telephone conference; provided, however, that a majority of the Employer Trustees and a majority of the Union Trustees consent thereto in writing (including e-mail).

2. **Section 7.3 Administrative Committee**, is amended by adding the following after the first sentence thereof:

In addition, a special meeting may be called (i) by either Co-Chair of the Board by giving at least five (5) business days advance written (including email) notice of the time and place thereof to the members of the Administrative Committee or (ii) by both Co-Chairs of the Board upon written (including e-mail) notice in the event that they determine in their discretion that exigent circumstances so require.

3. **Section 7.4 Investment Committee**, is amended by adding the following after the first sentence thereof:

In addition, a special meeting may be called (i) by either Co-Chair of the Board by giving at least five (5) business days advance written (including email) notice of the time and place thereof to the members of the Investment Committee or (ii) by both Co-Chairs of the Board upon written (including e-mail) notice in the event that they determine in their discretion that exigent circumstances so require.

4. **Section 7.5 Audit Committee**, is amended by adding the following after the first sentence thereof:

In addition, a special meeting may be called (i) by either Co-Chair of the Board by giving at least five (5) business days advance written (including email) notice of the time and place thereof to the members of the Audit Committee or (ii) by both Co-Chairs of the Board upon written (including e-mail) notice in the event that they determine in their discretion that exigent circumstances so require.

**IN WITNESS. WHEREOF**, the Board has executed this Amendment on this 31st day of  
**May 2007**

/s/ Norman K. Samnick  
Norman K. Samnick, Co-Chairperson

/s/ Thomas F. Lee  
Thomas F. Lee, Co-Chairperson

/s/ Irving W. Cheskin  
Irving Cheskin

/s/ Harold Ray Bradley  
Harold Bradley

/s/ J. Nicholas Counter III  
J. Nicholas Counter, III

/s/ Hal Espinosa  
Hal Espinosa

/s/ Arnie Kaplan  
Arnie Kaplan

/s/ William L. Foster  
William L. Foster

/s/ JoAnn Kessler  
JoAnn Kessler

/s/ Mary Landolfi  
Mary Landolfi

/s/ Marion Preston  
Marion Preston

/s/ Gary Matts  
Gary Matts

/s/ Jeffrey Ruthizer  
Jeff Ruthizer

/s/ Lovie Smith-Schenk  
Lovie Smith-Schenk

/s/ Alan H. Raphael  
Alan H. Raphael

/s/ Melinda Wagner  
Melinda Wagner

/s/ Harriet Slaughter  
Harriett Slaughter

/s/ Philip Yao  
Phil Yao

**AMENDMENT NUMBER THREE TO THE**  
**AGREEMENT AND DECLARATION OF TRUST ESTABLISHING**  
**THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS'**  
**PENSION FUND**  
**(As Amended and Restated Effective as of April 1, 2005)**

WHEREAS, the Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") adopted the Agreement and Declaration of Trust Establishing the American Federation of Musicians and Employers' Pension Fund, as amended and restated effective as of April 1, 2005 (the "Trust Agreement"); and

WHEREAS, pursuant to Article X, Section 10.1 of the Trust Agreement, the Board reserves the right to amend the Trust Agreement at any time; and

WHEREAS, the Board now wishes to amend the Trust Agreement in the manner set forth herein.

NOW, THEREFORE, Section 9.1(c) of the Trust Agreement is hereby amended, effective as of the amendment and restatement date, to read as follows:

(c) The rate and amount of contribution shall at all times be based solely on, and no more than, the scale wages (as defined in the Collective Bargaining Agreement) earned by Covered Employees. The minimum contribution rate shall be 4% of scale wages and the maximum contribution rate shall be 15% of scale wages; provided that the Board shall review proposed contribution rates of less than 4% or greater than 15% and may approve variances in such minimum and maximum contribution rates, on a case-by-case basis, in its sole and absolute discretion.

**IN WITNESS WHEREOF**, the Board has executed this Amendment on this 29th day of May, 2008.

By: /s/ Thomas F. Lee  
Thomas F. Lee, Co-Chair

By: /s/ Norman K. Samnick  
Norman K. Samnick, Co-Chair

**AMENDMENT NUMBER FOUR TO THE**  
**AGREEMENT AND DECLARATION OF TRUST ESTABLISHING**  
**THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS'**  
**PENSION FUND**  
**(As Amended and Restated Effective as of April 1, 2005)**

**WHEREAS**, the Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") adopted the Agreement and Declaration of Trust Establishing the American Federation of Musicians and Employers' Pension Fund, as amended and restated effective as of April 1, 2005 (the "Trust Agreement"); and

**WHEREAS**, pursuant to Article X, Section 10.1 of the Trust Agreement, the Board reserves the right to amend the Trust Agreement at any time; and

**WHEREAS**, on October 14, 2009, the Board adopted a resolution describing changes in a collective bargaining agreement that would result in the collective bargaining agreement and employer being unacceptable to the Board; and

**WHEREAS**, the Board now wishes to amend the Trust Agreement to formally incorporate the terms of the resolution;

**NOW, THEREFORE**, Section 2.4 of the Trust Agreement (Participation by Contributing Employers) is amended to read as follows, effective October 15, 2009:

"(a) Any Employer may participate in the Trust and the Plan by:

(1) Executing a copy of a Collective Bargaining Agreement, or otherwise establishing a consistent pattern of contributing to the Trust Fund pursuant to a Collective Bargaining Agreement;

(2) Designating a date on which such participation shall become effective;

(3) Designating the categories of employment and its Covered Employees for participation in the Plan; and

(4) Acceptance by the Board of the participation by such Employer in the Plan and Trust.

(b) Except as otherwise provided by the Board, an Employer and a Collective Bargaining Agreement is not acceptable to the Board in the event that: (i) in the case of a Collective Bargaining Agreement the terms of which were in effect (by agreement or operation of law) on October 15, 2009, the effective contribution rate applicable to any period of that Collective Bargaining Agreement is reduced (by agreement or otherwise, on or after October 16, 2009); or (ii) in the case of any future extension of or successor to any Collective Bargaining Agreement the terms of which were in effect (by agreement or operation of law) on October 15, 2009, the effective contribution rate is reduced to a rate that is lower than the effective contribution rate in effect on the last day of the expiring Collective Bargaining Agreement (based on the terms of the Collective Bargaining Agreement as they existed on October 15, 2009)."

**IN WITNESS WHEREOF**, the Board has executed this Amendment on this 24th day of February, 2010

By: /s/ Thomas F. Lee  
Thomas F. Lee, Co-Chair

By: /s/ Alan H. Raphael  
Alan H. Raphael, Co-Chair

**AMENDMENT NUMBER FIVE TO THE  
AGREEMENT AND DECLARATION OF TRUST ESTABLISHING  
THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS'  
PENSION FUND**

**(As Amended and Restated Effective as of April 1, 2005)**

**WHEREAS**, the Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") adopted the Agreement and Declaration of Trust Establishing the American Federation of Musicians and Employers' Pension Fund, as amended and restated effective as of April 1, 2005 (the "Trust Agreement"); and

**WHEREAS**, pursuant to Article X, Section 10.1 of the Trust Agreement, the Board reserves the right to amend the Trust Agreement at any time; and

**WHEREAS**, the Board has agreed to amend the Trust Agreement in the manner set forth herein and has delegated to the undersigned the authority to execute this Amendment.

**NOW, THEREFORE**, the Trust Agreement is hereby amended to read as follows, effective as of the date of adoption:

1. Section 6.1 (Officers) is amended to read as follows:

"(a) There shall be two (2) Co-Chairs of the Board, one of whom shall be the duly authorized President of the Union (or designated by the majority vote of those Union Trustees then in office, if the duly authorized President of the Union is not a Trustee), and the other of whom shall be designated by the majority vote of those Employer Trustees then in office.

(b) The term of such officers shall commence on the date of their election and continue until their successors are elected."

2. Section 7.3 (Administrative Committee) is amended as follows:

a. Subsection (a) is amended to read as follows:

"Employer Trustee members of the Administrative Committee shall be appointed by the Employer Co-Chair of the Board, and Union Trustee members of the Administrative Committee shall be appointed

by the Union Co-Chair of the Board. The members of the Administrative Committee shall select a Chairperson from their number.”

- b. Subsection (f) is amended to read as follows:

“Any member of the Administrative Committee may resign by delivering his or her written resignation to the Board and to the other members of the Administrative Committee, and another Trustee shall be appointed in his or her place in the manner set forth in subsection (a) above; provided, however, that there shall always be an equal number of Employer Trustees and Union Trustees appointed to such Committee (except in situations in which a vacancy is pending and waiting to be filled).”

3. Section 7.4(a) (Investment Committee) is amended as follows:

- a. Subsection (a) is amended to read as follows:

“Employer Trustee members of the Investment Committee shall be appointed by the Employer Co-Chair of the Board, and Union Trustee members of the Investment Committee shall be appointed by the Union Co-Chair of the Board. There shall be two (2) Co-Chairs of the Investment Committee, one of whom shall be designated by the majority vote of the Employer Trustee members of the Investment Committee and one of whom shall be appointed by the Union Co-Chair of the Board.”

- b. Subsection (e) is amended to read as follows:

“Any member of the Investment Committee may resign by delivering his or her written resignation to the Board and to the other members of the Investment Committee, and another Trustee shall be appointed in his or her place in the manner set forth in subsection (a) above; provided, however, that there shall always be an equal number of Employer Trustees and Union Trustees appointed to such Committee (except in situations in which a vacancy is pending and waiting to be filled).”

4. Section 7.5(a) (Audit Committee) is amended as follows:

- a. Subsection (a) is amended to read as follows:

“Employer Trustee members of the Audit Committee shall be appointed by the Employer Co-Chair of the Board, and Union Trustee members of the Audit Committee shall be appointed by the Union Co-Chair of the Board. The members of the Audit Committee shall select a Chairperson from their number.”

b. Subsection (f) is amended to read as follows:

"Any member of the Audit Committee may resign by delivering his or her written resignation to the Board and to the other members of the Audit Committee, and another Trustee shall be appointed in his or her place in the manner set forth in subsection (a) above; provided, however, that there shall always be an equal number of Employer Trustees and Union Trustees appointed to such Committee (except in situations in which a vacancy is pending and waiting to be filled)."

5. The first two lines of Section 7.4(b) are amended to read as follows:

"Subject to the actions of the Board and the provisions of the Investment Policy Statement and the Plan, the functions of the Investment Committee shall be to:"

6. The amendments to Sections 7.3, 7.4 and 7.5 of the Trust Agreement made by Amendment Number 2 to the Trust Agreement shall be moved to immediately after the first sentence of Sections 7.3(c), 7.4(c) and 7.5(c), respectively.

7. A new Section 9.10 shall be added to read as follows:

**Applicability of Article IX to Statutory Employer Surcharge**

For purposes of Section 9.3, 9.4, 9.5, 9.6, 9.7 and 9.9, the terms "contribution," "contributions", and "Unpaid Contributions" shall include employer surcharges required under Section 432(e)(7) of the Code.

\*

\*

IN WITNESS WHEREOF, the undersigned have executed this Amendment on this 19th day of May 2010.

By: /s/ Thomas F. Lee  
Thomas F. Lee, Co-Chair

By: /s/ Alan H. Raphael  
Alan H. Raphael, Co-Chair

**AMENDMENT NUMBER SIX TO THE**  
**AGREEMENT AND DECLARATION OF TRUST ESTABLISHING**  
**THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS'**  
**PENSION FUND**  
**(As Amended and Restated Effective as of April 1, 2005)**

**WHEREAS**, the Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") adopted the Agreement and Declaration of Trust Establishing the American Federation of Musicians and Employers' Pension Fund, as amended and restated effective as of April 1, 2005 (the "Trust Agreement"); and

**WHEREAS**, pursuant to Article X, Section 10.1 of the Trust Agreement, the Board reserves the right to amend the Trust Agreement at any time; and

**WHEREAS**, the Board has agreed to amend the Trust Agreement to clarify the definition of Employer in Section 1.13 and to conform the provisions of Article VIII with the Investment Policy Statement adopted by the Board effective May 19, 2010, and has delegated to the undersigned the authority to execute this Amendment.

**NOW, THEREFORE**, the Trust Agreement is hereby amended to read as follows, effective as of the date of adoption:

1. Section 1.13 (Employer) is amended to read as follows, effective as of the April 1, 2005 restatement date:

**1.13 "Employer", "Employers" or "Contributing Employers"** shall mean any employer acceptable to the Board (through Board approval or otherwise in accordance with procedures it establishes) that heretofore or hereafter is required or otherwise undertakes to contribute to the Plan and/or the Trust Fund on behalf of its Covered Employees pursuant to a Collective Bargaining Agreement, including (without limitation) an employer that is no longer obligated to contribute to the Plan and/or Trust Fund with respect to all periods of time during which such employer had such an obligation. The term "Employer", "Employers" or "Contributing Employers" shall not include unincorporated self-employed

persons or sole proprietorships with no other employees, or partnerships that have no employees other than partners.

2. Sections 8.1 and 8.2 of Article VIII (INVESTMENT MANAGERS) are amended to read as follows, effective May 19, 2010:

**8.1 Appointment of Investment Managers.**

(a) In its sole and absolute discretion, the Board or the Investment Committee may, from time to time, appoint one or more Investment Managers to manage and invest (including the power to acquire and dispose of) all or a portion of the assets of the Trust Fund. In the event that more than one Investment Manager is appointed, the Board or the Investment Committee shall separately segregate, or request the Custodian or sub-custodian to segregate, each portion of the assets constituting the account to be managed by each respective Investment Manager into a separate Investment Manager Account.

(b) The Board or the Investment Committee may also supervise and direct the investment of any portion of the Trust Fund that is not subject to the management and control of an Investment Manager, by exercising any of the powers set forth in Section 5.5 of this Agreement with respect to the Securities or Real Property or Interests in Real Property of the Trust Fund so invested.

(c) In addition, in its sole and absolute discretion, the Board or the Investment Committee may, from time to time, appoint one or more Investment Managers to serve as a "named fiduciary" (within the meaning of Section 402 of ERISA) for such specific purposes as may be provided by the Board or Investment Committee.

**8.2 Authorization.**

(a) Any appointment of an Investment Manager shall be authorized by the Board or the Investment Committee, and shall become effective as of the date specified by the Board or the Investment Committee. The Investment Manager shall also identify to the Board or the Investment Committee the person or persons authorized to give Instructions or directions to the Board on behalf of the Investment Manager.

(b) The Investment Manager shall have full discretion and authority, to the extent required, permitted or not prohibited by ERISA and other applicable law, to invest and reinvest the portion of Trust Fund assets allocated to it by the Board or the Investment Committee, without further notice, consent or approval of any party, except as expressly provided to the contrary in this Agreement or any agreement between the Board and the Investment Manager, and subject to any directions or guidelines as may be delivered from time to time to the Investment Manager by the Board or the Investment Committee (pursuant to Section 8.7).

(c) The duties and responsibilities of each Investment Manager shall be expressed in a written agreement to be entered into and executed on behalf of the Board and by such Investment Manager. Each Investment Manager so employed shall be compensated in such manner as shall be mutually agreed upon in such agreement.

(d) The Board or the Investment Committee shall meet periodically with any Investment Manager appointed hereby for the purpose of reviewing the activities of the Investment Manager, monitoring its investment performance (including the voting of any proxies that the Investment Manager has been delegated the right to vote), and determining if the Investment Manager has complied with any Investment Guidelines that may have been promulgated by the Board or Investment Committee (pursuant to Section 8.7).

**IN WITNESS WHEREOF.** the Board executed this Amendment on this 1<sup>st</sup> day of  
September, 2010.

By: /s/ Raymond M. Hair, Jr.  
Raymond Hair, Jr., Co-Chair

By: /s/ Alan H. Raphael  
Alan H. Raphael, Co-Chair

**AMENDMENT NUMBER SEVEN TO THE**  
**AGREEMENT AND DECLARATION OF TRUST ESTABLISHING**  
**THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS'**  
**PENSION FUND**  
**(As Amended and Restated Effective as of April 1, 2005)**

**WHEREAS**, the Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") adopted the Agreement and Declaration of Trust Establishing the American Federation of Musicians and Employers' Pension Fund, as amended and restated effective as of April 1, 2005 (the "Trust Agreement"); and

**WHEREAS**, pursuant to Article X, Section 10.1 of the Trust Agreement, the Board reserves the right to amend the Trust Agreement at any time; and

**WHEREAS**, the Board wishes to amend the Trust Agreement in the manner set forth below, and has delegated to the undersigned the authority to execute this Amendment.

**NOW, THEREFORE**, Section 9.1 of the Trust Agreement is hereby amended to add the following new subsection (d), effective January 13, 2012:

Notwithstanding the provisions of Section 9.1(c) above, an Employer may also make contributions to the Trust Fund in accordance with a Collective Bargaining Agreement that provides for contributions to be made on a basis other than scale wages if the Collective Bargaining Agreement provides that any such contributions will not be taken into account in determining any benefit payable under the Plan.

**IN WITNESS WHEREOF**, the Board executed this Amendment on this 16<sup>th</sup> day of February, 2012.

By: /s/ Raymond M. Hair, Jr.  
Raymond M. Hair, Co-Chair

By: /s/ Alan H. Raphael  
Alan H. Raphael, Co-Chair

**AMENDMENT NUMBER EIGHT TO THE  
AGREEMENT AND DECLARATION OF TRUST ESTABLISHING  
THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS'  
PENSION FUND**  
**(As Amended and Restated Effective as of April 1, 2005)**

WHEREAS, the Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") adopted the Agreement and Declaration of Trust Establishing the American Federation of Musicians and Employers' Pension Fund, as amended and restated effective as of April 1, 2005 (the "Trust Agreement"); and

WHEREAS, pursuant to Article X, Section 10.1 of the Trust Agreement, the Board reserves the right to amend the Trust Agreement at any time; and

WHEREAS, the Board wishes to amend the Trust Agreement in the manner set forth below, and has delegated to the undersigned the authority to execute this Amendment.

NOW, THEREFORE, the Trust Agreement is hereby amended as follows:

1. **Section 9.4 is amended to read as follows:**

**9.4 Default in Payment.**

(a) Employer contributions to the Trust Fund are due no later than:

(1) with respect to contributions due under any National Collective Bargaining Agreement, or any other Collective Bargaining Agreement that becomes effective before June 1, 2005:

(a) the due date for such contributions as set forth in the applicable Collective Bargaining Agreements, but no later than the last day of the month immediately following the calendar quarter in which the Covered Employee performed the services for which such contributions are due and payable to the Trust Fund; or

(b) if the Collective Bargaining Agreement does not specify a due date for Employer contributions to the Trust Fund, the last day of the month immediately following the month in which the Covered Employee performed the services for which such contributions are due and payable to the Trust Fund; or

(2) with respect to contributions due under any Collective Bargaining Agreement, other than a National Collective Bargaining Agreement, that becomes effective on or after June 1, 2005 (or that become effective earlier, but are renewed or extended effective

on or after that date), the last day of the calendar month immediately following the calendar month in which the Covered Employee performed the services for which such contributions are due and payable to the Trust Fund; or

(3) notwithstanding anything in Section 9.4(a)(1) or (2) of this Trust Agreement to the contrary, with respect to contributions (i) that are due from an Employer that has an outstanding delinquency to the Fund at the time the contribution obligation arises, and (ii) on which the Board or the Audit Committee (in its sole and absolute discretion) has determined the Employer is at risk of defaulting, any date on or after the due date for the payment of the wages on which the contributions are due, as prescribed by the Board or the Audit Committee, on a case-by-case basis, in its sole and absolute discretion. The Board or the Audit Committee shall notify an Employer as soon as reasonably practicable following the Board's determination that the provisions of this Section 9.4(a)(3) will be invoked and applied to the Employer.

(b) In addition to any other enforcement remedies that may exist under this Agreement or any applicable Collective Bargaining Agreements, the Board or the Audit Committee is authorized and empowered to initiate whatever actions or proceedings may be proper and necessary in their sole and absolute discretion for the enforcement of an Employer's contribution obligations to the Trust (including, but not limited to, proceedings at law or in equity, arbitration, mediation, other dispute resolution mechanisms and any other remedies that generally would be available for the enforcement of said obligation to contribute to the Trust Fund). Venue for such actions or proceedings shall be in New York County, New York or, in the sole discretion of the Board or the Audit Committee, in any other location authorized by law.

(c) In the event that any Employer shall fail to make required Employer contributions to the Trust Fund when due, the Board or the Audit Committee may and is empowered, in its sole and absolute discretion, to terminate, on a prospective basis, the participation of the Employer in the Plan and Trust Fund, and the crediting of future service credit to Employees of such terminated Employer. Nothing in this Section 9.4(c) shall affect or otherwise modify the ability of the Board or the Audit Committee to assert and enforce any and all other rights (as may be set forth in this Agreement, the Plan or any Collective Bargaining Agreement, or as may be provided by applicable law) against such Employer for the collection of any delinquent Employer contributions to the Plan or Trust Fund (including, but not limited to, those rights and actions set forth in this Article).

(d) A delinquent Employer shall be responsible for all late fees (including, without limitation, liquidated damages) set forth in any policy adopted by the Board or the Audit Committee from time to time. In addition, a delinquent Employer shall be liable for all costs and expenses incurred in effectuating its contributions or other payments due to the Trust Fund including but not limited to:

- (1) audit costs (as provided in Section 9.9(f) of this Trust Agreement);
- (2) arbitration expenses;
- (3) attorneys' fees;
- (4) court costs;

(5) other costs and expenses attributable to the collection of such contributions or other payments; and

(6) interest for every calendar year (or portion thereof) during which the delinquent contribution remained unpaid, calculated at the annual prime rate of interest quoted in The Wall Street Journal on the first business day of that calendar year, plus five percent, compounded monthly.

(e) All payments received from or on behalf of an Employer will be applied to amounts due in the following order: (i) interest; (ii) liquidated damages; (iii) surcharges under the Pension Protection Act of 2006; (iv) pension contribution obligations; and (v) withdrawal liability payments (including interest thereon).

(f) In addition to the right to assess an Employer with audit costs provided in Section 9.9(f), the Board or the Audit Committee shall also have the right to assess an Employer with all reasonable costs and expenses (including, without limitation, all audit, accounting, and legal fees) attributable to the audit of the Employer's payroll, wage, and related business records with respect to the contributions which the Employer is obligated to make to the Fund; provided, however, that the Board or the Audit Committee has determined that such Employer has been delinquent in remitting such contributions or payments to the Fund, and the aggregate amount of such delinquency, plus all accrued interest thereon and the cost of the audit, exceeds twenty percent (20%) of the actual audited amount determined by the Fund's auditors to be due the Fund.

**2. Section 9.8 is amended to read as follows:**

**9.8 Remittance Reports**

(a) Except as provided in Section 9.8(b), all contributions must be accompanied by a remittance report form that includes the name of the Employer, the name, address and phone number of the payor, if different (e.g., payroll company, affiliated entity), as well as all Employee first and last names, addresses, social security numbers, type of engagement(s) (e.g., name of applicable Collective Bargaining Agreement and indication of original use, new use or re-use of recording), description of engagement(s) (e.g., title of show, jingle or song and location of engagement), all engagement date(s), "scale wage" and contribution amount(s) and such other information as the Board may elect to prescribe in the future. The Employer shall submit to the Fund separate remittance or other reports for each type of engagement.

(b) Remittance Reports for Contributions Not Based on Scale Wages. In the case of contributions that are required to be made on a basis other than scale wages (as described in Section 9.1(d)), the remittance report form shall include such information as may be required by the Board to verify the accuracy and completeness of such contributions.

(c) If contributions due the Fund are not accompanied by a remittance form containing all of the information set forth in subsection (a) or (b) above, as applicable, the Employer may in the sole discretion of the Audit Committee be assessed a fee in an amount as may be prescribed by the Audit Committee for each day following the

contribution due date for which the remittance report is incomplete or not received by the Fund.

**IN WITNESS WHEREOF**, the Board executed this Amendment on this 20th day of May, 2015

By: /s/ Christopher J.G. Brockmeyer  
Christopher J.G. Brockmeyer, Co-Chair

By: /s/ Raymond M. Hair  
Raymond M. Hair, Co-Chair

**AMENDMENT NUMBER NINE TO THE**  
**AGREEMENT AND DECLARATION OF TRUST ESTABLISHING**  
**THE AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS'**  
**PENSION FUND**  
**(As Amended and Restated Effective as of April 1, 2005)**

**WHEREAS**, the Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") adopted the Agreement and Declaration of Trust Establishing the American Federation of Musicians and Employers' Pension Fund, as amended and restated effective as of April 1, 2005 (the "Trust Agreement"); and

**WHEREAS**, pursuant to Article X, Section 10.1 of the Trust Agreement, the Board reserves the right to amend the Trust Agreement at any time; and

**WHEREAS**, the Board wishes to amend Section 9.1(d) of the Trust Agreement in the manner set forth below for clarification, and has delegated to the undersigned the authority to execute this Amendment;

**NOW, THEREFORE**, Section 9.1(d) of the Trust Agreement is hereby amended to read as follows:

Notwithstanding the provisions of Section 9.1(c) above, an Employer may also make contributions to the Trust Fund in accordance with a Collective Bargaining Agreement (or settlement of a claim under a Collective Bargaining Agreement) that provides for contributions to be made on a basis other than scale wages if the Collective Bargaining Agreement (or settlement agreement) provides that any such contributions will not be taken into account in determining any benefit payable under the Plan.

**IN WITNESS WHEREOF**, the Board executed this Amendment on this 5th day of August, 2015.

By:     /s/ Christopher J.G. Brockmeyer      
Christopher J.G. Brockmeyer, Co-Chair

By:     /s/ Raymond M. Hair      
Raymond M. Hair, Co-Chair

**AMENDMENT NUMBER TEN**  
**TO THE AGREEMENT AND DECLARATION OF TRUST ESTABLISHING THE**  
**AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND**  
**(As Amended and Restated Effective as of April 1, 2005)**

WHEREAS, the Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") adopted the Agreement and Declaration of Trust Establishing the American Federation of Musicians and Employers' Pension Fund, as amended and restated effective as of April 1, 2005 (the "Trust Agreement"); and

WHEREAS, pursuant to Article X, Section 10.1 of the Trust Agreement, the Board reserves the right to amend the Trust Agreement at any time; and

WHEREAS, the Board wishes to amend the Trust Agreement in the manner set forth below, and has delegated to the undersigned the authority to execute this Amendment;

NOW, THEREFORE, the Trust Agreement is hereby amended to read as follows:

1. Section 6.1(c) shall be deleted and replaced with the following:

(c) The Co-Chairs of the Board shall choose one of themselves to preside over each meeting of the Board.

2. Section 9.4(a) shall be amended by adding the following paragraphs (4)

and (5):

(4) to the extent contributions are due with respect to all or a portion of an electronic media guarantee ("EMG") under a Collective Bargaining Agreement between the Union and a symphony orchestra under which musicians receive a periodic wage payment that also counts towards wages payable for electronic media work, the due date for contributions due on account of such EMG shall be the due date for such contributions as set forth in the Collective Bargaining Agreement, but no later than the end of the second month following the month in which the symphony's season ends.

(5) to the extent contributions are due on amounts other than scale wages, paid pursuant to Section 9.1(d) above, the due date for contributions on such amounts shall be the due date in the Collective Bargaining Agreement.

IN WITNESS WHEREOF, the Board executed this Amendment on this 16th day  
of February 2017.

By: /s/ Christopher Brockmeyer  
Christopher J.G. Brockmeyer

By: /s/ Raymond M. Hair, Jr.  
Raymond M. Hair, Co-Chair

**AMENDMENT NUMBER ELEVEN**  
**TO THE AGREEMENT AND DECLARATION OF TRUST ESTABLISHING THE**  
**AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND**  
**(As Amended and Restated Effective as of April 1, 2005)**

WHEREAS, the Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") adopted the Agreement and Declaration of Trust Establishing the American Federation of Musicians and Employers' Pension Fund, as amended and restated effective as of April 1, 2005 (the "Trust Agreement"); and

WHEREAS, pursuant to Article X, Section 10.1 of the Trust Agreement, the Board reserves the right to amend the Trust Agreement at any time; and

WHEREAS, the Board wishes to amend the Trust Agreement in the manner set forth below, and has delegated to the undersigned the authority to execute this Amendment;

NOW, THEREFORE, the Trust Agreement is hereby amended to read as follows:

1. Section 2.4(b) shall be replaced in its entirety with the following:

(b) Except as otherwise provided by the Board, an Employer and a Collective Bargaining Agreement are not acceptable to the Board in the event that: (i) in the case of a Collective Bargaining Agreement the terms of which were in effect (by agreement or operation of law) on October 15, 2009, the effective contribution rate applicable to any period of that Collective Bargaining Agreement is reduced (by agreement or otherwise on or after October 16, 2009); (ii) in the case of any future extension of or successor to any Collective Bargaining Agreement the terms of which were in effect (by agreement or operation of law) on October 15, 2009, the effective contribution rate is reduced to a rate that is lower than the effective contribution rate in effect on the last day of the expiring Collective Bargaining Agreement (based on the terms of the Collective Bargaining Agreement as they existed on October 15, 2009); or (iii) the terms of a Collective Bargaining Agreement (and any predecessor of the Collective Bargaining Agreement) were first in effect after October 15, 2009 ("Post-2009 CBA"), and the effective contribution rate of any extension or successor (by agreement or operation of law) to that Collective Bargaining Agreement, applicable to any period, is reduced below the rate in the first Post-2009 Collective Bargaining Agreement.

2. Section 9.5 shall be amended by adding the following sentence to the end of the Section:

9.5 Enforcement Actions. .... In any such action, the Employer consents to jurisdiction and venue in the Federal District Court for the Southern District of New York.

IN WITNESS WHEREOF, the Board executed this Amendment on this 8th day of November 2018.

By: /s/ Christopher Brockmeyer  
Christopher J.G. Brockmeyer

By: /s/ Raymond M. Hair, Jr.  
Raymond M. Hair, Co-Chair

**AMENDMENT NUMBER TWELVE**  
**TO THE AGREEMENT AND DECLARATION OF TRUST ESTABLISHING THE**  
**AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION FUND**  
**(As Amended and Restated Effective as of April 1, 2005)**

WHEREAS, the Board of Trustees (the "Board") of the American Federation of Musicians and Employers' Pension Fund (the "Fund") adopted the Agreement and Declaration of Trust Establishing the American Federation of Musicians and Employers' Pension Fund, as amended and restated effective as of April 1, 2005 (the "Trust Agreement"); and

WHEREAS, pursuant to Article X, Section 10.1 of the Trust Agreement, the Board reserves the right to amend the Trust Agreement at any time; and

WHEREAS, the Board wishes to amend the Trust Agreement in the manner set forth below, and has delegated to the undersigned the authority to execute this Amendment;

NOW, THEREFORE, the Trust Agreement is hereby amended as follows, effective October 15, 2020:

1. Article III is amended by adding a new Section 3.13 to read as follows:

**3.13 Appointment of Non-Voting Neutral Trustee.**

At any time the Board may appoint a non-voting, neutral Trustee ("Neutral Trustee") to serve as a non-voting member of the Investment Committee and an advisory resource to the voting members of the Investment Committee and to have such other responsibilities (if any) as set forth in such Neutral Trustee's agreement with the Plan or Fund. Notwithstanding the Neutral Trustee's designation as a "Trustee," in no event shall the Neutral Trustee have any voting authority nor any other authority or responsibility (and the Neutral Trustee shall not be considered a Trustee for the purposes of other sections of this Agreement except Sections 5.9 and 5.11 or as otherwise determined by the Board) except as described in this Section 3.13.

2. Section 5.7 is amended by deleting the existing text and replacing it with the following:

**5.7 Standard of Care.**

To the extent the Board is exercising powers, duties and responsibilities under this Agreement that are fiduciary, and non-settlor, in nature, the Board shall discharge such duties and responsibilities with 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, and shall diversify Trust Fund assets so as to avoid the risk of large losses (unless, under the circumstances, it is clearly prudent not to do so), consistent with the requirements of ERISA.

3. Section 7.2 is amended by adding a new subsection 7.2(d) to read as follows:

(d) Except to the extent such responsibility is provided to an Investment Manager, the Board of Trustees shall have the responsibility for establishing the Fund's asset allocation policy, subject to the following procedures: As soon as reasonably practicable after completing the search for an investment consultant initiated with a request for proposal issued in December 2020 and reaching contractual agreement with the selected consultant, the Board will retain an investment consultant charged with providing proposed asset allocation targets, subject to: (i) instructions from the Board on the Plan's investment return and risk objectives, and (ii) the Board's right to veto any proposed targets, in which case such investment consultant will be responsible for selecting other targets.

4. Section 8.1(c) is amended by deleting the existing text and replacing it with the following:

(c) In addition, in its sole and absolute discretion, the Board or the Investment Committee may, from time to time, appoint one or more Investment Managers to serve as a "named fiduciary" (within the meaning of Section 402 of ERISA) for such specific purposes as may be provided by the Board or Investment Committee, including for the purpose of exercising any of the responsibilities of the Board or the Investment Committee set forth herein, in which case references herein to the Board or Investment Committee shall include references to such named fiduciary to the extent of such appointment.

5. Section 8.8 is amended by deleting the existing text and replacing it with the following:

The Board, the Investment Committee or other named fiduciary may delegate to an Investment Manager the sole right to exercise, as it deems prudent and consistent with its obligations under ERISA, any proxies, conversion privilege or subscription right, and other shareholder rights appurtenant to securities held by the Fund.

IN WITNESS WHEREOF, the Board executed this Amendment on this 11th day of February 2021.

By: /s/ Christopher J.G. Brockmeyer  
Christopher J.G. Brockmeyer

By: /s/ Raymond M. Hair, Jr., Co-Chair  
Raymond M. Hair, Jr., Co-Chair