INDUSTRY AND LOCAL 338 PENSION FUND

AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST

Effective: ______ ___, 2024

TABLE OF CONTENTS

Page

INDUSTRY AND LOCAL 338 PENSION FUND

AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST

THIS AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST is made and entered into effective as of ____ __, 2024.

WITNESSETH:

WHEREAS, Teamsters Local 317, Teamsters Local 445, and Teamsters Local 687 (collectively, the "Unions") have entered into and, in the future, will enter into, Collective Bargaining Agreements with Employers, which require Employers to contribute to the Industry and Local 338 Pension Fund (the "Fund") so that eligible Employees and their Beneficiaries may have the opportunity to qualify for retirement benefits, subject to the rules and regulations of the Industry and Local 338 Pension Plan;

WHEREAS, the Fund was previously established to provide such benefits;

WHEREAS, the Fund is now administered pursuant to an Agreement and Declaration of Trust dated September 26, 1985, which has been subsequently amended in various respects;

WHEREAS, the Board of Trustees wishes to amend and restate such Agreement and Declaration of Trust in its entirety;

WHEREAS, Article XI of said Agreement and Declaration of Trust grants to the Board of Trustees of the Fund the power to amend the Agreement and Declaration of Trust;

NOW THEREFORE, the Agreement and Declaration of Trust is hereby amended and restated to read as follows.

ARTICLE I

DEFINITIONS

Unless the context or subject matter requires otherwise, the following definitions shall govern in this Agreement.

Section 1. **"Administrator"** means the Board of Trustees.

Section 2. **"Agreement"** means this Amended and Restated Agreement and Declaration of Trust, as amended from time to time.

Section 3. **"Beneficiary"** means a person designated by a Participant or by the terms of the Pension Plan and who is or may become entitled to a benefit from this Fund.

Section 4. **"Board of Trustees"** or **"Trustees"** means those persons designated in accordance with Article III of this Agreement.

Section 5. **"Code"** means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

Section 6. **"Collective Bargaining Agreement"** means the agreement (and any amendments thereto or renewals or extensions thereof) between any one of the Unions and an Employer requiring the Employer to contribute to the Trust in a manner acceptable to the Board of Trustees.

Section 7. **"Contributions"** means the money paid or payable into the Trust by the Employer pursuant to a Collective Bargaining Agreement with any one of the Unions. **"Contributions"** shall also mean, upon the expiration of a Collective Bargaining Agreement, money payable or paid into the Trust by an Employer under a duty imposed by law, including but not limited to the National Labor Relations Act.

Section 8. **"Employee"** means any person covered by a Collective Bargaining Agreement between an Employer and one of the Unions and who is engaged in employment with respect to which the Employer is obligated to contribute to the Trust.

Section 9. **"Employer"** means any employer that has entered into a Collective Bargaining Agreement with any one of the Unions (and any amendments thereto and renewals thereof with such Union), obligating said employer to contribute to the Trust. The Trustees shall have the discretion and authority to adopt rules for the acceptance, participation, and termination of Employers as they deem appropriate.

Section 10. **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended from time to time.

<u>Section 11.</u> **"Fund"** or **"Pension Fund"** means the Industry and Local 338 Pension Fund.

<u>Section 12.</u> **"Investment Manager"** has the meaning set forth in Section 3(38) of ERISA.

<u>Section 13.</u> **"Named Fiduciary"** means the Board of Trustees. In addition, any person or entity specifically appointed by the Board of Trustees in a resolution signed by at least one Union and one Employer Trustee designating that person's or entity's authority and responsibility as a Named Fiduciary shall be a Named Fiduciary if such person or entity accepts such appointment in writing.

<u>Section 14.</u> **"Participant"** shall mean participant as defined in the Plan.

<u>Section 15.</u> **"Plan"** means the Industry and Local 338 Pension Plan established and maintained pursuant to this Agreement, as amended from time to time.

<u>Section 16.</u> **"Trust"** or **"Fund"** shall mean the assets of the Fund and shall include the corpus and earnings, appreciations, or additions thereon and thereto held by the Board of Trustees for the purposes set forth in this Agreement and the Plan.

<u>Section 17.</u> **"Union"** means Teamsters Local 317, Teamsters Local 445, or Teamsters Local 687 or any successor by combination, consolidation or merger.

ARTICLE II

<u>NAME AND PURPOSE</u>

<u>Section 1.</u> **Composition of the Trust.** There is hereby established a Trust to be known as the Industry and Local 338 Pension Fund which shall consist of (1) all Contributions required by Collective Bargaining Agreements; (2) all investments made therewith, the proceeds thereof and the income therefrom; and (3) any other money or property received and held by the Trustees in accordance with applicable law for the uses and purposes set forth in this Agreement.

<u>Section 2.</u> **Purpose of the Trust.** The purpose of this Trust shall be to provide pension and such other benefits as may be permitted by law to qualified Participants and their Beneficiaries in the amounts and under the conditions as specified in the Agreement and Plan, in accordance with applicable law. No part of the corpus or income of the Trust shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their beneficiaries or the expenses (including taxes) of the Trust. It is intended that this Trust be a multiemployer plan as that term is defined in Section 3(37) of ERISA.

ARTICLE III

BOARD OF TRUSTEES

<u>Section 1.</u> Board of Trustees. The Trustees under this Trust Agreement, who shall be Trustees of the Trust, shall be five (5) in number, three (3) of whom shall be Union Trustees and two (2) of whom shall be Employer Trustees. The Board of Trustees, by unanimous vote, may increase or decrease the number of Trustees at any time. The Board of Trustees shall be Named Fiduciary under ERISA.

<u>Section 2.</u> Appointment of Union Trustees. Teamsters Local 317, Teamsters Local 445, and Teamsters Local 687 shall each appoint one (1) Union Trustee. The Union Trustee must be actively employed by the appointing Union or must be requested to act as a Union Trustee by the appointing Union. Each Union Trustee shall consent to and accept their appointment as Union Trustee. Each individual so appointed shall serve at the pleasure of the appointing Union. Each Union shall have the authority to appoint a Union Trustee for as long as such Union is a party to a Collective Bargaining Agreement requiring Contributions to the Trust.

<u>Section 3.</u> Appointment of Employer Trustees. The Employer Trustees shall be appointed by an Employer which is a party to a Collective Bargaining Agreement requiring Contributions to the Trust. The Employer Trustee must be actively employed by the appointing Employer or must be requested to act as an Employer Trustee by the appointing Employer. Each Employer Trustee shall consent to and accept their appointment as an Employer Trustee. Each individual so appointed shall serve at the pleasure of the appointing entity.

<u>Section 4.</u> Term of Trustees. Each Trustee shall continue to serve as such until the Trustee's death, incapacity, resignation or removal, as herein provided.

<u>Section 5</u>. Resignation of Trustees. A Trustee may resign and become and remain fully discharged from all further duty or responsibility hereunder upon giving thirty (30) days' notice in writing to the remaining Trustees, or such shorter notice as the remaining Trustees 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 at an earlier date, in which event such resignation shall take effect immediately upon the appointment of such successor Trustee.

<u>Section 6</u>. Removal of Union Trustees. A Union Trustee may be removed at any time through a written statement by the principal officer of the Union that appointed them as Union Trustee, which shall serve as sufficient evidence of the action taken by the Union.

<u>Section 7</u>. Removal of Employer Trustees. An Employer Trustee may be removed at any time through a written statement by a duly authorized representative of the Employer that appointed them as Employer Trustee, which shall serve as sufficient evidence of the action taken by the Employer.

<u>Section 8.</u> Employer Trustee Vacancies. In the event a vacancy occurs among the Employer Trustees, whether by resignation, incapacity, death or removal, or in the event that an increase in the authorized number of Trustees shall create a vacancy, the remaining Employer Trustees shall select a successor or additional Trustee. Such successor or additional Trustee shall satisfy the requirements of Section 3 herein. The Unions shall have no right to participate in any way in the selection of any Employer Trustee whether or not they contribute to the Fund for their employees.

<u>Section 9.</u> Union Trustee Vacancies. In the event a vacancy occurs among the Union Trustees, whether by resignation, incapacity, death or removal, a successor Union Trustee shall be designated by the Union that appointed such Union Trustee. In the event that an increase in the authorized number of Trustees shall create a vacancy, an additional Union Trustee shall be designated by a majority of the Union Trustees.

<u>Section 10.</u> Vacancy of Trustees. It is the current intention hereof that the Fund shall be administered by two (2) Employer Trustees and three (3) Union Trustees, but in the event of a vacancy or vacancies, until the designation of a successor Trustee or Trustees as hereinabove provided, the remaining Trustees shall have full power to act and shall act.

<u>Section 11.</u> Acceptance of Trusteeship. Any successor Employer Trustee or any successor Union Trustee shall immediately upon their designation as a successor Trustee and their acceptance of the trusteeship in writing filed with the Trustees become vested with all the property, rights, powers and duties of a Trustee hereunder with like effect as if originally named as a Trustee and all the Trustees then in office, the insurance carrier of each insurance policy, and all other necessary parties shall be immediately notified.

<u>Section 12.</u> Payment of Trustees. The Trustees shall not receive compensation from the Fund for the performance of their duties as a Trustee except as may be allowed under ERISA and as may be authorized by the remaining Trustees; however, each Trustee shall be entitled to reimbursement from the Fund for all reasonable and necessary expenses which the Trustee incurs in the performance of the Trustee's duties. The Trustees shall establish the conditions for payment of compensation (if any) and for the reimbursement of expenses. Examples of reimbursable expenses include: (1) the reasonable costs and expenses for attendance by the Trustees at meetings of the Board of Trustees or at educational seminars; and (2) the reasonable costs and expenses of any suit or proceeding brought by or against the Trustees, including but not limited to attorneys' fees, to the extent permitted by applicable law.

ARTICLE IV

VOTING, QUORUM, MEETINGS, DEADLOCK, ARBITRATION

Section 1. **Block Voting.** In the determination of any matter coming before the Trustees for their consideration, the entire group of Employer Trustees shall have one vote and the entire group of Union Trustees shall have one vote.

Section 2. **Quorum.** To constitute a quorum at any meeting of the Trustees, there must be present at least two (2) Union Trustees and both Employer Trustees. Any and all action taken at a meeting in the manner above provided shall have the same effect and force as if taken by all of the Trustees.

Section 3. **Meetings.** All meetings shall be held at a place and time to be designated by the Trustees. Meetings may be held by video or telephone conference or any other mechanism available for conducting virtual meetings. The Trustees shall meet at least once each year and at such other times as they deem it necessary to transact their business. A special meeting may be called by any two (2) Trustees upon ten (10) days' written notice.

Section 4. **Action of Trustees without Meeting.** Action by the Trustees may also be taken by them in writing, without a meeting, provided that in such cases, there shall be a unanimous concurrence of all Trustees.

Section 5. **Deadlock and Arbitration.** A deadlock shall be deemed to exist whenever the Trustees are unable to reach an agreement at a meeting after duly voting according to the voting procedure hereinabove set forth. A deadlock shall also be deemed to exist whenever the lack of a necessary quorum of Trustees continues for two (2) successive meetings of the Trustees, or where at two (2) successive meetings the minimum number of affirmative votes needed to cast the vote of the Employer Trustees or of the Union Trustees cannot be obtained. In the event of a deadlock in the determination of any matter which must be decided by the Trustees, the question shall be submitted for decision to a neutral person selected by the Trustees. In the event of the Trustees' inability to agree upon a neutral person within ten (10) days of reaching deadlock, such neutral person shall be selected from a list of arbitrators to be furnished by the American Arbitration Association ("AAA"). If no arbitrator on such list is mutually acceptable to the Trustees, the arbitrator shall be designated by the AAA. The AAA shall be advised of the nature of the dispute and shall be requested to furnish a list of arbitrators who are competent and qualified by training and experience to decide the issue involved. The decision of such arbitrator shall be final and binding and shall be adopted by the Trustees and deemed to be the vote of the Trustees. The costs and expenses incidental to any proceedings needed to break a deadlock shall be borne by the Trust.

ARTICLE V

POWERS AND DUTIES OF THE TRUSTEES

<u>Section 1</u>. **Conduct of Trust Business.** The Trustees shall have authority to control and manage the operation and administration of the Fund and shall conduct the business and activities of the Fund in accordance with this Agreement and applicable law. The Trustees shall hold, manage and protect the Trust and collect the income therefrom and Contributions thereto. The Board of Trustees shall be the Named Fiduciary and the Administrator of the Pension Fund as those terms are defined in ERISA. Except as provided in this Agreement or as determined by the Trustees, all actions taken by the Trustees that are fiduciary or would otherwise be considered settlor actions shall be considered fiduciary actions within the meaning of ERISA.

<u>Section 2</u>. **Use of the Trust to Pay Administrative Expenses and Provide Benefits.** (a) The Trustees shall have the power and authority to use and apply the Trust to pay or provide for the payment of all reasonable and necessary expenses (i) of collecting Contributions and payments and other monies and property to which the Trust may be entitled; and (ii) of administering the affairs of the Trust, including the purchase or lease of premises, material, supplies and equipment, (iii) of obtaining such legal, actuarial, investment, administrative, accounting, clerical and other assistance or employees as they may find necessary or appropriate, and (iv) of performing such other acts as the Trustees, in their sole discretion, find necessary or appropriate in the performance of their duties. (b) The Trustees shall have the power and authority to use and apply the Trust to pay or provide for the payment of retirement and related benefits to eligible Employees and Beneficiaries in accordance with the terms, provisions and conditions of the Plan to be agreed upon by the Trustees pursuant to this Agreement.

<u>Section 3</u>. **Construction and Determinations by Trustees.** The Trustees shall have full and exclusive authority to determine all questions of coverage and eligibility, methods of providing or arranging for benefits and all other related matters. They shall have full and exclusive power to construe the provisions of this Agreement and the Plan, and the terms used therein and any rules and regulations issued thereunder. Any such determination and any such construction adopted by the Trustees in good faith shall be binding upon the Unions, Employers, Employees, Participants, and Beneficiaries.

<u>Section 4.</u> **General Powers.** The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law, to:

(1) demand, collect, receive and hold Contributions and to take such steps as may be deemed necessary or desirable to collect Contributions due the Trust;

(2) pay or provide for the payment of all reasonable and necessary expenses of collecting Contributions and payments;

(3) establish the terms and conditions upon which benefits shall be provided, including but not limited to eligibility of Participants and the amount, nature and form of benefits;

(4) promulgate such requirements for the participation of Employers in the Fund and such other rules and regulations as may, in their discretion, be deemed proper and necessary for the sound and efficient administration of the Trust;

(5) commence or defend any legal, equitable or administrative proceedings brought in connection with the Trust and represent the Trust in all such proceedings;

(6) compromise, settle arbitrate and release claims or demands in favor of or against the Trust or the Trustees on such terms and conditions as the Trustees may deem advisable;

(7) enter into any and all contracts and agreements for carrying out the terms of this Agreement and the administration of the Fund;

(8) enter into an investment contract or agreement with an insurance company or companies for the investment and reinvestment of assets of the Fund;

(9) enter into a group annuity contract or contracts and any agreements supplemental thereto, with an insurance company or companies for the purpose of investing all or a portion of the Fund held by them in Trust. Any such contract may provide that deposits thereunder be allocated to the insurance company's general account, or solely to one or more of its separate accounts maintained for the collective investment of the assets of qualified retirement plans, including but not limited to, a separate account, invested primarily in real property or any interest therein, or to the insurance company's general account and one or more of its separate accounts. The insurance company issuing such contract shall have the exclusive responsibility for the investment and management of any amounts held under such contract, and shall have all the powers with respect to the assets of the Fund held thereunder as the Trustees have with respect to the assets of the Fund held under this Agreement;

(10) invest, reinvest and have invested and reinvested all funds of this Trust, without distinction between principal and income, in any type of investment the Trustees deem prudent;

(11) exercise all rights, proxies, powers and privileges as might be lawfully exercised by any person owning similar stocks, bonds or other property, real or personal, held by them as Trustees, in their own right;

(12) register securities or other Trust property in the name of the Trust or of the Trustees, or in the names of one or more nominees and to hold instruments in bearer form;

(13) enter into and terminate agency or custody agreements with banks or trust companies chosen by them, under which said agreements the Trustees may turn over to said banks or trust companies a portion or all of the funds held by them in this Trust for safekeeping, investment or reinvestment, on such terms as the Trustees deem advisable;

(14) enter into or terminate "Corporate Trust Agreements" with banks, on such terms as the Trustees deem advisable in their discretion, for custodian services and/or investment services, and to transfer the assets of the Fund to said banks;

(15) commingle at their discretion, all or any portion of the assets of the Trust, with assets of other qualified employee benefit plans for the purpose of investment in, or through, investment trusts for employee benefit plans. Said investment may, at the Trustees' discretion, be in the equity and/or fixed income funds of such investment trust. To the extent of this Trust's participation in any investment trust, that investment trust shall constitute a part of this Agreement;

(16) invest the assets of the Trust in any common, collective or commingled trust fund, to the extent permitted by ERISA and other applicable law, and to direct the investment of assets of the Trust in deposits which bear a reasonable rate of interest. To the extent monies or other assets are transferred to such a collective trust in exchange for an interest in such a collective trust, the terms and conditions of the plan of such collective trust solely shall govern the investment duties, responsibilities and powers of the Trustees of such collective trust, and to the extent required by law, such terms, responsibilities and powers shall be part of this Agreement.

(17) sell, exchange, lease, convey, mortgage or dispose of any property, whether real or personal, at any time forming a part of the Trust upon such terms as they may deem proper, and to execute and deliver any and all instruments of conveyance, lease, mortgage and transfer in connection therewith;

(18) pay or provide for the payment of all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust or any money, property or securities forming a part thereof;

(19) retain such portion of the monies of the Trust in cash balances as the Trustees may deem desirable, without any liability for interest thereon;

(20) establish and accumulate as part of the Trust such reasonable reserve funds as the Trustees, in their sole discretion, deem necessary or desirable to carry out the purposes of such Trust;

(21) allocate fiduciary responsibilities among the Trustees, or Committees of the Trustees, delegate fiduciary duties to persons other than Trustees and delegate

Trustee responsibilities to an Investment Manager as provided in this Agreement and in accordance with the requirements of ERISA;

(22) appoint an Investment Manager or Managers, as that term is defined in the ERISA, and enter into an agreement with such Investment Manager, in accordance with the requirements of ERISA, delegating to the Investment Manager the responsibility to control and manage, including the power to acquire and dispose of, such of the assets of the Trust as the Trustees may specify;

(23) retain a Third-Party Administrator (a "TPA") to administer the Trust or enter into an agreement or arrangement with other similar trust funds for the operation of a joint administrative office, which shall administer the Trust, perform such other duties and furnish such other services as may be assigned, delegated or directed or as may be contracted by the Trustees;

(24) retain or engage qualified investment consultants, independent qualified public accountants, enrolled actuaries, legal counsel and other necessary professionals to perform all services as may be required by applicable law and such other services as the Trustees may deem necessary;

(25) pay or provide for the payment from the Trust of all costs incurred in employing such professionals, consultants, and managers as the Trustees deem necessary and in accordance with this Agreement and applicable law;

(26) designate an agent for service of legal process for the Trust;

(27) obtain and maintain policies of insurance, to the extent permitted by law, to insure themselves, the Fund as such, as well as agents of the Trustees and of the Trust, while engaged in business and related activities for and on behalf of the Trust (i) with respect to liability to others as a result of acts, errors or omissions of such Trustee or Trustees, or agents, respectively, and (ii) with respect to injuries received or property damage suffered by them. The cost of the premiums for such policies of insurance shall be paid out of the Trust to the extent permitted by ERISA;

(28) enter into reciprocal agreements (on such terms as the Trustees deem advisable), with trustees of other pension funds to permit employees covered hereby to receive pension credits in this Fund when working outside the geographical jurisdiction and/or trade jurisdiction covered by the Collective Bargaining Agreements, as defined herein, and to receive from other pension funds Contributions made on behalf of such employees to the other funds; to disburse to other pension funds Contributions received on behalf of employees not normally covered under this Fund, to permit those employees to receive pension credits in their home funds;

(29) merge or integrate other pension funds into or with this Fund or to accept the transfer of all or a portion of the assets of another pension fund in accordance with the requirements of ERISA or, to merge or integrate this Fund into or with other pension funds or to transfer all or a portion of the assets of this Fund to other pension funds in accordance with ERISA;

(30) establish such rules and regulations necessary to effectuate the purposes of this Agreement and not inconsistent with the terms hereof; and

(31) do any and all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to accomplish the general objective and purpose of the Fund, provided all such actions shall be in accordance with this Agreement, the Plan, and applicable law.

Section 5. **Personal Liability.** No Trustee shall be liable or responsible for their own acts or for any acts or defaults of any other fiduciary or party in interest or any other person except to the extent liability is imposed by ERISA. The Trustees, to the extent permitted by ERISA, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person. Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Trust contracted by them as Trustees, or for the non-fulfillment of contracts, but the same shall be paid out of the Trust.

Section 6. **Reliance on Professional Advice.** The Trustees may consult with the Fund's legal counsel, actuary, accountant and any other professionals and, to the extent permitted by ERISA, the Trustees shall be protected in acting upon the advice of such professionals.

Section 7. **Books of Account.** The Trustees shall cause to be kept true and accurate books of account and records of all transactions of the Trust which shall be open to the inspection of each of the Trustees at all times and which shall be audited annually or more often, and at such times as the Trustees deem appropriate by a certified public accountant selected by the Trustees.

Section 8. **Surety Bonds.** The Trustees and any employees of the Trust's TPA who are empowered and authorized to sign checks and handle monies of the Trust shall be bonded by a duly authorized surety company, qualified to write such bonds, in such amounts as may be determined from time to time by the Trustees. The cost of the premiums of such bonds may be paid out of the Trust. The bonds shall be in such amounts as required by applicable law.

Section 9. **Execution of Documents.** The Trustees may, in the course of conducting the business of the Trust, execute all instruments or documents or notices in the name of the Fund which instruments shall be signed by or one or more Trustees or employees of the TPA as authorized by the Trustees in writing.

<u>Section 10.</u> Deposits and Withdrawals. All monies due to the Trust shall be deposited in such bank or banks as the Trustees may designate for that purpose and all withdrawals of monies from such account(s) shall be made only by checks signed by those Trustees or representatives of the Fund's TPA authorized in writing by the Trustees to sign such checks. Except as hereinafter provided, no check shall be valid unless signed by either (a) a duly appointed representative of the Fund's TPA or (b) two (2) persons, one of whom shall be a Union Trustee and one an Employer Trustee.

ARTICLE VI

<u>COLLECTION OF CONTRIBUTIONS</u>

<u>Section 1.</u> Payment and Reporting of Contributions. An Employer shall pay to the Trust the Contributions required by the Employer's Collective Bargaining Agreement. Payments shall be made promptly on the 15^{th} day of each month covering all payroll periods during the preceding calendar month. Detailed reports with respect to such Contributions shall be made in such form and manner and at such intervals as may be required by the Trustees. The Trustees have the sole discretion to mandate the manner in which Employers must submit payment and reports, including mandating electronic payment of Contributions and submission of reports, notwithstanding anything to the contrary in the Collective Bargaining Agreements. Each Employer shall promptly furnish to the Trustees on demand any and all records pertaining to the classifications of the Employer's employees, their names, social security numbers, the amount of wages paid and hours worked, and any and all other payroll records and information that the Trustees may require in connection with the administration of the Trust.

<u>Section 2.</u> Audits. The Trustees, or their authorized representatives, may at any time examine and audit the pertinent books and records of any Employer to determine whether proper Contributions are being made and whenever such examination or audit is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust. If such audit discloses the failure by an Employer to make the required amount of Contributions or to contribute for the requisite number of employees, the Employer shall pay the cost of the audit in addition to making the additional Contributions required and interest thereon unless such findings are paid by the Employer within thirty (30) days of demand for payment.

<u>Section 3.</u> Authority to Collect Contributions. The Trustees shall have the power to demand, collect and receive Contributions and shall hold such monies for the purposes specified in this Agreement. In addition to any other enforcement remedies under the Collective Bargaining Agreements and under this Agreement, the Trustees are authorized and empowered to take whatever actions may be proper and necessary in their discretion for the enforcement of Employers' obligations including but not limited to proceedings at law and in equity and arbitration and any remedies which would be generally available to the parties for enforcement of the Collective Bargaining Agreement.

Section 4. **Default in Payment.** The failure of an Employer to pay Contributions when due shall be a violation of the Collective Bargaining Agreement between the Employer and the Union and a violation of the Employer's obligations under this Agreement. Non-payment by an Employer of any monies due shall not relieve any other Employer from their contribution obligation. In addition to any other remedies to which the parties may be entitled, an Employer in default for five (5) working days shall be obligated to pay interest on the Contributions at the rate of 8¼% per annum from the date that payment of the Contributions was due until the date that Contributions are received by the Fund, plus all expenses of collection incurred by the Trustees, including reasonable attorneys' and auditors' fees.

Section 5. **Legal Action Following a Default in Payment.** If an Employer fails to pay required Contributions, the Trustees may bring an action on behalf of the Trust pursuant to Sections 502(g)(2) and 515 of ERISA to enforce the Employer's obligation. In any action in which judgment is awarded in favor of the Trust, the Court shall issue an award to the Trust:

(a) requiring the Employer to pay to the Trust:

(i) the unpaid Contributions,

(ii) interest on the unpaid Contributions at the prime rate of 8¼% per annum from the date that payment of the Contributions was due until the date that Contributions are received by the Fund,

(iii) liquidated damages equal to the greater of:

(a) the amount of interest on the unpaid Contributions, or

(b) 20% of the unpaid Contributions;

(iv) reasonable audit fees, attorneys' fees, and costs of the action, and

(b) granting the Plan such other legal or equitable relief as the Court deems appropriate.

Nothing in this section shall be construed as a waiver or limitation on the Fund's, the Trustees' or the Union's right to enforce an Employer's contribution obligation in any other type of proceeding.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 1. **Termination of Individual Employers.** An Employer shall cease to be an Employer under this Agreement whenever such Employer is no longer contractually obligated, pursuant to a Collective Bargaining Agreement or applicable labor-management relations law, to contribute to the Trust or when the Trustees determine, in their sole discretion, that the Employer's participation as a contributing Employer shall terminate. Participants who are employees of such Employer shall cease to accrue benefits under the Plan after the termination date. Benefits accrued as a result of service with the Participants' Employer before the Employer had an obligation to contribute to the Trust may not be payable. In computing the period of service for determining the nonforfeitable percentage of the benefits of Participants who are employed by the terminated Employer, all years of service with the Employer after the Employer's withdrawal shall not be taken into account. An Employer who ceases to be an Employer hereunder shall remain fully liable for Contributions which may be due under the terms of the Collective Bargaining Agreement or applicable law, including withdrawal liability.

Section 2. **No Right, Title or Interest to Trust.** No Participant or any person claiming by or through such Participant by reason of having been named a Beneficiary shall have any right, title or interest in or to the funds or other property of the Trust or any part thereof, except as specifically provided. Subject to certain limited exceptions created by ERISA and the Code, no monies, property, equity or interest of any nature whatsoever in the Trust or policies or benefits or monies payable therefrom shall be subject in any manner by any Participant or person claiming through such Participant, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien or charge, and any attempts to cause the same to be subject thereto shall be null and void. If any attempt at alienation or other charge against benefits is made, the Trustees may, in their discretion, withhold payment of benefits due unless otherwise ordered by a court of competent jurisdiction.

Section 3. **Situs of Trust.** This Agreement is accepted by the Trustees in the State of New York and such place shall be deemed the situs of the Fund. All questions pertaining to validity, construction and administration shall be determined in accordance with the laws of the United States and of the State of New York, to the extent such question is not governed by federal law.

ARTICLE VIII

AMENDMENT

This Agreement may be amended in any respect and at any time by the Trustees, provided that each such amendment shall be duly executed in writing by the Trustees and annexed hereto. Any amendment may have retroactive effect.

ARTICLE IX

TERMINATION OF THE TRUST

Section 1. (a) The Trust may be terminated when there is no longer in force a Collective Bargaining Agreement between the Employers and the Union requiring Contributions to the Trust.

(b) The Trust may also be terminated at any time by the unanimous vote of all Trustees.

Section 2. In the event of termination of the Trust, the Trustees shall apply the Fund to pay or provide for the payment of any and all obligations including administrative expenses of the Trust and distribute and apply any remaining surplus in such manner as will, in their opinion, best effectuate the purpose of the Trust, provided however that no part of the corpus or income of the Trust shall be used for or diverted to purposes other than the payment of benefits of Participants and their beneficiaries and the administrative expenses of the Trust.

Section 3. Upon termination of the Trust, the Trustees shall forthwith notify the Union and each Employer, any insurance carrier and all other necessary parties, and shall continue as Trustees for the purpose of winding up the affairs of such Trust, and may take any action which the Trustees, in their discretion, may deem appropriate.

ARTICLE X

EMPLOYER WITHDRAWAL LIABILITY

<u>Section 1.</u> Withdrawal Liability. An Employer that withdraws from the Fund shall owe and pay withdrawal liability to the Trust, as determined under this Article and ERISA. The Employer's rights, duties and liabilities in connection with the Trustees' claim for withdrawal liability to the extent not expressly provided for herein shall be governed by ERISA. For purposes of this Article, all corporations, trades or businesses that are under the common control, as defined in regulations promulgated or adopted by the Pension Benefit Guaranty Corporation ("PBGC"), are considered a single employer and the entity resulting from a change in corporate structure or a change to an unincorporated entity is considered the real Employer.

<u>Section 2</u>. Definition of Withdrawal. Except as provided in this section, a withdrawal of an Employer occurs if the Employer:

(1) Permanently ceases to have an obligation to contribute to the Fund, or
(2) Permanently ceases all covered operations under the Fund.

A withdrawal does not occur solely because the Employer temporarily suspends Contributions to the Fund during a labor dispute involving its Employees. Nor does a withdrawal occur solely because of a change in the corporate structure of the Employer or because of a change to an incorporated structure, provided that the change does not interrupt the Contributions and obligation to contribute hereunder.

The date of an Employer's Withdrawal is the earlier of the date the Employer ceases to have an obligation to contribute to the Fund or the date its covered operations cease.

<u>Section 3</u>. Sale of Assets. A withdrawal of an Employer ("the Seller") does not occur solely because, as a result of a bona fide or arm's-length sale of assets to an unrelated party ("the Purchaser"), the Seller ceases covered operations under the Fund or ceases to have an obligation to contribute to the Fund for its covered operations, if:

(1) The Purchaser assumes the obligation to contribute to the Fund for such operations on behalf of substantially the same number of contribution base units ("CBUs") for which the Seller was required to contribute;

(2) The Purchaser provides to the Fund for a period of five (5) Plan Years commencing with the Plan Year beginning after the sale of assets, a bond, an amount held in escrow, letter of credit, or other credit arrangement satisfactory to the Trustees in an amount equal to the greater of:

(a) the average annual Contributions required to be made to the Fund by the Seller with respect to such operations for the three (3) Plan Years preceding the Plan Year in which the sale occurs, or

(b) the annual Contributions required to be made by the Seller with respect to such operations for the last Plan Year before the Plan Year in which the sale occurred, which bond, escrow or letter of credit shall be paid to the Fund if the Purchaser withdraws from the Fund, or fails to make a contribution to the Fund when due at any time during the first five (5) Plan Years beginning after the sale; and

(c) The contract for sale provides that if the Purchaser withdraws with respect to such operations, whether or not the withdrawal is a withdrawal with respect to the Purchaser's total operations during the first five (5) Plan Years specified above, the Seller is secondarily liable for any Withdrawal Liability it would have owed to the Fund (but for this section) if the Purchaser's liability with respect to such operations is not paid.

If the Purchaser withdraws with respect to such operations within five (5) Plan Years and fails to make any Withdrawal Liability payment when due, then the Seller shall pay to the Fund an amount equal to the payment that would have been due from the Seller but for this section.

If the Seller liquidates or distributes all or substantially all of its assets before the end of the five (5) Plan Year period specified above, then the Seller shall provide to the Fund a bond, amount in escrow or other credit arrangement satisfactory to the Trustees in an amount equal to the present value of the withdrawal liability the Seller would have had but for this subsection.

Section 4. **Amount of Withdrawal Liability.** The amount of an Employer's liability for a withdrawal shall be determined in accordance with Section 4211(c)(3) of ERISA, as amended.

Section 5. **Installment Payments.** Withdrawal liability shall be payable in installments. The total amount due from the Employer in each 12-month period beginning on the date of the first installment shall be the product of:

(1) the highest rate at which the Employer was obligated to contribute to the Fund in the period of ten (10) consecutive Plan Years ending with the Plan Year in which the withdrawal occurred, multiplied by

(2) the Employer's average annual contribution base for the three (3) consecutive Plan Years within the ten (10) consecutive Plan Years ending before the Plan Year in which the withdrawal occurred during which the Employer's contribution base was the highest; and

(3) provided however, that installments shall not be payable in excess of twenty (20) 12-month periods, and the number of installment payments due in the final year shall be reduced so that the total payments will not exceed the Employer's total amortized withdrawal liability. The number of payments shall be determined by applying interest rate used in the Plan's most recent actuarial valuation.

<u>**Section 6.**</u> **Partial Withdrawals.** Except as otherwise provided in this section, there is a partial withdrawal by an Employer on the last day of the Plan Year if for such Plan Year:

(1) there is a 70% contribution base unit decline (as defined below), or

(2) there is a partial cessation of the Employer's contribution obligation.

(a) 70% Decline in Contribution Base Units.

For purposes of determining where the condition of Section 6(1) is satisfied, there is a 70% contribution decline for any Plan Year if during each Plan Year in the "3-year testing period" the contribution base units for which the Employer is obligated to contribute to the Plan do not exceed 30% of the contribution base units for the "high base year".

The term "3-year testing period" means the period consisting of the Plan Year and the two immediately preceding Plan Years.

The number of contribution base units for the "high base year" is the average number of such units for the two (2) Plan Years for which they were the highest within the five (5) Plan Years immediately preceding the beginning of the 3-year testing period. The pertinent contribution base units ended before June 30, 1980 shall be deemed to be equal to the Employer's contribution base units for the Plan Year ended June 30, 1980.

Contributions and contribution units allocable to a Collective Bargaining Agreement with respect to which the Employer's contribution obligation permanently ceased before September 26, 1980, or at a facility for which the Employer permanently ceased to be obligated to contribute (or permanently ceased all covered operations) before September 26, 1980, shall not be taken into account if, and to the extent that, the Employer demonstrates the Contributions and contribution base units allocable to such Agreements or facility.

(b) Partial Cessation of Contribution Obligation

There is a partial cessation of the Employer's contribution obligation for the Plan Year if, during such year:

(1) the Employer permanently ceases to have an obligation to contribute under one or more, but fewer than all, Collective Bargaining Agreements under which the Employer has been obligated to contribute to the Fund, but continues to perform work in the jurisdiction of the Collective Bargaining Agreement of the type for which Contributions were previously required or transfers such work to another location.

(2) the Employer permanently ceases to have an obligation to contribute to the Fund with respect to work performed at one or more, but fewer than all, of its facilities, but continues to perform work at the facility of the type for which the obligation to contribute ceases.

(c) Amount of Partial Withdrawal Liability.

The amount of liability for a partial withdrawal and the total amount due in a 12-month period with respect to a partial withdrawal shall be pro rata shares of the amounts determined as if the Employer had withdrawn completely, in a manner consistent with the applicable provisions of Sections 4206 and 4212 of ERISA.

Notwithstanding anything herein to the contrary, the liability of an Employer for a partial withdrawal shall be subject to conditions set forth in regulations prescribed by the PBGC.

(d) Subsequent Withdrawal Liability.

If, after a partial withdrawal, an Employer again incurs liability for a complete or partial withdrawal, the liability incurred as a result of the later withdrawal(s) shall be adjusted to the extent necessary to avoid duplication of liability.

Section 7. **Notice and Demand.** As soon as practicable after an Employer's complete or partial withdrawal, the Trustees shall notify the Employer of the amount of its withdrawal liability, and the schedule of payments and demand payment in accordance with the schedule. An Employer's withdrawal liability shall be paid in equal monthly installments. Payment shall be due notwithstanding the pendency of any review, arbitration or other proceedings, beginning the first day of the month that begins at least 10 days after the date of notice of, and demand for, payment is sent to the Employer, except that the Trustees may, in their discretion, require the initial payment on the first day of the month following the demand even if there are fewer than 10 days between the demand and the due date, if the circumstances so warrant. Interest shall accrue on any late payment from the date the payment was due until the date paid, at the rate of 8¼% per annum.

Section 8. **Request for Review.** Within 90 days of the Employer's receipt of the Trustees' notification and demand, the Employer may ask the Trustees to review any specific matter relating to the determination of the Employer's withdrawal liability and the schedule of payments, identify any inaccuracy in the Trustees' determination of the Employer's withdrawal liability, or furnish any additional relevant information. The Trustees shall review the matters raised by the Employer and shall notify the Employer of their decision and the basis for such decision, including the reasons for any change in the determination. Such determination upon review shall be issued by the Trustees within a reasonable period of time. The failure of an Employer to request review of the Trustees' determination in accordance with this section shall preclude the Employer's request for arbitration.

Section 9. **Arbitration.** Any dispute between an Employer and the Trustees concerning withdrawal liability shall be resolved through arbitration in accordance with the following provisions:

(1) The Employer or the Trustees may initiate arbitration within 60 days following the earlier of: (a) the date of the Trustees' notification to the Employer of their determination upon review under Section 8 or (b) 120 days after the date of the Employer's request for review under Section 8.

(2) The Employer and the Trustees may jointly initiate arbitration within 180 days after the date of the Trustees' initial demand to the Employer for payment of its Withdrawal Liability.

(3) An arbitration pursuant to this section shall be conducted under the Multiemployer Pension Plan Arbitration Rules of the American Arbitration Association, or pursuant to such other fair and equitable rules as the Trustees may adopt. The arbitrator shall have the power to award attorneys' fees and costs.

(4) In any such arbitration, the Trustees' determinations of and in connection with withdrawal liability and the schedule of payment shall be presumed correct unless the Employer shows by a preponderance of the evidence that a determination was unreasonable or clearly erroneous. The Trustees' determination of the Fund's unfunded vested liability for a Plan Year shall likewise be presumed correct unless the Employer shows by a preponderance of the evidence that the actuarial assumptions used in the determination were in the aggregate unreasonable (taking into account the experience of the Fund and reasonable expectations) or that the Fund's actuary made a significant error in applying the actuarial assumptions or methods.

(5) If, following review, arbitration or other proceedings, the amount of the Employer's withdrawal liability is determined to be different from the amount set forth in the Trustees' initial notice and demand, adjustment shall be made by reducing or increasing the total number of installment payments due. If the Employer has paid more than the amount finally determined to be its withdrawal liability, the Plan shall refund the excess.

<u>Section 10.</u> Default and Acceleration. An Employer is in default on its withdrawal liability payments if:

(1) any installment is not paid when due,

(2) the Plan has notified the Employer of its failure to pay the liability on the date it was due, and

(3) the Employer has failed to pay the past due installment within 60 days after its receipt of the non-payment notice.

In addition to a default due to non-payment, the Trustees may determine that an Employer is in default if:

(1) a petition is filed in Bankruptcy Court with respect to the Employer,

(2) the Employer sells a significant portion of its assets after it has withdrawn from the Fund,

(3) there is an assignment for the benefit of creditors with respect to the Employer, or

(4) upon the occurrence of any event or circumstances indicating that the Employer will be unable to pay its future obligations of withdrawal liability as determined in the sole discretion of the Trustees.

In the case of a default on withdrawal liability, the Trustees may require immediate payment of the outstanding balance of the Employer's withdrawal liability, plus accrued interest on the total outstanding amount from the due date of the first payment which was not timely made.

<u>Section 11.</u> Other Withdrawal Liability Provisions.

(a) **Prepayment.** An Employer may prepay all or part of its withdrawal liability without penalty, subject to such rules and conditions as the Trustees may promulgate.

(b) **Right to Adopt Rules.** The Trustees may adopt rules providing other terms and conditions for an Employer to satisfy its withdrawal liability consistent with the purposes and standards of ERISA, and not inconsistent with regulations of the PBGC.

(c) **Post-Withdrawal Resumption of Contributions.** If an Employer that has withdrawn from the Fund later renews the obligation to contribute, the unpaid balance of the Employer's liability incurred on account of the earlier withdrawal shall be reduced in accordance with rules adopted by the Trustees pursuant to regulations of the PBGC.

(d) **Bond/Security.** The Trustees may require that an Employer post a bond, or provide to the Plan other security, if:

(1) the Employer's payment schedule would extend for longer than 18 months;

(2) the Employer is the subject of a petition under the Bankruptcy Code, or similar proceedings under state or federal laws;

(3) substantially all of the Employer's assets are sold, distributed or transferred out of the jurisdiction of the courts of the United States, or

(4) in any Plan Year, the contribution base units for which an Employer contributes to the Plan do not exceed 30% of the average number of contribution base units for the two (2) Plan Years for which such contribution base units were the highest within the five (5) Plan Years immediately preceding the Plan Year at issue.

(e) **Adjustment of Withdrawal Liability.** Notwithstanding any other provision of this Article, if all or substantially all contributing Employers withdraw from the Plan pursuant to an agreement or arrangement, as determined under ERISA Sections 4209 and 4219(c)(1)(D), the Withdrawal Liability of each such Employer shall be adjusted in accordance with those ERISA sections and any regulations issued pursuant thereto.

(f) **Notice.** Any notice that must be given to an Employer under this Article or under Subtitle E of Title IV of ERISA shall be sufficient if given to the specific member of a commonly controlled group that has or has had the obligation to contribute to the Trust. Notice shall also be given to any other member of the controlled group that the Employer identifies and specifically designates to retrieve notices hereunder.

(g) **Litigation.** The Trustees may bring an action in federal court to enforce and collect withdrawal liability, in which event all of the remedies available pursuant to this Agreement and ERISA shall apply.

IN WITNESS WHEREOF, the undersigned do hereto set their hands and seals.

UNION TRUSTEES	**EMPLOYER TRUSTEES**
____________________ Daniel Maldonado Union Trustee	____________________ Christopher Palmer Employer Trustee
____________________ Mickey Smith Union Trustee	____________________ Andrea Rutherford Employer Trustee
____________________ Duane Wright Union Trustee	

Date: _________ __ 2024