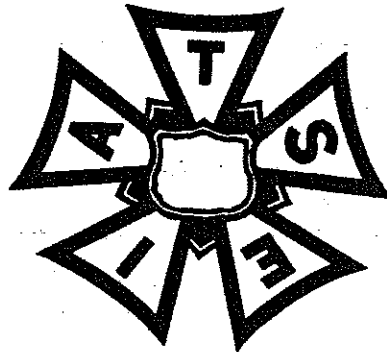


AGREEMENT
AND
DECLARATION
OF TRUST



ESTABLISHING THE
I.A.T.S.E. NATIONAL HEALTH AND WELFARE
FUND

THIS AGREEMENT AND DECLARATION OF TRUST, and restated as of the 22nd day of September 2005, establishing the I.A.T.S.E. NATIONAL HEALTH AND WELFARE FUND, by and among (a) DANIEL DITOLLA, PETER FITZPATRICK, BRIAN LAWLOR, MATTHEW D. LOEB, JOHN MCNAMEE, DEBORAH REID, THOMAS C. SHORT, and JAMES B. WOOD on behalf of the INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA and as Union Trustees; and (b) IRVING W. CHESKIN, DEAN FERRIS, CAROL LOMBARDINI, SETH POPPER, STEVE RAPAPORT, JEFFREY RUTHIZER, HARRIET SLAUGHTER, and HOWARD WELINSKY on behalf of the Employers contributing to the Plan and as Employer Trustees.

WITNESSETH:

WHEREAS, the Employers and the Union have executed, and may from time to time hereafter execute Collective Bargaining Agreements which, among other things, require periodic Employer contributions to the Fund; and

WHEREAS, the Employers and the Union established an Agreement and Declaration of Trust establishing the Fund, dated June 18, 1973, and as amended and restated as of October 1, 1983, 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 welfare benefits to Covered Employees eligible to participate in the I.A.T.S.E. National Health and Welfare Fund, the terms of which are governed by the I.A.T.S.E. NATIONAL HEALTH AND WELFARE FUND PLAN A and the I.A.T.S.E. NATIONAL HEALTH AND WELFARE FUND PLAN C, and their Beneficiaries; and (b) for defraying the reasonable administrative and other expenses of the Fund; 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 restate the Existing Trust, effective as of September 22, 2005, with respect to 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, and through them by 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 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 "Authorized Person" shall mean, with respect to the Trust Fund, the Co-Chairpersons 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.

1.4 "Beneficiary" shall mean a Covered Employee's spouse, or such other person or entity entitled under the terms of the a Plan to receive benefits, if any, under the Plan following the death of the Covered Employee.

1.5 "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 Plans and the Trust Fund.

1.6 "Code" shall mean the Internal Revenue Code of 1986, as from time to time amended, and all rules and regulations promulgated pursuant thereto.

1.7 "Collective Bargaining Agreement" shall mean any collective bargaining, participation, or other written agreement between an Employer and the Union requiring said 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, together with any modifications, supplements or amendments thereto. 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).

1.8 "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 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).

1.9 "Committee" 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).

1.10 "Covered Employee" or "Employee" shall mean all those employees who are embraced within the scope of a Collective Bargaining Agreement as now or hereafter in effect between an Employer and the Union. In addition, the term "Covered Employees" or "Employees" may also cover and include employees of the Trust Fund (including any affiliated fund) itself or the Union, provided that the Union executes a participation agreement, in a form acceptable to the Board, agreeing to contribute to the Fund and to be bound by this Agreement. The term "Covered Employee" or "Employee", however, shall not cover or include a self-employed person or sole proprietor which is an Employer who is acting as his or her own employee, or a partner of a partnership that is an Employer who is acting as an employee of such partnership; provided, however, that a shareholder of a corporation that is duly organized and operated under the laws of a State of the United States that is an Employer, who is employed by that corporation pursuant to a Collective Bargaining Agreement, shall be considered a "Covered Employee" or "Employee".

1.11 "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 of Article III) and/or custodian of Trust Fund Securities.

1.12 "Employer", "Employers" or "Contributing Employers" shall mean such employers that heretofore or hereafter have entered into Collective Bargaining Agreements with the Union obligating them to make contributions to the Trust Fund on behalf of their respective Employees. The term "Employer," "Employers" or "Contributing Employers" shall not include unincorporated self-employed persons or sole proprietorships with no other employees, or proprietorships with no other employees other than partners. For purposes of Article IX hereof, the Union shall be deemed an Employer, provided that it has executed a participation agreement as described in Section 1.10 hereof.

1.13 "Employer Trustees" shall mean IRVING W. CHESKIN, DEAN FERRIS, CAROL LOMBARDINI, SETH POPPER, STEVE RAPAPORT, JEFFREY RUTHIZER, HARRIET SLAUGHTER, and HOWARD WELINSKY and, when acting as Employer Trustees, their successors appointed pursuant to the procedures set forth in Article III.

1.14 "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.

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

1.16 "Instruct" or "Instructions" shall mean written communications signed by an Authorized Person (including, without limitation, instructions received by telefax, telex 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).

1.17 "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.

1.18 "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.

1.19 "Plan" or "Plans" shall mean the detailed rules and regulations of the I.A.T.S.E. National Health and Welfare Fund Plan A and the I.A.T.S.E. National Health and Welfare Fund Plan C, 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.

1.20 "Real Property" or "Interest in Real Property" shall mean, in general, leaseholds, leasebacks, fee titles, mortgages and all other forms of 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.

1.21 "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, or other person associated or affiliated therewith) to the extent permitted by ERISA; (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) leaseholds, leasebacks, fee titles, mortgages and any other interests in real property; 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.

1.22 "Trust," "Trust Fund," or "Fund" shall mean the I.A.T.S.E. National Health and Welfare Fund, including 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.

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

1.24 "Union" shall mean the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada and any affiliated local union thereof.

1.25 "Union Trustees" shall mean DANIEL DITOLLA, PETER FITZPATRICK, BRIAN LAWLOR, MATTHEW D. LOEB, JOHN MCNAMEE, DEBORAH REID, THOMAS C. SHORT, and JAMES B. WOOD and, when acting as Union Trustees, their successors appointed pursuant to the procedures set forth in Article III.

ARTICLE II

NAME, PURPOSE AND OPERATION OF TRUST

2.1 Name. The Trust shall be known as the "I.A.T.S.E. National Health and Welfare Fund."

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

2.3 Establishment of Fund. As hereby created, the assets of the Fund shall be comprised of and derived from Employer Contributions made to or for the account of this Fund under Collective Bargaining Agreements, together with any and all investments made by or on behalf of the Trustees, or monies received by the Trustees as contributions or as income from investments made and held by the Trustees or otherwise, and any other money or property, received and/or held by the Trustees for the uses, purposes and Trust set forth in this Agreement.

2.4 Funding of Plan Benefits. The benefits to be provided shall be determined by the Trustees and based upon actuarial and other assumptions and methods which, in the aggregate, shall be reasonable and which shall take into account the experience of the Plan and its reasonable expectations.

2.5 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, so as to ensure that the earnings of the Trust Fund remain exempt from income tax under the Code, and that Employer Contributions remain tax deductible under 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" employee welfare benefit plan within the meaning of, and in accordance with, Section 302(c) of the Labor Management Relations Act of 1947, as amended, and Section 3(1) of ERISA. 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.

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

(a) Executing a Collective Bargaining Agreement or otherwise adopting such agreement by its course of conduct;

(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 or Plans and Trust; provided, however, that the Board may, in its discretion, terminate participation by an Employer at any time by written notice to the Employer.

In the event that the Board of Trustees adopts more than one Plan, an Employer's participation is limited to the Plan designated in the Collective Bargaining Agreement or otherwise designated.

2.7 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, inter alia:

(a) Reviewed, understood, adopted and agreed to all provisions of this Agreement and the applicable Plan or Plans (and any amendments to such Agreement, Plan or Plans), 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; and

(c) Agreed to comply with and be bound unconditionally to said Plan or Plans and Trust, any amendments thereto, as well as all of the decisions of the Board and the Administrator.

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 eight (8) Employer Trustees (of whom no more than three (3) may be designated by the League of American Theaters and Producers, Inc. (the "League") and no more than five (5) may be designated by the Alliance of Motion Picture and Television Producers (the "AMPTP")) and up to eight (8) Union Trustees.

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 Employer Trustees shall be: IRVING W. CHESKIN, DEAN FERRIS, CAROL LOMBARDINI, SETH POPPER, STEVE RAPAPORT, JEFFREY RUTHIZER, HARRIET SLAUGHTER, and HOWARD WELINSKY. In no event shall the Union or Union Trustees be entitled to designate an Employer Trustee.

(b) The Union Trustees shall be designated by the President of the Union. The current Union Trustees designated by the President of the Union shall be: DANIEL DITOLLA, PETER FITZPATRICK, BRIAN LAWLOR, MATTHEW D. LOEB, JOHN MCNAMEE, DEBORAH REID, THOMAS C. SHORT, and JAMES B. WOOD. 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. Any resignation by a Trustee shall be in writing and sent by registered mail addressed to the Office of the Fund.

3.7 Removal of Employer Trustees. Any Employer Trustee may be removed from office at any time, with or without cause, by an instrument in writing signed by a duly authorized representative of the Employer or Employer organization appointing him and filed with the Board. Such removal shall be effective immediately upon such filing. For this purpose, the League shall be deemed to have appointed IRVING W. CHESKIN, SETH POPPER and HARRIET SLAUGHTER; and the AMPTP shall be deemed to have appointed DEAN FERRIS, CAROL LOMBARDINI, STEVE RAPAPORT, JEFFREY RUTHIZER and HOWARD WELINSKY.

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. 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 Sections 3.7, a successor Employer Trustee shall be designated as follows:

- (a) IRVING W. CHESKIN, SETH POPPER and HARRIET SLAUGHTER, or their successors as Employer Trustee, shall be replaced by a designee of the League.
- (b) DEAN FERRIS, CAROL LOMBARDINI, STEVE RAPAPORT, JEFFREY RUTHIZER, and HOWARD WELINSKY, or their successors as Employer Trustee, shall be replaced by a duly authorized representative of the AMPTP.

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. Such appointment shall become effective immediately upon such filing.

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, a bank, trust company or broker/dealer located within the United States.
- (b) The Board may, pursuant to Instructions or a separate written agreement, delegate to the Corporate Trustee:

- (1) the power to hold the Fund 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 in the Corporate Trustee's sole discretion (pursuant to the powers set forth in Section 5.5 of this Agreement as may be duly delegated to it by the Board);

(3) the power to loan Trust Fund Securities (pursuant to Section 5.5(t) of this Agreement); 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, which agreement shall contain such provisions as the Board may deem advisable. Upon execution of such agreement with the Corporate Trustee, the Board may transfer and convey to the Corporate Trustee 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, 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. 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 in the manner provided in the trust or other agreement between the Board and the Corporate Trustee. In the event that a Corporate Trustee is appointed, such Corporate Trustee 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 pursuant to said agreement.

3.13 Use of Custodian

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

(b) The Board may enter into and execute a custodial or other written agreement with the Custodian, which agreement shall contain such provisions as the Board may deem advisable. Upon execution of such agreement with the Custodian, the Board may transfer and convey to the Custodian any part or all of the Securities, Real Property or Interest in Real Property, or other Property of the Fund acceptable to the Custodian.

(c) The Board may, at any time, remove the Custodian in the manner provided in the trust or other agreement between the Board and the Custodian. In the event that a Custodian is appointed, such 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 Custodian pursuant to said agreement.

ARTICLE IV PLAN OF BENEFITS

4.1 Benefits.

(a) The Board (or the Administrator 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 to be provided to Covered

Employees and their Beneficiaries. However, no benefits other than health, welfare 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, the Custodian, or other duly authorized agent) or may be provided for by the purchase and delivery of such insurance contracts, policies or certificates or the purchase of health, welfare and related benefits or services from one or more health maintenance or similar organizations, 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) 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 Plan Administrator or any Committee or other designee duly authorized by the Board) shall have the exclusive right, power and 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 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 provision of benefits to Covered Employees and Beneficiaries is to be determined shall be specified in the Plan, as amended by the Board from time to time.

In the event an application for benefits under the Plan shall be denied, the Trustees shall provide such Employee with adequate notice in writing, setting forth the specific reasons for such denial in a manner which can be easily understood by the Employee. Any Employee whose claim for benefits has been denied shall be afforded a reasonable opportunity to apply for a full and fair review by the Trustees. The Trustees shall have the authority to establish rules and regulations concerning the manner in which Employees may apply for an appeal of the denial of his or her claim for benefits, which shall be set forth in 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, health maintenance organizations or similar entities.

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 made by a mistake of fact or law, 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), offset by any benefits or claims paid by the Fund based on such mistaken contribution, to the Employer prior to the expiration of six months after a determination by the Board (or its duly authorized designee) that such contribution has been made by a mistake of fact or law.

(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, in whole or in part, shall be final and binding on the Employer and any affected Employee or Beneficiary.

4.5 No Assignment of Benefits. Except as may otherwise be provided in the Plan, ERISA or the Code:

(a) No monies, property or equity of any nature whatsoever in the Fund or contracts, policies, benefits, or monies payable therefrom shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, attachment, encumbrance, garnishment, mortgage, lien, or charge of any kind, nor shall any health or welfare 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; and

(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.

(d) Notwithstanding the foregoing, a Covered Employee or a Beneficiary may assign his or her right to receive reimbursement from the Fund, for a benefit that is covered under the Plan, to a qualified medical provider as determined pursuant to the terms of the Plan. In the event that there is any dispute as to whether an assignment made pursuant to this Section 4.5(d) is valid, the Trustees' decision shall be final, binding and conclusive on all affected parties.

4.6 Filing of Reports and Notices. The Trustees are authorized to file any and all reports with the U.S. Department of Labor, the Internal Revenue Service of the United States Treasury Department and any other federal or state agency that requires reports or filings pertaining to the Plan or the

Trust. In addition, the Trustees are authorized to make any applications necessary in order to receive and maintain approval from the Internal Revenue Service, and the U.S. Department of Labor.

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 all Fund professionals 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) premiums or other payments in connection with the policy or policies of insurance, health maintenance and other similar contracts entered into by the Fund, if, when and to the extent such payments or premiums shall become due;

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

(E) any taxes of any nature, provided, however, that the Trustees may contest the validity of any tax and may obtain the advice of counsel;

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

(G) 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; and

(H) the reimbursement of all reasonable and necessary expenses of the individual Trustees incurred in connection with the operation of the Trust and the Plan and their performance of their duties as Trustees.

(2) To pay from the Trust Fund or provide for the payment of, subscriptions, charges, deposits or other payments under insurance, health maintenance organization and other benefits contracts.

(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, as such expenses may be approved by the Board.

5.4 Insurance Contracts.

(a) The Board may enter into such insurance contracts and policies with health maintenance and similar organizations, and 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 contracts and policies, 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 health maintenance or other organization with which such group contracts or policies are in effect shall not be required to inquire into the authority of the Board.

(b) In no event shall any insurance company, health maintenance organization, or similar entity issuing any contracts or policies 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 or policy issued by it.

(c) Any insurance company, health maintenance organization, or similar entity may deal with the Board in accordance with the terms and conditions of the contract or policy between such entity and the Board and in such manner as the Board and the entity 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 (or where an Investment Manager or Custodian is duly appointed to have investment authority in connection with Trust Fund assets in accordance with this Agreement, such Investment Manager or Custodian, as the case may be) 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 to an Investment Manager (pursuant to Section 8.9 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, release or settle any claim, 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 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;

(k) To apply for, purchase, receive, retain, administer, surrender, transfer or assign any insurance policy or health, welfare or related benefit contract, and pay the premium and exercise the rights, privileges, options and benefits contained in any such contract;

(l) To organize 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 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, 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 professional counsel, 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 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 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).

(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:

(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;

(t) To:

(1) loan 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 (100%) 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;

(u) 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, exchange or otherwise acquire and to 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 which may at any time be encumbrances upon any property, 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, Collective Trusts or other 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 prohibi-

ed 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);

(v) 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;

(w) To attend to legal matters in connection with the making of investments for the Trust Fund by retaining appropriate legal counsel in connection with the same and taking or causing to be taken such acts as, in the reasonable judgment of the Board and upon advice of such counsel, are necessary or appropriate to comply with all applicable laws, rules and regulations in connection with the making, validity or enforceability of such investments;

(x) 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.

(y) 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 or necessary to accomplish the general objectives of the Plan or this Trust.

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. 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 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.

5.8 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 (f) 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 (f) 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 (f) below;

(d) No Trustee shall be liable with respect to a breach of a fiduciary duty by another Trustee which was committed before he became, or after he ceased to be, a fiduciary pursuant to the terms of the Plan or Trust; and

(e) 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

(f) 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 or except as may be prohibited under ERISA.

(g) The Trustees may, in their sole discretion, seek judicial protection, by any action or proceeding they may deem necessary, to settle their accounts or to obtain judicial determination or declaratory judgment as to any question of construction of this Agreement or instruction as to any action thereunder. The Trustees shall be required to join as party defendants in any such action or proceeding only the Union and the Employers who have contributed in the preceding six months, although the Trustees may also join such other parties therein as they may deem necessary or appropriate. In no event shall such power in any manner limit or otherwise affect or circumscribe the rights of the Union or the Employers under their Collective Bargaining Agreements or the laws of the State of New York and/or the United States.

5.10 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 or duly authorized surety company qualified under the laws of the State of New York 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.

5.11 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 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(f) of this Agreement) 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, 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).

5.12 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 policies or 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, to an employee of the Fund, or to any other person as the Board, in its sole discretion, shall determine pursuant to such policies or resolutions.

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

5.14 Discretionary Authority.

(a) The Board (or, where applicable, the Administrator or any Committee, or any insurance carrier, health maintenance organization or similar entity 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 factual and legal 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, or any insurance carrier, health maintenance organization or similar entity duly authorized by the Board) shall have the sole and absolute discretionary authority to:

- (1) take all actions and make all decisions (including factual 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, and all other determinations made, under the Plan or other Plan documents;
- (4) resolve and/or clarify any factual or other 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 Administrator or any Committee, or any insurance carrier, health maintenance organization or similar entity 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-Chairpersons 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 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; provided, however, that no individual or joint action of any Trustee or Trustees in excess of the authority granted by this Agreement or the Trustees shall be binding on the Fund or the Trustees or any Trustee.
- (c) 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.
- (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.

5.16 Educational Conference.

- (a) The Trustees are hereby empowered to obtain membership, in the name of the Fund, in a recognized organization established for the education and training of Trustees and Fund personnel, may authorize one or more of the Board of Trustees, the Administrator, or Fund personnel to attend such organization's educational conferences, and may authorize the payment by the Fund of the reasonable expenses actually incurred by said Trustee, Administrator, or Fund personnel in attending said educational conferences.
- (b) The Trustees may also authorize one or more of the Board of Trustees, the Administrator, or Fund personnel to attend industry conferences directed at and pertinent to the provision, management and administration of benefits and may authorize the payment by the Fund of the reasonable expenses

actually incurred by said Trustee, Administrator, or Fund personnel in attending said industry conferences.

ARTICLE VI MEETINGS AND DECISIONS OF TRUSTEES

6.1 Officers.

(a) The Board shall elect two (2) Co-Chairpersons 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-Chairperson who is a Union Trustee shall preside over meetings of the Board. During odd-numbered calendar years, the Co-Chairperson who is an Employer Trustee shall preside over meetings of the Board.

6.2 Calling of Meetings.

(a) The Board shall endeavor to hold regular meetings at least four (4) times per year, and at such other times as the Board may reasonably decide. Either Co-Chairperson or any four (4) Trustees (at least one (1) of whom shall be a Union Trustee and at least one (1) of whom shall be an Employer Trustee) may call a special meeting of the Board, at any time.

(b) Subject to the provisions of Section 6.2(c), all meeting of the Board shall be subject to prior written notice, specifying the time, place and agenda for the meeting. Notice of a regular meeting or of a special meeting shall be furnished at least five (5) business days prior to the date of the proposed meeting. Notices of meeting shall be sent by the Administrator or by the Trustee(s) calling for the meeting, and may be sent by registered mail, telefax or e-mail transmission to each Trustee at the address, fax number or e-mail address last furnished by the Trustee to the Administrator, and shall be deemed to have been furnished three (3) business days after the date of mailing or the same day as the date of any telefax or e-mail transmission to such address.

(c) Meetings of the Board may be held at any time without proper notice or with notice for a shorter period than specified in Section 6.2(b), provided that all of the Trustees consent thereto in writing, either before or as soon as practicable following such meeting and that there is a quorum of Trustees participating in the meeting to conduct business.

(d) Some or all of the Trustees may participate in meetings of the Board by telephone conference, video conference, or any similar method by which Trustees may hear and be heard by each other, and any such participation shall count for purposes of establishing a quorum pursuant to Section 6.3.

6.3 Quorum. No action shall be taken at a meeting of the Board unless a quorum is present. For the purposes of transacting business, a quorum shall consist of at least three (3) Union Trustees and three (3) Employer Trustees (at least one of whom shall be an appointee of the League and two of whom shall be appointees of the AMPTP), including any Trustee who has furnished a written proxy (pursuant to Section 6.4(b)), for such meeting.

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 participating in 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 participating in 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 proxy 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 Administrator or either Co-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 the unanimous vote of all Trustees. For purposes of the preceding sentence, the abstention of a Trustee due to a conflict of interest shall not prevent a determination that the vote is unanimous.

(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)), 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 by 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, and to such other persons as the Board may deem advisable in its sole and absolute discretion.

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-Chairperson may 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-Chairperson or both of 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 both 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) the Employer Trustees or 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 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 the unanimous vote of the Board. Notwithstanding the foregoing, the Arbitrator shall be without power or authority to amend, modify or vary any provision of the Plan, this Agreement or a Collective Bargaining Agreement.

(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 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 and the Plan, 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) initial 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 (subject to Board approval);

(6) supervision of the 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 the provision of regular reports to the Board (or its Committees) concerning the operation of the Fund or Plan.

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 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 tax-exempt status of the Plan and Trust, under the Code;

(4) designation of fiduciaries of the Trust Fund and Plan (including, without limitation, the Administrator, 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); and

(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 Assets, which functions have not been duly delegated to 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 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 such Committee or a specific Trustee or group of Trustees.

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 Manager by exercising any of the powers set forth in Section 5.5 of Article V of this Agreement with respect to the Securities or Real Property or Interest 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. 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 may be 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 set forth 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). 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 (y) (unless the Board has explicitly consented in writing to the Investment Manager exercising the powers set forth in such subsections). Notwithstanding anything to the contrary contained in this Agreement, neither the Board nor any Committee 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.

8.3 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) through (y) (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 (consistent with the provisions of ERISA and the Investment Manager's agreement with the Board); 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 and the Investment Manager's agreement with the Board).

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 and shall be set forth in the Investment Manager's agreement with 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 neither the Board nor the Administrator 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).

8.9 **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 privileges or subscription rights, 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) The Investment Manager shall also issue a report to 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) The 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, each Employer shall contribute to the Trust Fund on behalf of all Covered Employees the amount required by the applicable Collective Bargaining Agreements at any time in force and effect between the Union and an Employer, or any participation agreements executed by the Union.

(b) The rate and amount of contribution shall at all times be governed by the aforementioned Collective Bargaining Agreements or participation agreements then in force and effect, together with any amendments, supplements, or 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 or participation agreements regarding the rate and principal amount of contributions. With respect to Fund employees who shall be covered hereunder, the rate of contributions to the Trust Fund with respect to said Fund employees shall be determined by the Board of Trustees in their sole and absolute discretion.

9.2. Effective Date of Employer Contributions. All contributions shall commence to be made effective as of the date specified in the applicable Collective Bargaining Agreements or participation agreements, and said contributions shall continue to be paid as long as the Employer is so obligated pursuant to said Collective Bargaining Agreement or participation agreement or until it ceases to be an Employer within the meaning of this Agreement.

9.3 Mode of Payment. All contributions shall be made payable to "I.A.T.S.E. National Health and Welfare Fund," or shall be paid in such other manner and form as may be prescribed by the Board.

9.4 Default in Payment.

(a) Unless the Trustees have otherwise determined, and notwithstanding any provision in a Collective Bargaining Agreement or participation agreement to the contrary, contributions by an Employer shall be payable no later than ten days following the end of the month in which the work has been performed. Interest, liquidated damages and reasonable attorneys' fees may be assessed with respect to late contributions pursuant to delinquency policies and procedures that may be adopted by the Trustees from time to time ("Delinquency Guidelines").

(b) In addition to any other enforcement remedies that may exist under this Agreement, 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) 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 contributions to Employees of such terminated Employer. Nothing in this Section 9.4(c) shall affect or otherwise modify the ability of the Board 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 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;
- (2) attorneys' fees;
- (3) court costs;
- (4) all other costs and expenses attributable to the collection of such contributions or other payments; and
- (5) interest at the rate provided in the Delinquency Guidelines.

(e) In addition to the right to assess an Employer with audit costs provided in Section 9.8(g), the Board 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 or other forms of payment which the Employer is obligated to make to the Fund as provided in the Delinquency Guidelines.

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 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, in accordance with the court's award, the following amounts:

- (a) all unpaid contributions due and payable; plus
- (b) interest on such unpaid contributions (at the rate provided in the Delinquency Guidelines); plus

(c) an amount equal to the greater of:

(1) the interest on the unpaid contributions (at the rate provided in the Delinquency Guidelines),
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 any 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.

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 or the Administrator, in such form and manner as may be required by the Board or the Administrator including, without limitation, providing information concerning the Employer and, if applicable, any payroll company or other company, partnership, person, organization or entity affiliated with such Employer (hereinafter collectively referred to as the "Employer"), as well as all Employee names, addresses, social security numbers, local union affiliations, engagement date(s), "scale wage" and contribution amounts. The Employer shall submit to the Fund separate remittance or other reports for each type of engagement.

(b) The Board (or the Administrator, if authorized by the Board) shall be authorized and empowered to initiate on behalf of the Fund whatever action(s) or proceeding(s) may 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).

(c) The Board (or the Administrator, if authorized by the Board) shall have the right to designate an accountant, attorney or other representative of the Fund (a "Fund Representative") periodically to examine, copy and audit, and the Employer agrees to permit such Fund Representative to conduct such periodic examinations and audits of, 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 (or any other agreement requiring contributions to the Fund), this Agreement, the Plan, the rules and policies of the Trustees, or under applicable law.

(d) 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.

(e) 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 (including, but not limited to, such Records and other documents as listed hereinabove).

(f) 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. The Employer shall be permitted to adjourn the audit for up to ten (10) business days (provided that the Employer gives the Fund Representative requesting the audit with no less than ten (10) business days' advance written notice of its need for an adjournment).

(g) In the event that the Fund Representative has provided proper and timely notice of the audit to the affected Employer in accordance with Section 9.8(f) 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) of this Article IX). In any such action, the affected Employer consents to jurisdiction in the Federal District Court for the Southern District of New York.

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

9.9 Employee Contributions.

The Trustees shall be empowered, if legally permissible, to accept contributions from individual Employees and/or from the Union on behalf of individual Employees in such cases and on such conditions as the Trustees may determine, in order to defray the cost of providing benefits for such individual Employees where, because of periods of unemployment or other interruptions in employment, they would otherwise cease to meet the eligibility requirements established under the Plan.

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 Board, the Administrator, all Trustees, all Contributing Employers, any Investment Manager, or Custodian, and all others whosoever; provided that the amendment:

(a) is consistent with, and shall not divert any portion of the Trust Fund from, 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, welfare or related benefits or result in the return or diversion of any part of the Fund to the Union or to any of the Contributing Employers except as otherwise provided in this Agreement.

10.3 Notification of Amendments. Whenever an amendment is adopted in accordance with this Article, a copy thereof shall be distributed to all Trustees, and the Trustees shall execute any instrument or instruments necessary in connection therewith.

10.4 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);

(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.

(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 and winding up the affairs of the Trust. The Board may take any action with regard to health maintenance organizations, insurance carriers or policies or other group contracts which the Trustees, in their discretion, may deem appropriate.

10.5 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 from consolidating or merging the Fund with another welfare fund or from transferring any assets of the Fund to another welfare 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.

ARTICLE XI ACCOUNTS OF THE BOARD

11.1 Board to Maintain Trust Accounts. Unless otherwise delegated to the Administrator, 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, as well as representatives of the Union and 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. The Trust Fund shall be valued by the Trustees at least annually. 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, (or, at the direction of the Board, the Custodian or the Fund's actuarial consultants), to reflect their current fair market value. The Trustees may engage and pay the expenses of a professional to conduct such valuation.

ARTICLE XII MISCELLANEOUS

12.1 Termination of Individual Employers. An Employer shall cease to be an Employer within the meaning of this Agreement when it is no longer obligated pursuant to a Collective Bargaining Agreement with the Union to make contributions to this Fund or, as determined by the Trustees, when it is delinquent in its contributions or reports to the Fund.

12.2 Situs. The Board and the Fund shall have and maintain a principal office in the City of New York, County of New York. All actions of the Board shall be deemed to have taken place at the situs of this Trust Fund. The Board may change the location of said office within the County of New

York, but no change shall be effective until notice thereof shall have been given to the Union and the Employers who have made contributions within the six months immediately prior to said notice.

12.3 Choice of Law. This Agreement and the Trust Fund created hereby, as well as the Plans, 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).

12.4 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.

12.5 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.

12.6 Service of Process. The Administrator and/or any of the individual Trustees are hereby designated as agents for service of legal process on the Trust or the Plans.

12.7 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 Trustees (or their duly appointed designee(s)) 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 Trustees (or their duly appointed designee(s)) were duly authorized and empowered to execute such instrument.

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

12.9 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
I.A.T.S.E. National Health & Welfare Fund
2109 Broadway
New York, New York 10023

(b) To the Administrator:

Fund Administrator
I.A.T.S.E. National Health & Welfare Fund
2109 Broadway

New York, New York 10023

(c) To Fund Co-Counsel:

Spivak, Lipton, Watanabe, Spivak & Moss, LLP
1700 Broadway
New York, NY 10019

Attn: Franklin K. Moss, Esq.

Proskauer Rose LLP
1585 Broadway
New York, New York 10036-8299

Attn: Ira M. Golub, Esq.

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. The Trustees shall not be bound by any notice, direction, requisition, advice or request, unless and until it shall have been received by the Trustees at the above-listed address.

12.10 Severability. If any one or more of the covenants, agreements, provisions or terms of this Agreement (or any amendment hereto) the Plan or a Collective Bargaining Agreement 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.

12.11 Legal Compliance. The Board, Administrator, each Trustee, Committee, and each Investment Manager shall carry out their 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.

12.12 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.

12.13 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.

12.14 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.

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

12.16 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.

12.17 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.

12.18 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.

12.19 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 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

UNION TRUSTEES



IRVING W. CHESKIN


DANIEL DITOLLA



DEAN FERRIS


PETER FITZPATRICK



CAROL LOMBARDINI


BRIAN LAWLOR


SETH POPPER


MATTHEW D. LOEB

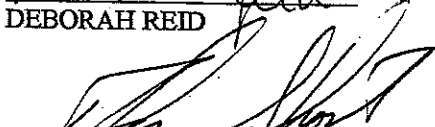

STEVE RAPAPORT


JOHN MCNAMEE


JEFFREY RUTHIZER


DEBORAH REID


HARRIET SLAUGHTER


THOMAS C. SHORT


HOWARD WELINSKY


JAMES B. WOOD