

AGREEMENT AND DECLARATION OF TRUST
OF THE
LOCAL 802 MUSICIANS HEALTH FUND

Initially Adopted on August 4, 1964, Amended and Restated as of April 17, 1997, and Amended
and Restated Effective as of March 17, 2010

**AGREEMENT AND DECLARATION OF TRUST
OF THE
LOCAL 802MUSICIANS HEALTH FUND**

THIS AGREEMENT AND DECLARATION OF TRUST, amended and restated as of the 17th day of March, 2010, establishing the LOCAL 802 MUSICIANS HEALTH FUND (the "Fund"), by and among (a) Augustino Gagliardi, John O'Connor, Jay Blumenthal, Martha Hyde and Maxine Roach (who, with their successors designated in the manner provided herein, are hereinafter collectively referred to as the "Union Trustees") on behalf of LOCAL 802 OF THE AMERICAN FEDERATION OF MUSICIANS, AFL-CIO (the "Union") and as Union Trustees; and (b) Christopher Brockmeyer, JoAnn Kessler, David Lazar, Paul Libin and Nina Essman (who, with their successors designated in the manner provided herein, are hereinafter collectively referred to as the "Employer Trustees") on behalf of The Broadway League Inc., its affiliated members, and other contributing employers (collectively, the "Employers") and as Employer Trustees (the Union Trustees and the Employer Trustees being hereinafter collectively referred to as the "Trustees").

WITNESSETH:

WHEREAS, the Employers and the Union have executed, and may from time-to-time hereafter execute, collective bargaining agreements, participation or similar agreements (collectively, "Collective Bargaining Agreements") which, among other things, require periodic contributions from Employers to the Fund; and

WHEREAS, the Employers and the Union established an Agreement and Declaration of Trust establishing the Theatres Sick Pay and Hospitalization Fund, dated August 4, 1964 and as from time-to-time thereafter amended (the "Prior Trust"); and subsequently determined that it is

consistent with their fiduciary responsibilities and in the best interests of the participants and beneficiaries of the Fund to accept a merger with the Musicians Local 802 Health Benefits Plan in order to create a new entity to be called "Local 802 Musicians Health Fund," effective July 1, 2007.

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 Prior Trust, to restate, inter alia, the powers, duties, authorities and responsibilities of the Trustees and the nature of benefits to be provided under the Plan to Covered Employees and Beneficiaries.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained, it is hereby mutually understood and agreed by the Trustees, 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 **"Administrator"** shall mean the Board or any entity or individual(s) duly authorized by the Board to administer the Fund or the Plan. The Board, and not the Administrator, shall be the "Administrator" (as that term is defined in Section 3(16)(A) of ERISA) of the Plan and the Trust Fund.

1.2 **"Agreement"** or **"Trust Agreement"** shall mean this Agreement and Declaration of Trust, as it 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 Administrator, the Board, and any Committees duly authorized by the Board to take any actions hereunder.

1.3 **"Alternate Recipient"** shall mean child or other dependent of a plan participant who is recognized by a Qualified Medical Child Support Order ("QMCSO") as having a right to receive all, or a portion of, the participant's benefits payable under a plan.

1.4 **"Authorized Person"** shall mean, with respect to the Trust Fund, the Chairperson of the Board, any individual Trustee or member of any Committee of Trustees duly authorized by the Board to represent the Board or said Committee, and the Administrator where the Administrator 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 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. 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 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).

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.

1.10 **"Committee"** or **"Subcommittee"** shall mean any committee duly appointed and authorized by the Board to act pursuant to this Agreement (containing at least one Employer Trustee and one Union Trustee).

1.11 **"Covered Employee"** or **"Employee"** shall mean an individual employed by an Employer to provide services pursuant to the terms of a Collective Bargaining Agreement or any such participation or other written agreement between an Employer and the Union requiring an Employer to make contributions to this Trust Fund.

1.12 **"Custodian"** shall mean one or more banks, trust companies, or broker-dealers selected by the Board as custodian of Trust Fund Securities, property or investments of the Fund.

1.13 **"Employer", "Employers" or "Contributing Employers"** shall mean the various employer members of The Broadway League Inc., or other Employer who have presently in force, or who hereafter executes a collective bargaining agreement or other written agreement with the Union providing for such Employer's contributions to the Fund maintained pursuant to this Trust Agreement.

1.14 **"Employer Trustee"** shall mean each individual designated as a regular Employer Trustee pursuant to the procedures set forth in Section 3.3(a) of Article III and, when acting as an Employer Trustee, his or her alternate or successor.

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

1.17 **"Fund"** shall mean the Local 802 Musicians Health Fund.

1.18 **"Instruct" or "Instructions"** shall mean written communications signed by an Authorized Person (including, without limitation, instructions received by the Fund or any other such 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 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 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.

1.20 **"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.

1.21 **"Plan"** shall mean the detailed rules and regulations of the Local 802 Musicians Health Fund, 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 Fund. A summary plan description describing the benefits provided under the Fund may also constitute the Plan and serve as the Plan document.

1.22 **"Qualified Medical Child Support Order"** or **"QMCSO"** shall mean an Order that creates or recognizes the right of an "alternate recipient" to receive benefits for which a participant or beneficiary is eligible under a group health plan or assigns to an alternate recipient the right of a participant or beneficiary to receive benefits under the Plan; and is recognized by the Plan as "qualified" because it includes information and meets other requirements of the QMCSO provisions in applicable law.

1.23 **"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.

1.24 **"Trust Funds"** 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.

1.25 **"Trustee(s)"** shall mean, collectively, the individual regular Employer Trustees, the individual regular Union Trustees and, when acting as Trustees, their alternates, successors and assigns.

1.26 **"Union"** shall mean Local 802 of the American Federation of Musicians, AFL-CIO.

1.27 **"Union Trustee"** shall mean each individual designated as a regular Union Trustee pursuant to the procedures set forth in Section 3.3(b) of Article III, and, when acting as a Union Trustee, his or her alternate or successor.

ARTICLE II

NAME, PURPOSE AND OPERATION OF TRUST

2.1 **Name.** The Fund shall be known as the "Local 802 Musicians Health Fund."

2.2 **Purpose.** The Fund is established for the exclusive purpose of providing certain welfare 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 Fund and the Plan in accordance with this Agreement, the Plan, and applicable law.

2.3 **Operation.**

(a) It is intended that this Fund shall be established and operated in a manner that shall qualify it as an organization exempt from income taxation under Section 501 of the Code. Notwithstanding anything to the contrary contained herein, the Fund shall be operated exclusively for such purposes as will comply with Section 501(c)(9) 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 Fund while continuing to comply with the requirements of the Code.

(b) It is further intended that this Fund 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 Fund while continuing to comply with the requirements of ERISA.

(c) The Fund shall also be established and operated as a "jointly-administered" welfare 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 Fund 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 participation agreement, or otherwise establishing a consistent pattern of contributing to the Trust Fund on behalf of its musician employees pursuant to a Collective Bargaining Agreement or similar agreement;

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

(c) Designating the categories of employment and 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 Fund, any amendments thereto, as well as all of the decisions of the Trustees and the Administrator; 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 terms of this Agreement, the Plan or a Collective Bargaining Agreement.

ARTICLE III

TRUSTEES

3.1 **Composition of Trustees.** The Trustees under this Agreement, who shall be Trustees of the Trust created and established hereunder, shall consist of five (5) Employer Trustees and five (5) Union Trustees. At least three (3) Trustees shall be appointed by The Broadway League Inc., and two (2) Trustees shall be appointed by the entity or industry group (i.e., employer) with the largest aggregate contributions to the Fund for the last two (2) years.

3.2 **Acceptance of Trust and Trusteeship.** The Trustees appointed hereunder hereby accept the Fund 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 his or her capacity as trustee and fiduciary of the Trust Fund in accordance with the provisions of this Agreement.

3.3 **Selection of Trustees.**

(a) The current Employer Trustees shall be: Christopher Brockmeyer, JoAnn Kessler, David Lazar, Paul Libin, and Nina Essman. In no event shall the Union or Union Trustees be entitled to designate an Employer Trustee.

(b) The current Union Trustees shall be: Augustino Gagliardi, John O'Connor, Jay Blumenthal, Martha Hyde, and Maxine Roach. 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 thirty (30) 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 of this Article III) 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 regular or alternate Employer Trustee may be removed from office at any time, with or without cause, [A] by a majority vote of the regular Employer Trustees then in office, or [B] in the case of the three Employer Trustees appointed by

The Broadway League Inc., by the Executive Committee of the League, or [C] in the case of the two (2) Employer Trustees appointed by the entity or industry group with the largest aggregate contributions to the Fund, by that appointing entity or industry group, it being understood that, every two years, a census will be taken by the Fund in order to determine whether either of such two (2) Trustees still represent the entity or industry group with the largest aggregate contributions to the Fund for the preceding two (2) years.

3.8 Removal of Union Trustees. Any Union Trustee may be removed from office at any time, with or without cause, by the duly authorized President of the Union and filed with the Board. Such removal shall become effective immediately upon such filing.

3.9 Successor Employer Trustees. In the event that any Employer Trustee shall die, become incapable of acting hereunder, resign, or be removed pursuant to Section 3.7, then either the Executive Committee of The Broadway League Inc. in the case of the three (3) Trustees designated by the League or as to the remaining two (2) Trustees, the Employer Trustees then in office by majority vote, may designate a person to fill the position of Employer Trustee thus made available by filing with the Board a certificate in writing. Such appointment shall become effective immediately upon such filing or as otherwise provided in such certificate.

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, the duly authorized President of the Union shall designate a successor Union Trustee by the filing with the Board of a certificate in writing. Such appointment shall become effective immediately upon such filing or as otherwise provided in such certificate.

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.

ARTICLE IV

PLAN OF BENEFITS

4.1 Benefits.

(a) The Board (or any Committee duly authorized by the Board) 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 welfare benefits 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 Administrator, 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 Administrator, and each Trustee from the consequences of relying on any information or directions furnished to the Board, the Administrator, any Committee member or their agents by such Contributing Employer.

(d) The Board (or the Administrator or any Committee duly authorized by the Board) shall have the exclusive right, power and authority, in its sole and absolute discretion, to recover any benefit payment made to a Covered Employee or Beneficiary by mistake of fact or law, or in reliance on any false or fraudulent statements, information or proof submitted by a Covered Employee or Beneficiary (including the withholding of a material fact) plus interest and costs (including, without limitation, by recovery through offset of future benefit payments).

(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 only during or until the time the person entitled to receive such benefit maintains or attains a given age or status, or only during or until the time 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 is to be made to Covered Employees and Beneficiaries, shall be specified in the Plan, as amended by the Board from time to time, all of which may be set forth in a summary plan description that shall constitute the Plan.

4.3 **Insurance Contracts.** The written plan of benefits comprising the Plan may (but need not necessarily) consist, in whole or in part, of contracts with one or more insurance companies.

4.4 **Mistake of Fact or Law.**

(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 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 Fund has been (1) made by a mistake of fact or law, or (2) 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 Board (or its duly authorized designee) as to (1) above, or one year following the disallowance of the deduction under (2) 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 its duly authorized designee) 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 its duly authorized designee) 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 Medical Child Support Orders" (as defined in Section 609(a)(2) 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 benefit, until actually paid to the Covered Employee (or Beneficiary or estate), be in any manner subject to the debts or liabilities of said participant;

(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; and

(d) The Board (or any duly designated Committee), in its sole and absolute discretion, may terminate or postpone any such benefit payments (or portions thereof) to the spouse, children and relatives of the person to whom any such benefits are payable.

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 such payments, deposits, monies, policies or other properties and assets, and to hold the same 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 of Article IV.

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 Administrator 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) premium or other payments under insurance contracts or policies purchased by or on behalf of the Plan or the Fund;

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

(E) any taxes;

(F) the expense of maintaining mailboxes, bank accounts and safety deposit boxes; and other repositories;

(G) The cost of implementing and maintaining any accounting,

auditing, computer, recordkeeping and 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; and

(2) 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 Fund for all reasonable, actual and necessary expenses which they incur in the performance of their duties as Trustees hereunder.

5.4 Insurance Contracts.

(a) The Board may enter into such insurance contracts and policies, 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 or 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 Fund.

5.5 General Powers. The Board is hereby empowered, in its sole and absolute discretion:

(a) To purchase, sell, receive, subscribe for, invest and reinvest Trust Fund assets allowable under their promulgated investment guidelines and/or resolution adopted by the Trustees;

(b) 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 to an Investment Manager (pursuant to Section 3.9 of this Agreement);

(c) To 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 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.

(d) To:

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

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

(3) sue or defend suits or legal proceedings against the Fund, the Plan, the Trustees or the Administrator, or to protect or enforce any interest in the Fund and to represent the Fund, the Plan, the Trustees or the Administrator 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;

(e) 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, or other provisions of ERISA), the Internal Revenue Service, 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;

(f) 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 Administrator 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 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 acquisition, operation, management, or administration of the Trust Fund or the 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;

(g) To establish and implement a funding and valuation 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 Fund (including, without limitation, reserves for existing and potential obligations and liabilities of the Trust Fund and administrative expenses);

(h) 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 or duties, as defined in Section 405(c)(3) of ERISA) to the extent consistent with ERISA; and

(2) engage such person or persons as it may deem necessary or desirable as the Administrator 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).

(i) 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);

(j) To make, execute and deliver any and all conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers; and

(k) 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) The Board may delegate one or more of its fiduciary responsibilities to one or more other Committees.

(b) Each such Committee shall be comprised of two or more Trustees and shall be comprised of an equal number of Employer Trustees and Union Trustees, where possible. 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 resulting to the Trust Fund resulting from the acts or omissions of any Committee.

5.7 Board as Recordkeeper.

(a) Unless otherwise delegated to another person to the extent permitted by law, the Board shall act as a 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) The Board shall maintain true and accurate 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 an independent certified public accountant selected by the Board. Such records will be kept in accordance with the security requirements for protected health information ("PHI") pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") and other applicable law.

5.8 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 all 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.

5.9 Reliance on Written Instruments and Advice of Professionals. 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.

5.10 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 (d) 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 (d) below;

(c) 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

(d) 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 Administrator (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, reasonable attorneys' fees, court costs; actuarial and related consulting costs; accounting and auditing costs; investment management, trustee and custodian costs; insurance premiums and related costs; and 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.

5.11 **Bonding.** Any person required to be bonded under the provisions of ERISA, including without limitation the Trustees, Administrator, 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 the amount required by Section 412 of ERISA. The Board shall, in its sole discretion, have the authority to require the bonding of any other employee of the Trust and to require bonds above the minimum amount. The cost of premiums for such bonds shall be paid out of the Trust Fund.

5.12 **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 Administrator 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 5.10(d) of this Agreement) arising out of a 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, the Employers and the Union set forth in Section 5.10 of this Article V). The insurance contemplated herein shall permit recourse by 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).

5.13 **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 Administrator, or to any other person as the Board, in its sole discretion, shall determine.

5.14 **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.

5.15 Discretionary Authority.

(a) The Board (or, where applicable, the Administrator or any Committee duly authorized by the Board) 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, the Administrator or any Committee duly authorized by the Board) 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 the 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 Administrator 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.

5.16 Execution of Documents.

(a) The Board may authorize by resolution any Union Trustee and any Employer Trustee (or any group composed equally of Union and Employer Trustees), or the Administrator 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.

(b) All persons, corporations, partnerships, groups or associations may accept any notice or instrument signed in accordance with this Section 5.16 as duly authorized and binding on the Board.

(c) 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 a Chairperson and a Co-Chairperson during the month of December, from among the Trustees, in accordance with paragraph (c) of this section 6.1.

(b) The term of office of the Chairperson and the Co-Chairperson shall be one year. Notwithstanding the foregoing sentence, the Chairperson and the Co-Chairperson shall continue to hold his office until a new Chairperson or Co-Chairperson is elected.

(c) During even-numbered calendar years, the Board shall elect a Union Trustee as the Chairperson, and an Employer Trustee as the Co-Chairperson. During odd-numbered calendar years the Board shall elect an Employer Trustee as the Chairperson, and a Union Trustee as the Co-Chairperson.

6.2 Calling of Meetings.

(a) The Board shall endeavor to meet at least four (4) times in a calendar year.

(b) At the written request of any two (2) Trustees, the Chairperson shall call a special meeting by giving at least five (5) days advance written notice to the Trustees. The written notice shall be sent by ordinary mail or other media that ensures actual receipt, and shall specify the matters to be discussed at the special meeting; provided, however, that such notice may be waived in writing by any Trustee.

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

(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 regular Trustees consent thereto in writing.

6.3 Quorum. Subject to the provisions of Section 6.4(a), at all meetings of the Board, a majority of Employer Trustees and a majority of Union Trustees then in office 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 approved, or defeated, by a vote of two to zero. The Employer Trustees, as a unit, shall have one vote, and the Union Trustees, as a unit, shall have one vote.

(b) The Union Trustees shall determine how they cast their vote as a unit on any matter, except as provided elsewhere in this Section 6.4, by a majority vote of the Union Trustees.

(c) 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.

(d) In addition to decisions made at meetings, each regular Trustee may also be polled with respect to an issue by the Administrator or the Chairperson (or his or her designee) either in writing or by telephone without the necessity of having a meeting; provided, however, that any action to be taken with respect to such issue must be carried by majority vote on each side (i.e., a majority of Union Trustees and a majority of Employer Trustees) and, if polled by telephone, must be consented to in writing by each regular Trustee either before or 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 unanimous vote, it shall be referred for decision to the Board at its next meeting.

(e) 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)), or because of the lack of a quorum at two consecutive meetings of the Board, the matter shall then be resolved by arbitration (as provided for in Section 6.6).

6.5 **Minutes of Meetings.** The Administrator (or his or her duly authorized designee) 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)), or due to a lack of a quorum at two consecutive meetings of the Board, the Chairperson 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, the Chairperson 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-Chairperson 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 to cast their vote; or

(2) the Board votes one to one; or

(3) 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 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 all parties in interest and such award shall be final and binding on all parties concerned as though it was embodied in a resolution duly adopted by 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 Fund.

ARTICLE VII

ALLOCATION OF RESPONSIBILITIES

7.1 The Administrator.

(a) Where the Administrator is a person other than the Board, the Administrator shall have the responsibility and authority to control the administration of the Trust Fund, subject to the terms of this Agreement, the Plan, any written agreement between the Board and the Administrator, 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 Administrator under the terms of this Agreement, the Plan, or any written agreement between the Board and the Administrator;

(2) functions assigned to the Administrator 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 Forms 5500 and 990, Summary Annual Report, Summary Plan Descriptions, and Summaries of Material Modifications); and

(7) maintenance of all records of the 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, as well as, the investment of the assets attributable thereto (except to the extent that such responsibility has been delegated by the Board to the 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 tax-exempt status of the Trust under the Code, with the assistance of its professional advisors;

(4) designation of fiduciaries of the Trust Fund and Plan (including, without limitation, Investment Managers, Custodians, and members of Committees);

(5) 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 Administrator, an Investment Manager or Custodian, or to other fiduciaries of the Trust or the Plan);

(6) 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 funds;

(7) establishment of procedures for the administration and operation of the Plan, including the acceptance and processing of applications for welfare benefits;

(8) review and approval or denial of appeals for welfare payments, or other benefit claims, submitted by Covered Employees and Beneficiaries, which have been denied by the Administrator or appeals to review state medical child support orders which have been determined by the Administrator not to be qualified;

(9) preparation, approval and adoption of the administrative expense and operating budget of the Fund office, including determination of the salaries and fringe benefits of all Fund employees;

(10) approval of the attendance by, and reimbursement of the reasonable expenses of, individual Trustees at educational conferences or other meetings in accordance with trustee travel and expense guidelines it establishes from time-to-time;

(11) monitoring and evaluating (using one or more professional investment evaluation firms, if necessary) the performance of Custodians, Investment Managers, and other investment consultants; and

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

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.

(b) In the event that more than one Investment Manager is appointed, the Board 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 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 by exercising any of the powers set forth in Section 5.5 of Article V of this Agreement with respect to the Securities 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. The Investment Manager shall also identify to the Board 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 8.8 of this Article VIII).

(c) The duties and responsibilities 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. Each Investment Manager so employed shall be compensated in such manner as shall be mutually agreed upon in such agreement.

(d) The Board 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 (pursuant to Section 8.8 of this Article VIII).

8.3 Acknowledgments. The Board 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 of Article V, except subsections (j) and (k) (unless the Board 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, nor the Administrator 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 **Authority of Investment Manager.** The authority of any Investment Manager, and the terms and conditions of its appointment and retention, shall be the sole responsibility of the Board.

8.8 **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 (in its sole discretion), expressing the investment objectives, restrictions and policies of the Board 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 shall not in any manner be construed as an acceptance by the Board of any investment management or supervisory powers in connection with Trust Fund assets managed by an Investment Manager (and the Board shall not, 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).

8.9 **Proxies.**

(a) The Board 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 Board 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 the Board, 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 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, the Employers shall contribute to the Fund the amount required by the applicable Collective Bargaining Agreements at any time in force and effect between the Union and the Employer.

(b) The rate and amount of contribution shall at all times be governed by said Collective Bargaining Agreements, together with any amendments, supplements, and modifications thereto.

(c) 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 which govern rate and amount of contributions.

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 "LOCAL 802 MUSICIANS HEALTH 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 payments to the Trust Fund are due no later than:

(1) the due date for such contributions as set forth in the applicable Collective Bargaining Agreements (or related agreements); or

(2) with respect to any such agreements that do 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 was engaged in a performance or other activity for which contributions are payable to the Trust Fund.

(b) In addition to any other enforcement remedies that may exist under any applicable Collective Bargaining Agreements, or any other agreement requiring contributions to the Trust Fund, the Board 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 and any other remedies that generally would be available for the enforcement of said obligation to contribute to the Trust Fund).

(c) 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) arbitration expenses (if applicable);
- (2) attorneys' fees;
- (3) court costs;
- (4) all other costs and expenses attributable to any audit of the Employer's payroll, wage, and related business records with respect to unpaid contributions or payments; and
- (5) interest equal to the rate of interest charged by the Fund's bank; plus five percent in liquidated damages.

9.5 **Enforcement Actions.** In addition to any other remedies to which the Board 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 pursuant hereto (hereinafter collectively referred to as "Unpaid Contributions"), the Board may bring an action on behalf of the Trust Fund pursuant to section 502(g)(2) and 515 of ERISA and to any other applicable statute 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 such party the following amounts:

- (a) all unpaid Contributions due and payable; plus
- (b) interest on such unpaid Contributions (computed in accordance with the method set forth in Section 9.4(c) of this Article IX); plus
- (c) an amount equal to the greater of:
 - (1) the interest on the unpaid Contributions (computed in accordance with the method set forth in Section 9.4(c) of this Article IX), 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 (as determined by the Trustees), 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, or the Board to enforce an Employer's contribution obligation in any 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.

9.8 Remittance Reports and Audits.

(a) All Employers shall make contributions to the Fund, together with any remittance or other reports prescribed by the Board.

(b) The Board (or its duly authorized representatives) may at any time make an audit of the payroll, wage, and related business records and/or reports of any Employer with respect to the contributions and/or reports which it is obligated to make to or other forms of payments due the Fund. Each Employer shall make available to the Board (or its authorized representatives) all records deemed necessary by such persons to determine the accuracy, completeness, and timeliness of such contributions and payments or reports.

(c) If the Board determines that an Employer has been delinquent in remitting such contributions or payments to the Fund, the provisions of Section 9.4(c) of this Article IX shall be applicable herein.

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 of Article VI), 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 Administrator, 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 Trust to lose its tax-exemption under Section 501(a) of the Code.

10.2 **Limitation of Amendments.** Notwithstanding anything to the contrary contained in this Agreement, 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 health or related welfare benefits or result in the return or diversion of any part of the Fund to any of the Contributing Employers.

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 of Article VI); or

(2) 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.

(b) 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 of Article IV), 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.

(c) Upon termination of the Trust, the Board shall forthwith notify all necessary parties, including the Union, the Administrator, and any insurance carriers, Investment Managers, custodians and other service providers, and as many Contributing Employers and covered Employees (and their Beneficiaries) as possible, 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. 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.

10.5 Merger. The Trustees are authorized to merge, combine or consolidate with other funds upon any terms or conditions mutually agreed upon by the Trustees of the Fund, subject to the provisions of ERISA, the Internal Revenue Code, or any other applicable law.

10.6 Settlor Function. The Trustees shall also have the discretion and authority to use Plan assets to pay for expenses related to activities that are typically considered settlor in nature, such as activities that relate to the establishment, design and termination of the Plan. Pursuant to U.S. DOL Field Assistance Bulletin 2002-2 and other applicable statutory provisions, administrative regulations or applicable laws, in carrying out such settlor activities, the Trustees will act as fiduciaries and such activities will be governed by the fiduciary provisions of ERISA.

ARTICLE XI

ACCOUNTS OF THE BOARD

11.1 **Board to Maintain Trust Accounts.** Unless otherwise delegated to the Administrator, Custodian, Fund accountant, or another entity or person, the Board shall:

(a) Act as a 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 and a representative of each Contributing Employer 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, with prudence and in good faith, to reflect their current fair market value.

ARTICLE XII

MISCELLANEOUS

12.1 **Situs.** The Board 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 Chairman of the Trustees 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 Chairman was 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 when either delivered in writing to the addresses below or when deposited by first-class mail addressed as follows:

- (a) **To the Board:**
Board of Trustees
LOCAL 802 MUSICIANS HEALTH FUND
322 West 48th Street
New York, NY 10036
- (b) **To the Administrator:**
Fund Administrator
LOCAL 802 MUSICIANS HEALTH FUND
322 West 48th Street
New York, NY 10036

or to such other addresses as any of the foregoing parties, or individual Trustees, shall subsequently instruct the other parties. Any notice or other communication shall be deemed to have been given to, or received by, the appropriate party 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, Administrator, each Trustee, Committee, 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 of Article X.

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.

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 regular 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


Christopher Brockmeyer

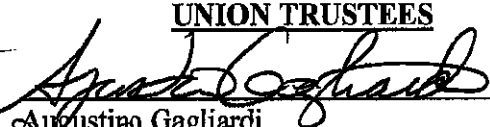

JoAnn Kessler

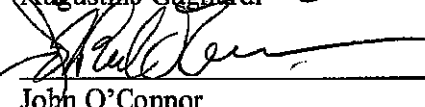

David Lazar


Paul Libin

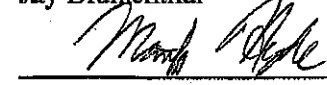

Nina Essman

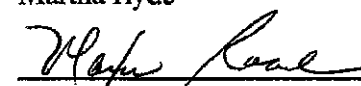
UNION TRUSTEES


Augustino Gagliardi


John O'Connor


Jay Brumenthal


Martha Hyde


Maxine Roach

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AGREEMENT AND DECLARATION OF TRUST
OF THE
LOCAL 802 MUSICIANS HEALTH FUND

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FIRST AMENDMENT TO THE AGREEMENT AND
DECLARATION OF TRUST OF THE LOCAL 802 MUSICIANS HEALTH FUND

WHEREAS, the Agreement and Declaration of Trust of the Local 802 Health Fund, effective March 17, 2010 (the "Trust Agreement"), sets forth the terms and conditions under which the Local 802 Musicians Health Fund (the "Health Fund") is established and administered; and

WHEREAS, Article X, Section 10.1 of the Trust Agreement provides the Board of Trustees (the "Board") with the right to amend the Trust Agreement; and

WHEREAS, the Board now desires to amend the Trust Agreement: and

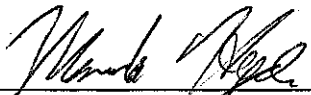
NOW, THEREFORE BE IT RESOLVED by the Board that the Trust Agreement is amended, effective April 28, 2014, as follows:

Article IX, Section 9.2, entitled "Effective Date of Employer Contributions" is hereby amended by renumbering the existing paragraph as (a) and adding a new subparagraph (b) to read as follows:


All Employer contributions shall, after their due date and until their payment in full by the Employer to the Health Fund, be deemed to constitute assets of the Health Fund while they are still in the possession of the Employer.

This amendment may be executed in counterpart by the Trustees

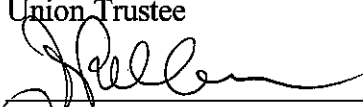
IN WITNESS WHEREOF, the Trustees have executed this Amendment on this 24th day of April 2014.




Union Trustee



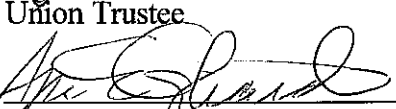
Union Trustee




Union Trustee



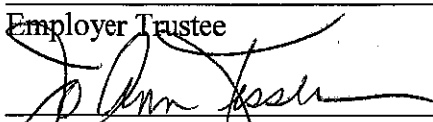
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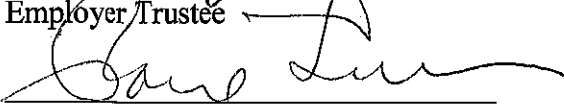
Employer Trustee



Employer Trustee



Employer Trustee



Employer Trustee