INDUSTRY AND LOCAL 338 WELFARE FUND

AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST

Effective: _______ __, 2024

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INDUSTRY AND LOCAL 338 WELFARE 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 445 (the "Union") has 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 Welfare Fund (the "Fund") so that eligible Employees and their Beneficiaries may have the opportunity to qualify for welfare benefits, subject to the rules and regulations of the Industry and Local 338 Welfare 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, which was entered into in 1985 and which has been subsequently amended;

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

WHEREAS, Article X 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 Welfare 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 the Union 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 the Union. **"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 the Union 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 the Union (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.

Section 11. **"Fund"** or **"Welfare Fund"** means the Industry and Local 338 Welfare Fund.

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

Section 13. **"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 Trustee 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.

Section 14. **"Participant"** shall mean participant as defined in the Plan.

Section 15. **"Plan"** means the Industry and Local 338 Welfare Plan established and maintained pursuant to this Agreement, as amended from time to time.

Section 16. **"Policy"** means the policy of insurance, if any, purchased by the Fund to provide benefits to Employees and their eligible dependents.

Section 17. **"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.

Section 18. **"Union"** means Teamsters Local 445 or any successor by combination, consolidation or merger.

ARTICLE II

NAME AND PURPOSE

Section 1. **Composition of the Trust.** There is hereby established a Trust to be known as the Industry and Local 338 Welfare 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.

Section 2. **Purpose of the Trust.** The purpose of this Trust shall be to provide welfare and such other benefits as determined in the sole discretion of the Board of Trustees 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. Such benefits may include hospital, medical, prescription drug, life insurance, accidental and dismemberment, short-term disability, paid family leave, and any related benefits. The Fund may provide such welfare benefits on a selfinsured or an insured basis, as the Trustees deem appropriate. 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. The Fund is intended to qualify as a tax-exempt trust under the Code. The administration of the Fund, and its terms and provisions, shall be such that it shall at all times meet the applicable requirements of the Code.

ARTICLE III

BOARD OF TRUSTEES

Section 1. **Board of Trustees.** The Trustees under this Trust Agreement, who shall be Trustees of the Trust, shall be three (3) in number, two (2) of whom shall be Union Trustees and one (1) of whom shall be an Employer Trustee. 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.

Section 2. **Appointment of Union Trustees.** The Union shall appoint two (2) Union Trustees. The Union Trustee must be actively employed by the Union or must be requested to act as a Union Trustee by the 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 Union. The 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.

Section 3. **Appointment of Employer Trustee.** The Employer Trustee 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 Employer or must be requested to act as an Employer Trustee by the Employer. The 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.

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

Section 5. **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, 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 an Employer Trustee vacancy occurs, whether by resignation, incapacity, death or removal, or in the event that an increase in the authorized number of Trustees shall create a vacancy, and to the extent possible under the circumstances, the existing Employer Trustee shall seek to fill the vacancy by nominating a successor or additional Trustee who shall satisfy the requirements of Section 3 herein. If the existing Employer Trustee is unable to fill the vacancy, the Fund's Third-Party Administrator ("TPA") shall solicit nominations from the Employers. If more than one nomination is received, the Fund's TPA shall conduct a vote among the Employers and the individual who receives the majority of the Employers' votes shall be appointed as Employer Trustee. Such successor or additional Trustee shall satisfy the requirements of Section 3 herein. The Union shall have no right to participate in any way in the selection of any Employer Trustee whether or not it contributes to the Fund for its 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. 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) Union Trustees and one (1) Employer Trustee, 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 to the extent permitted by law, including the Labor Management Relations 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 one (1) Union Trustee and at least one (1) Employer Trustee. Any and all action taken at a meeting in the above-described manner 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 one (1) Trustee 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

Section 1. **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 Welfare 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.

Section 2. **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 welfare 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.

Section 3. **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 Union, Employers, Employees, Participants, and Beneficiaries.

Section 4. **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) purchase Policies to provide benefits to Participants and their eligible Dependents;

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

(7) 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;

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

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

(10) enter into a group annuity contract(s) and any agreements supplemental thereto, with an insurance company(ies) 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 Fund's assets held thereunder as the Trustees have with respect to the Fund's assets held under this Agreement;

(11) 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.

(12) 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;

(13) 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;

(14) 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;

(15) 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;

(16) 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;

(17) 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.

(18) 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;

(19) 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;

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

(21) 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;

(22) 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;

(23) appoint an Investment Manager(s), 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;

(24) retain 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;

(25) 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;

(26) 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;

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

(28) 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;

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

Section 10. **Deposits and Withdrawals.** All monies due to the Trust shall be deposited in such bank(s) 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) one Union Trustee and one Employer Trustee.

ARTICLE VI

COLLECTION OF CONTRIBUTIONS

Section 1. 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 15th 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.

Section 2. 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.

Section 3. 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 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 qualify for benefits under the Plan after the termination date except to the extent that claim claims were incurred prior to the termination date. 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.

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. 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.

Section 4. **HIPAA Compliance.**

(a) In accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") regarding the disclosure of "protected health information" ("PHI"), including electronic protected health information ("ePHI"), the Plan and its Trustees have taken and shall continue to take the actions set forth in this Section to comply with HIPAA and provide a mechanism under which Plan employees and the Trustees may receive PHI, including ePHI, in connection with Plan participants and beneficiaries.

(b) It is intended that the Plan shall comply with the Privacy Rule and Security Rule, and regulations issued pursuant to 45 C.F.R. Parts 160, 162 and 164, as same may be amended from time to time. It is further intended that the Agreement, as so amended, constitutes the plan document which under the Privacy and Security Rules must incorporate provisions governing the disclosure of PHI, including ePHI, of the Plan's participants and beneficiaries to the Trustees of the Plan.

(c) The Plan may use and disclose PHI, including ePHI, for treatment, payment and operations, and such other uses and disclosures as are permitted and required under the Privacy Rule and the Agreement, and employees of the Plan's TPA shall have access to such PHI, including ePHI, as is necessary for them to perform their duties for the Plan.

(d) To the extent permitted by law, the Trustees may receive, use and disclose PHI, including ePHI, if, in the sole discretion of the Trustees, such PHI or ePHI is necessary for the Trustees to perform their fiduciary or administrative duties as Trustees. In all cases, the Trustees shall receive, use and disclose the minimum amount of PHI or ePHI necessary for the Trustee to perform their functions under the Plan, and shall safeguard such PHI or ePHI as required by the Privacy and Security Rules and this Trust Agreement.

(e) The Trustees may also receive summary health information within the meaning of the Privacy Rule, for the purpose of obtaining premium bids for providing coverage, of modifying or amending the Plan and may also receive enrollment and disenrollment information that lists which individuals are participating in the Plan.

(f) Each Trustee who receives PHI, including ePHI, from the Plan shall keep such information in strict confidence and shall not use or further disclose the PHI or ePHI received from the Plan other than as permitted or required by law and this Agreement or upon the express written permission of the Participant or Beneficiary who is subject of the PHI or ePHI.

(g) The Plan has implemented administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of the Plan, and will ensure the "adequate separation" within the meaning of 45 C.F.R. § 164.504(f)(2)(iii) of the Trustees and their agents and employees.

(h) Each Trustee who receives PHI, including ePHI, from the Plan shall ensure that the Trustee's agents to whom the Trustee provides such PHI or ePHI, if any, shall conform to the same restrictions on the agent's use or disclosure of the information as govern the Trustee's use or disclosure.

(i) Each Trustee who receives ePHI from the Plan shall ensure that the Trustee's agents to whom the Trustees provide such ePHI, if any, shall implement reasonable and appropriate security measures to protect ePHI.

(j) Each Trustee who receives PHI, including ePHI, from the Plan shall not use or disclose such PHI or ePHI for any employment-related actions or decisions, or with respect to any pension or other benefit plan sponsored by the Trustees.

(k) Each Trustee who receives PHI from the Plan shall promptly report to the Plan's Privacy Officer any use or disclosure of such PHI that is inconsistent with the provisions set forth in this Agreement or otherwise required by law, of which the Trustee becomes aware.

(l) If any Trustee becomes aware of any security incident with respect to ePHI, the Trustee shall promptly report the incident to the Privacy Officer of the Plan and will cooperate with the Plan to correct the violation and to impose appropriate sanctions.

(m) The Trustees of the Plan shall, to the extent required by HIPAA (1) make PHI that the Trustee has created or received from the Plan available to the individual about whom such PHI pertains for inspection and copying, as required by law, (2) make available any PHI that they have received from the Plan for amendment and incorporate any amendments to PHI the Trustee has received from the Plan as required by law, and (3) make available the information required to provide an accounting of disclosures as required by law.

(n) The Trustees and the TPA's staff may obtain PHI in the course of performing the duties of their job with or for the Trustee who obtained such information. If any Trustee becomes aware of any such violations, the Trustee will promptly report the violation to the Privacy Officer of the Plan and will cooperate with the Plan to correct the violation, to impose appropriate sanctions, and to mitigate any harmful effects to the Participants or Beneficiaries.

(o) Each Trustee who receives PHI from the Plan shall return to the Plan or destroy all such PHI received from the Plan when there is no longer a need for the information, except that if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information non-feasible.

(p) The Trustees shall make available to the Secretary of Health and Human Services their internal practices, books and records relating to the use and disclosure of PHI received from the Plan to determine the Plan's HIPAA compliance.

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.

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

UNION TRUSTEES	**EMPLOYER TRUSTEE**
____________________ Daniel Maldonado Union Trustee	____________________ Christopher Palmer Employer Trustee
____________________ Lori Polesel Union Trustee	

Dated: _________ __ 2024