

**AGREEMENT AND DECLARATION OF TRUST**

**PROVIDING FOR THE**

**SANTA MONICA UNITE HERE**

**HEALTH BENEFIT TRUST FUND**

**AS LAST AMENDED AND RESTATED**

**EFFECTIVE MAY 1, 2015**

**Preamble**

The Agreement and Declaration of Trust Providing for Santa Monica Culinary Welfare Fund As Last Restated Effective June 1, 1980 and as Last amended August 14, 2006, is hereby amended and restated, effective May 1, 2015, as the Agreement and Declaration of Trust Providing for the Santa Monica UNITE HERE Health Benefit Trust Fund, As Last Amended and Restated Effective May 1, 2015.

**Article I**

**Name and Establishment of Trust Fund**

- 1.1 The name of the Trust established herein is the Santa Monica UNITE HERE Health Benefit Trust Fund.
- 1.2 This Trust is established pursuant to section 302(c)(5) of the Labor Management Relations Act of 1947, 29 U.S.C. § 186(c)(5), for the sole and exclusive benefit of Employees of Employers, and the Dependents of such Employees.
- 1.3 This Trust is intended to be exempt from taxation as a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits under section 501(c)(9) of the Internal Revenue Code of 1986.
- 1.4 This Trust is established pursuant to the requirements the Employee Retirement Income Security Act of 1974 (ERISA), including section 403(a) thereof, 29 U.S.C. § 1103(a), for the sole purpose of providing benefits to participants and beneficiaries under one or more employee welfare benefit plans (within the meaning of section 3(1) of ERISA) and defraying the reasonable expenses of administering such plan.

**Article II**  
**Definitions**

- 2.1 **Collective Bargaining Agreement** means an agreement between the Union and one or more Employers providing for contributions to the Trust and requiring the Union and such Employer or Employers to be bound by the terms of this Trust Agreement.
- 2.2 **Beneficiary** means a person designated by an Employee as one entitled to a benefit under a Plan that provides for the designation of one or more beneficiaries by an Employee.
- 2.3 **Dependent** means an Employee's spouse, domestic partner, children or other persons as defined by the Trustees in a Plan.
- 2.4 **Employee** means any person employed by an Employer with respect to whom contributions are required to be made to the Trust pursuant to a Collective Bargaining Agreement or a Participation Agreement. Employee shall not mean a sole proprietor, or a partner, or a corporate shareholder who is not an employee.
- 2.5 **Employer** means any employer of Employees that is obligated to make contributions to this Trust by reason of a Collective Bargaining Agreement or Participation Agreement. The term Employer shall also include a Union, if such Union executes a Participation Agreement acceptable to the Trustees, but not for the purpose of the appointment of Employer Trustees.
- 2.6 **Fund** means the trust assets of the Santa Monica UNITE HERE Health Benefit Trust Fund.
- 2.7 **Participation Agreement** means an agreement between the Trust and the Union or an Employer providing for the payment of contributions to the Trust and the participation of one or more non-bargaining unit employees in a Plan offered by the Trust.
- 2.8 **Plan** means one or more welfare benefit plans established and maintained by the Trustees for the payment or provision of life, sick, accident, or other benefits under section 501(c)(9) of the Internal Revenue Code and the regulations thereunder, including all benefits permissible under section 302(c)(5) of the Labor Management Relations Act excepting any retirement or pension benefit.
- 2.9 **Trust** shall mean the Trust established pursuant to this Trust Agreement and any amendments thereto.
- 2.10 **Trust Agreement** shall mean this Agreement and Declaration of Trust Providing for the Santa Monica UNITE HERE Health Benefit Trust Fund, As Last Amended and Restated Effective May 1, 2015.

2.11 **Trustee** shall mean an individual serving on the board of trustees pursuant to Article VI of the Trust Agreement.

2.12 **Union** means UNITE HERE Union Local 11, and such other unions as may hereafter become party to and bound by this Agreement, with the consent of the Union.

### **Article III Contributions**

- 3.1 Each Employer shall contribute monthly to the Trust the amount specified in its Collective Bargaining Agreement or Participation Agreement. Unless the Trustees accept a Collective Bargaining Agreement providing for contributions on another basis, contributions shall be payable for each hour worked by or required to be paid to each Employee of such Employer.
- 3.2 With each payment of contributions, each Employer shall submit a report, on a form approved by the Trustees, of such information as the Trustees may require for the documentation of the amount of contributions due to the Trust, as well as the identification of persons entitled to participate in any Plan of benefits offered through the Trust.
- 3.3 Notwithstanding the terms of any Collective Bargaining Agreement, payment of contributions for work in a calendar month is due, and shall be made to the Trust, on or before the 10<sup>th</sup> day of the following month; or at such other time as the Trustees, in their discretion, may require.
- 3.4 Notwithstanding the terms of any Collective Bargaining Agreement, payment of contributions is delinquent if not made to the Trust on or before the last day of the month in which such contributions are due under Section 3.3.
- 3.5 In the case of delinquent contributions, due to the difficulty of ascertaining the actual expense and damage to the Trust resulting from the failure of an Employer to timely pay contributions in full, the amount of damage to the Trust resulting from any delinquency shall be conclusively presumed to be ten percent (10%) of the amount of the delinquent contributions. This amount shall be due and payable to the Trust as liquidated damages and not as a penalty upon the day immediately following the date on which any contributions become delinquent, and shall be payable as contributions required to be made pursuant to this Agreement, in addition to contributions delinquent under Section 3.4.
- 3.6 In the event of any Employer's failure to pay any contributions required under this Trust Agreement, the Trustees may enter into any lawful agreement with such Employer related to the payment of such contributions, or initiate legal action or arbitration against such Employer for contributions. An Employer with delinquent contributions referred by the Trust to an attorney for collection shall pay to the Trust all attorney's fees and the cost of any audit or investigation, as well as any other costs (including but not limited to court costs) reasonably incurred by the Trust in connection with any agreement, arbitration or legal action related to the payment of such Employer's delinquent contributions. If the Trustees initiate legal action or arbitration to collect delinquent contributions from an Employer, such Employer shall owe as liquidated damages twenty percent (20%) of the delinquent contributions owed to the Trust, or, if greater, interest as calculated by a court pursuant to ERISA section 502(g)(2)(C)(ii).

- 3.7 The acceptance by the Trustees of any reports or contributions shall not be construed as an admission of the accuracy of such reports or sufficiency of the amount of such contributions. The Trustees may, from time to time, require an audit of the accounts and records of any Employer to be made by a certified public accountant or other auditor selected by the Trustees.
- 3.8 Each Employer shall maintain books and payroll records substantiating its obligations to contribute to the Trust for a period of at least seven (7) years, and make such records available in any audit conducted or ordered to be conducted by the Trust. All compensation paid to any Employee shall be presumed to be paid pursuant to the Employer's Collective Bargaining Agreement, and subject to the obligation to contribute to the Trust, unless clearly and correctly identified by the Employer in its payroll records as compensation not required by its Collective Bargaining Agreement.
- 3.9 In the event that an audit of an Employer conducted pursuant to this Agreement results in a finding that the statements of contributions due, previously submitted by such Employer, were not accurate, and the amount of contributions made by such Employer to the Trust is less than the amount of contributions determined to be due by the audit, the Employer shall immediately pay the additional amount of contributions shown to be due to the Trust as delinquent contributions.
- 3.10 The cost of all audits initiated in the absence of prior delinquency shall be borne by the Trust, except in the following circumstances: (a) An Employer shall pay the cost of any audit which results in a finding that the Employer underreported and/or underpaid contributions to the Trust by an amount exceeding ten percent (10%) of the amount of the total contributions determined to be due by such audit; and (b) any Employer against which the Trustees have previously initiated legal action for payment of contributions shall pay the cost of an audit which results in a finding that the Employer underreported and/or underpaid contributions to the Trust, regardless of the amount of such underreporting and/or underpayment.
- 3.11 The findings of any audit conducted on behalf of the Trust shall be final and binding on the audited Employer, provided that such Employer shall have the opportunity to present any exceptions or objections to such findings to the Trustees within thirty (30) days of the delivery of the audit report to such Employer, and the Trustees may make adjustments to the audit findings on the basis of such Employer's exceptions or objections.
- 3.12 In the absence of a satisfactory resolution of any delinquency in contributions or audit, in addition to legal process, the Trustees may submit any controversy or dispute regarding an employer's delinquency, default, deficiency or liability for contributions or contribution reports to binding arbitration before the permanent arbitrator selected hereunder.

- 3.12.1 To initiate binding arbitration with an Employer, the Trustees shall provide seven days written notice of such arbitration to such Employer by certified mail, overnight delivery service, fax, or electronic transmission to the Employer's place of business or other contact registered with the Trustees. At the time and place designated in the Trustees' notice, the permanent arbitrator shall hold a hearing. Upon due proof that the Employer had timely notice of the hearing, the Arbitrator shall render an award, even if the Employer fails to appear at the hearing or otherwise to contest the matter.
- 3.12.2 The permanent arbitrator shall render an award in writing within reasonable time following the close of the hearing, and a copy thereof shall be furnished to the parties by certified mail, addressed as above.
- 3.12.3 Hearings by the permanent arbitrator shall be conducted consistent with the requirements of the Code of Civil Procedure for the State of California, and the permanent arbitrator shall have all the powers of an arbitrator under the Code of Civil Procedure, including but not limited to the powers set forth in Section 1283.05. The Arbitrator is further specifically empowered and authorized to take judicial notice of relevant facts and/or documents, and to receive evidence of any kind from the Trustees or the Employer, including during adjournment of a hearing. In cases where the Employer has failed to supply books and records relating to the amount of contributions due, the Arbitrator shall establish the amount of contributions due on the basis of other evidence including but not limited to estimates based on previously audited or reported months of the Employer. The permanent arbitrator shall have authority, as necessary, to determine the extent of his or her own jurisdiction; to determine the existence and legal effect of any alleged written agreement between the parties; and to accept the agreement, in cases where an agreement is found to be in effect, as a submission to hear the arbitration where a demand for arbitration has been made. In making any award in favor of the Trust, the permanent arbitrator shall act as a court awarding judgment in favor of a plan in an action by a fiduciary to enforce section 515 of ERISA, with respect to awarding unpaid contributions, interest, interest or liquidated damages, attorney's fees, and other legal or equitable relief to the Trust Fund, within the meaning of section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2).
- 3.12.4 If the Arbitrator finds for the Trustees and against the Employer, there shall be added to the amount of contributions found due and payable in the Arbitrator's Judgment, attorney's fees expenses of litigation, costs of audit, investigation, liquidated damages and interest as provided under the Trust Agreement and section 502(g)(2) of ERISA. Costs of the arbitration itself shall be paid by the losing party.

- 3.12.5 The decision of the Arbitrator shall be final and binding upon the Trust and the Employer. If the Trustees petition the court to confirm the award of the arbitrator, the Petition and the notice of hearing on the petition shall be served by certified mail, to the address of the Employer registered with the Trustees.
- 3.12.6 The permanent arbitrator shall be selected by mutual agreement of the Trustees for a term of 3 years. Upon expiration of such term, the term of the permanent arbitrator shall be extended for an additional 3 years, unless he or she is removed by the Trustees pursuant to Section 3.12.7.
- 3.12.7 Either the Union Trustees or the Employer Trustees may remove the Permanent Arbitrator by providing 30 days written notice of such removal to the Permanent Arbitrator and the Union Trustees (in the case of removal by the Employer Trustees) or the Employer Trustees (in the case of removal by the Union Trustees). The removal of a permanent arbitrator shall not deprive such arbitrator of jurisdiction to hear and determine any matter already referred for arbitration as of the date of the notice of removal. In the event of removal of a permanent arbitrator, the Trustees shall name a successor permanent arbitrator for a term of 3 years.
- 3.13 The Union and Employers shall assure that the Trust receives a copy or documentation of each Collective Bargaining Agreement, Participation Agreement, or other agreement between the Union and any Employer pursuant to which contributions are to be made to the Trust. Any agreement not provided or disclosed to the Trustees as required herein shall not be binding on the Trust, but shall be enforceable with respect to Employer contributions solely at the election of the Trustees.
- 3.14 The Trustees may reject contributions from any Employer whose Collective Bargaining Agreement or Participation Agreement fails to satisfy applicable law, or is inconsistent with the requirements of this Agreement or with other requirements adopted by the Trustees from time to time.
- 3.15 The Trustees may, in their discretion and as permitted by law, make a refund of Employer contributions found to be made by mistake, to the Employer making such contributions.

**Article IV**  
**Application of Fund**

- 4.1 The Fund shall consist of all contributions, money, and other property received from any source, so long as the receipt of such contributions, money, or property is consistent with the requirements of applicable law. Any and all dividends, refunds, experience rating payments, or reimbursements of any kind, paid or payable with respect to any contract or insurance policy entered or held by the Trustees, shall be paid to the Trustees and shall constitute assets of the Fund.
- 4.2 The Fund shall be held, administered, applied and disposed of solely for the uses, purposes and objectives declared in this Agreement and according to its terms and provisions. No part of the Trust principal or earnings may inure to the benefit of any private individual other than through the payment of benefits permitted to be paid by a voluntary employees' benefit association under the Treasury Regulations at §1.501(c)(9)-3. No assets of the Trust may be paid or distributed to any Employer in the event of termination or dissolution of the Trust or any Plan offered by the Trust.

In the event one or more participating Employers, Union or group thereof cease their participation in the Trust Fund or cease to be required to contribute to the Trust, there shall be no division or allocation of any assets of the Trust Fund to any such former Employer, or its employees, or the Union or group thereof. Further, no participating Employer, Union or group shall have the right to title or interest in Trust assets and there shall be no reversion of any assets of the Trust Fund to any participating Employers, employees, Union or group. Following the withdrawal of one or more Employers, Union or groups, this Trust Agreement and the Trust Fund shall continue for the benefit of all remaining participants.

- 4.3 No person other than the Trustees shall have any right, title or interest in the Trust. No person who is at any time an Employee, Dependent, or Beneficiary under any Plan shall have any right, entitlement, or claim to any assets of the Trust, other than the right, entitlement, or claim for benefits provided under the terms of the Plan under which such person is an Employee, Dependent, or Beneficiary.
- 4.4 The Trust and any benefits under any Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrances, or charge, by any person other than the Trustees and their duly authorized representatives, and by the Trustees or their representatives only to the extent and for the purposes herein provided.



**Article V**  
**Board of Trustees**

- 5.1 There shall be two (2) Employer Trustees and two (2) Union Trustees. The Union shall appoint two Union Trustees. Employers required to contribute to the Fund under a Collective Bargaining Agreement shall appoint two Employer Trustees. The appointment of an Employer Trustee may be made by any Employer. Such appointments shall be signed by the appointing Employer or Union, and be delivered to the Trustees directly or through an administrator appointed by the Trustees.
- 5.2 The Union and the Employers may (but are not required to) designate an Alternate Trustee for each Trustee. An Alternate Trustee shall be entitled to vote at any meeting at which the Trustee for whom he or she serves as an alternate is not present, or to vote on any matter on which the Trustee for whom he or she serves as an alternate is unable to vote because of a conflict.
- 5.3 The designation of Trustees by the Employers and the Union, and the acceptance of such designation by the persons so designated, shall be made by a signed writing, evidencing the agreement of such person with the terms of this Agreement and the requirements of the office of Trustee hereunder, delivered to the Trust. Upon presentation of such writing, any person so designated, without any further act, shall become vested with all of the estate, rights, powers, discretion, duties and obligations of a Trustee.
- 5.4 Once duly designated, a Trustee shall continue to serve as a Trustee until resignation, termination, incapacity, or death. Any Trustee may resign at any time upon delivery of written notice to the Trustees.
- 5.5 The Union or an Employer may terminate the appointment of any Trustee appointed to the Board of Trustees by such Union or Employer by delivery of written notice of such termination to the Trust and to the Trustee to be terminated. An Employer Trustee may also be removed by a majority of the Employers.
- 5.6 In the event of any vacancy on the Board of Trustees, a successor Trustee shall be promptly designated by an Employer, if there is an Employer Trustee vacancy, or the Union, if there is a Union Trustee vacancy. If an Employer vacancy continues for more than ninety (90) days, the remaining Employer Trustee may appoint a successor Employer Trustee. The existence of a vacancy shall not impair the ability of the remaining Trustees (including Alternate Trustees) to carry out any action otherwise authorized under this Agreement.
- 5.7 In the event that an Employer designating a Trustee ceases to be under an obligation to contribute to the Trust, such Trustee may continue to serve as a Trustee until the designation of a successor Trustee is made by an Employer.

The designation of a successor in such circumstances shall effect termination of the appointment of a Trustee designated by a former Employer.

- 5.8 Regular meetings of the Board of Trustees shall be held at times and locations to be fixed by the Board of Trustees. Written notice of such meetings shall be given to all Trustees and Alternate Trustees at least five (5) days before the date of the meeting.
- 5.9 Any two (2) members of the Board of Trustees may call a special meeting by giving written notice thereof to all other members of the Board of Trustees, at least five (5) days before the date of the meeting. Any meetings at which all members of the Board of Trustees are present or concerning which all members of the Board of Trustees have waived notice in writing (which waiver may be executed before, during or after said meeting) shall be a valid meeting without the giving of such notice.
- 5.10 Any notice required to be given to or between the Trustees may be given by e-mail, fax, post or private courier service, or telephone, at the address or number provided by the Trustee to the Trust.
- 5.11 Meetings of the Board of Trustees shall be held at the principal place of business of the Board of Trustees, or at such other place as the Board of Trustees may determine from time to time. Meetings held by telephone, or by other conferencing technology of any kind, shall be deemed to be held at the principal place of business of the Board of Trustees, and all Trustees (including alternate Trustees) participating in any such meeting remotely shall be considered present for the purposes of determining a quorum.
- 5.12 To constitute a quorum at any meeting of the Board of Trustees, there must be present at least one (1) Employer Trustee and one (1) Union Trustee, including Alternate Trustees in such count. In the absence of a quorum, the Board of Trustees shall not transact any business at a meeting.
- 5.13 The Trustees may take or authorize any action without a meeting if unanimous approval consent to such action by all Trustees (or their alternate Trustees) is evidenced in writing (including but not limited to e-mail, facsimile transmission, or mail ballot).
- 5.14 At least annually, the Trustees shall designate one Trustee Chairman of the Board of Trustees, and one Trustee Secretary of the Board of Trustees. The Chairman and Secretary shall not both be Union Trustees, or both Employer Trustees, at any time.
- 5.15 The Board of Trustees may from time to time appoint from its members any committees, or working groups, consisting of an equal number of Union and Employer Trustees, as deemed appropriate or necessary. If so authorized by the

Board of Trustees, the action of a duly approved committee shall constitute an action of the Board of Trustees.

- 5.16 The Board of Trustees may, in its discretion, make any rules or policies for the governance of its activities or the conduct of its business, provided that such rules are not inconsistent with the provisions of this Agreement.
- 5.17 All matters before the Trustees at a meeting of the Board of Trustees shall be approved by majority vote. The voting shall consist of one (1) vote for all Union Trustees present and one (1) vote for all Employer Trustees present. If a vote on any matter does not result in a majority vote, the vote on such matter is deadlocked.
- 5.18 In the event that the Board of Trustees is deadlocked as to any matter, the matter shall, upon twenty (20) days' written notice by either the Employer Trustees or the Union Trustees, be referred by them for final decision to an impartial arbitrator to be selected by the Employer and Union Trustees. Should the Trustees not be able to agree on an impartial arbitrator within ten days, any Trustee may apply to the United States District Court for the Central District of California for the appointment of an arbitrator or umpire pursuant to 29 U.S.C. § 186(c)(5)(B). The impartial arbitrator or umpire so appointed shall have no authority to negotiate a change in this Agreement or amend this Agreement in any manner, nor to enlarge the powers or authority granted to the Trustees hereunder. Within the scope of such authority, the decision of an impartial arbitrator or umpire shall be final and binding upon the Trustees as to the matter giving rise to the deadlock. Any expenses incurred in connection with the appointment of or the services of an impartial arbitrator or umpire shall be paid by the Trust.

**Article VI**  
**Duties, Responsibilities, and Rights of Trustees**

- 6.1 The Trustees shall be responsible for the supervision of the Trust and shall at all times act consistent with the requirements of this Trust Agreement and all applicable laws. In addition to the specific powers provided in this Trust Agreement, the Trustees shall have all general and incidental powers appropriate to the administration of the Trust.
- 6.2 The Trustees may establish, maintain, amend, or terminate Plans as they deem appropriate and in accordance with applicable laws; provided, however, the Trustees must be guided by the provisions of any Collective Bargaining Agreement directing them with respect to the establishment, maintenance, amendment or termination of a Plan. The Trustees are not, however, required to implement directions in a Collective Bargaining Agreement that would be unlawful or would require the Trustees to breach their fiduciary obligations.
- 6.3 The Trustees shall maintain such records, and make such reports and disclosures, as are required under applicable law, or useful in the maintenance and governance of the Trust and any Plan adopted by the Trustees.
- 6.4 The Trustees shall cause the Trust and each Plan offered through the Trust to be audited annually by a certified public accountant at the Trust's expense.
- 6.5 The Trustees may enter into, amend, or terminate any contract necessary or helpful for the establishment, maintenance, or administration of the Trust and any Plan offered through the Trust, or the delegation of any Trustee responsibility permitted by law to be delegated, including but not limited to contracts for the provision of welfare benefits under a Plan, whether through the provision of services or through insurance; contracts for administrative, accounting, auditing, legal, actuarial, banking and custodial, investment advisory, investment management, or other consulting services; and contracts designating an agent for service of legal process.
- 6.6 The Trustees may authorize the payment of the Trust's lawful obligations, and the execution of any report, return, instrument, or other document required to be made by the Trust or with respect to any Plan offered through the Trust, by such person or persons as the Trustees may designate from time to time. No party dealing with the Trustees or their duly appointed representatives shall be obligated to see to the application of any monies or property of the Trust, or to see that the terms of the Trust have been complied with.
- 6.7 The Trustees' powers shall be discharged solely in the interest of the participants and beneficiaries of the Trust and for the exclusive purpose of providing benefits to participants and their beneficiaries, and defraying reasonable expenses of administering the Fund. The Trustees shall exercise their powers and duties with the care, skill, prudence and diligence under the circumstances then

prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

- 6.8 The Trustees shall have sole, exclusive, and unlimited discretion and authority to determine all questions of any kind arising in connection with the Trust or any Plan offered by the Trust, including the interpretation or construction of this Trust Agreement, all documents pertaining to a Plan established hereunder, and any rule, policy, requirement, or regulation adopted by the Trustees. All such determinations made by the Trustees in good faith, including but not limited to determinations of eligibility for participation or for benefits under a Plan offered by the Trust, shall be final and binding as to all parties, including but not limited to any Union, Employer, Employee, or Dependent. No Employer or Union, nor any individual Trustee, shall have any authority to act for or on behalf of the Trust, except in the case of a Trustee authorized by action of the Board of Trustees.
- 6.9 The Trustees may adopt such measures, policies, rules, and requirements relating to the funding of the Trust's benefit Plans as they determine, in their discretion, to be reasonable and appropriate, including but not limited to the establishment of a reserve fund or funds and the adoption of funding policies and minimum requirements for Collective Bargaining Agreements. The Trustees may, in their discretion, refuse to accept contributions under any Collective Bargaining Agreement or Participation Agreement which contains any term or provision inconsistent with any policy, rule, or requirement adopted by the Board of Trustees.
- 6.10 The Trustees shall perform or cause to be performed audits of Employers, as permitted by this Agreement; and enforce the rights of the Trust with respect to Employer contributions required under a Collective Bargaining Agreement or Participation Agreement, including the rights of the Trust to any liquidated damages, interest, costs and attorneys fees, and audit expenses, as provided under this Agreement or under applicable law.
- 6.11 The Trustees shall have the authority, in their absolute discretion, to continue the participation in any Plan of the Trust of the Employees of any Employer (and their Dependents) during a period for which the Employer has failed to make the required contributions when due; but the Trustees shall not be obligated either to said Employees (or their Dependents) or said Employer to continue the provision of Trust benefits as permitted herein, nor shall the Trustees incur any liability whatsoever for their failure or refusal to do so. In the event the Trustees make such payments from the Trust, the Trust shall be reimbursed by the Employer of the Employees benefitted thereby, at the rate otherwise provided under such Employer's Collective Bargaining Agreement (as in effect at the time such Employer ceased to make timely contributions to the Trust).

- 6.12 The Trustees may settle, compromise, arbitrate, or prosecute or defend any claim or liability of the Trust, or asserted against the Trust, and commence, defend or settle any legal, administrative, or other proceedings or investigations arising from or related to the establishment or administration of the Trust or a Plan offered by the Trust.
- 6.13 The Trustees may merge the Trust with or into other employee benefit trust funds, so that participants in plans offered by such other trusts become participants in the Plans of this Trust, or so that participants in Plans of this Trust may become participants in any successor trust into which this Trust may be merged. The Trustees shall have the authority to negotiate and consummate appropriate merger agreements providing for the transfer of assets and liabilities from one employee benefit trust fund to another employee benefit trust fund or to this Trust, subject to the requirements of ERISA, the Internal Revenue Code, and any other applicable law.
- 6.14 The Trustees have the authority to perform or to delegate the performance of the following actions:
- Accept, receive, and hold all assets of the Trust, as well as any income or earnings from such assets;
  - Deposit or withdraw any money contributed to or otherwise received by the Trust, or cause such money to be deposited or withdrawn, in or from a bank or banks designated by such Trustees;
  - Pay all taxes, fees, or other assessments lawfully assessed against the Trust; and
  - Make, execute and deliver any and all contracts, agreements, deeds, leases, mortgages, conveyances, waivers, releases, or other written instruments deemed necessary or appropriate by the Trustees.
- 6.15 The Trustees shall establish investment policies and invest the assets of the Trust, or delegate the investment of such assets, consistent with the requirements of ERISA.
- 6.16 Consistent with the investment policy of the Trust, the Trustees have the power and authority:
- To invest and reinvest the assets of the Trust, without distinction between principal and income, in such securities, obligations, or property of any kind, or interest therein, as the Trustees may deem proper;
  - To sell or dispose of such securities, obligations, or property in such manner as the Trustees may deem proper;

To exercise all incidents of the ownership of any security, obligation or property, including but not limited to the voting of shares of voting stock, the exercise of any option, subscription right, or conversion privilege;

To register any security in the name of the Trust or in the name of a nominee, and to hold any investment in bearer form;

To hold such cash as may await investment or payment in deposit with a bank, with or without interest;

To employ such agents, custodians, and advisers as the Trustees deem suitable; and

To make, execute, acknowledge and deliver any instrument or document necessary or appropriate to carry out the authority of the Trustees.

- 6.17 The Trustees shall receive no compensation from the Trust for their service as Trustees, but shall be reimbursed from the Trust for all authorized reasonable and necessary expenses which they incur in the performance of their duties. Such reasonable and necessary expense may include, as an example and not a limitation, membership in organizations having the purpose of disseminating knowledge of employee benefit plans, and attendance at educational conferences relating to employee benefit plans, consistent with any policy of expense reimbursement adopted by the Trustees.
- 6.18 To the extent permitted by ERISA, neither the Trustees collectively nor any past, present, or future individual Trustee shall be liable personally to anyone for any action taken or omitted by any one or more of them, or by their agents or other representatives, in connection with the administration of the Trust; and any judgment against the Trust shall be enforceable only against the Trust.
- 6.19 To the extent permitted by ERISA and other applicable law, the Trust shall indemnify, defend, and hold harmless each Trustee, and the Trustees collectively, against all claims, administrative or investigatory proceedings, actions, suits, costs, damages, expenses, losses and liabilities, including costs and expenses incurred in investigations prior to a claim, action or suit, (whether or not a claim, proceeding, action or suit results) and for settlement of pending or threatened litigation, arising from any act or omission of said Trustee or Trustees in connection with the Trust. However, if a final court decree establishes personal liability on the part of specified Trustees for breach of fiduciary responsibility, neither such liability nor the defense of such Trustees shall be chargeable to the Trust.
- 6.20 The Trustees may, in their discretion, cause the Fund to pay legal fees and other expenses of litigation incurred by any current or former Trustee or Trustees in defending a civil or criminal action, suit or proceeding payable by the Fund under Section 6.20 in advance of the final disposition of such action, suit or proceeding, and as such fees and expenses are incurred, provided that the

Trustee or Trustees receiving such advance payment agree in writing to repay all amounts so advanced, in the event it is ultimately determined that such Trustees breached the requirements of Part 4 of Title I of ERISA, or in the event of a conviction not overturned by appeal. In addition, the Trustees shall have the discretion to terminate advance payment of costs and fees from the Fund at any time.

- 6.21 The Trustees may purchase, with Trust assets, all bonds and insurance coverage necessary to or helpful in the administration of the Plans of benefits offered through the Trust. The Trust shall purchase fiduciary insurance, with recourse against the Trustees, insuring against any acts or omissions of the Trustees in violation of their fiduciary duties. Nothing herein shall preclude any Trustee from purchasing liability insurance without recourse, or purchasing waiver of recourse on coverage provided by the Trust, out of funds from sources other than the Trust.
- 6.22 The Trustees shall incur no liability in acting upon any document or instrument believed by them in good faith to be genuine and to be made, executed or delivered by the proper party to have made, executed or delivered the same and shall incur no liability by relying upon the opinion of legal counsel in connection with any matter pertaining to the administration or execution of this Trust.
- 6.23 The Trustees may, in their discretion, accept or require any reasonable evidence of any fact or matter to be proven in connection with the Trust or a Plan. In the case of a matter to be proven by the Union or by an Employer, the Trustees may, unless other evidence is required by law or by this Agreement, rely conclusively on an affidavit signed by such Employer or Union (or the duly authorized representative thereof).



**Article VII**  
**Miscellaneous**

- 7.1 Neither the establishment of this Trust, nor the establishment or maintenance of any Plan hereunder, shall be construed as giving any person any legal or equitable rights against the Employers or the Union.
- 7.2 No Employer shall be liable for any payment to the Trust required of any other Employer, and neither the Employers nor the Union nor any Trustee shall be liable for any welfare benefits as contemplated by this Agreement.
- 7.3 All notices, reports and other documents required of any Union or Employer hereunder shall be delivered in the manner and by the means specified by the Trustees to the principal place of business of the Trust. The principal place of business of the Trust shall be the office of a provider of administrative services to the Trust designated by the Trustees pursuant to Section 6.5 of the Trust Agreement (the administrative office), unless otherwise designated by the Trustees. Any Employer or Union shall register its mail, electronic, and other addresses for the delivery of documents by the Trust with the administrative office designated by the Trustees.
- 7.4 Any dispute arising with respect to the administration of this Trust or the application of the terms and provisions of this Trust shall not be subject to settlement through any grievance procedure established by any collective bargaining agreement in effect between the Employers and the Union. All such disputes shall be determined only in the manner provided in Section 5.18 of this Agreement.
- 7.5 This Agreement shall be binding upon the successors and assigns of all Employers, the Union and the Trustees.
- 7.6 This Trust is established pursuant to California law, and all questions pertaining to this Trust shall be determined in accordance with California law, to the extent not preempted by ERISA or other federal law.
- 7.7 In case any provision of this Trust Agreement shall be declared illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of this Trust Agreement, but this Agreement shall be construed and in force as if said illegal or invalid provision had never been inserted herein; provided, however, that the remaining parts of this Agreement will enable the objective and purposes of this Trust Agreement to be accomplished.
- 7.8 In this Agreement, whenever the context so requires, the masculine gender includes the feminine, and the singular number includes the plural.
- 7.9 This Trust Agreement may be executed in one or more counterparts, which shall, in the aggregate, be deemed the complete and original document.

7.10 The Plan will use protected health information (PHI) to the extent and in accordance with the uses and disclosures permitted by the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA) and the HIPAA Privacy Regulations, 45 Code of Federal Regulations, Parts 160 and 164, Subparts A through E. Specifically, the Plan will use and disclose PHI for purposes related to health care treatment, payment for health care, and health care operations, as defined in the HIPAA Privacy Regulations.

7.10.1 The Plan will use and disclose PHI as required or permitted by the HIPAA Privacy Regulations and pursuant to a written authorization of the Participant or Beneficiary.

7.10.2 For purposes of this Section 7.10 the Board of Trustees is the "Plan Sponsor." The Plan will disclose PHI to the Plan Sponsor only upon receipt of a certification from the Plan Sponsor that the Plan documents have been amended to incorporate the following provisions.

7.10.3 With respect to PHI, the Plan Sponsor agrees to:

7.10.3.1 Not use or further disclose PHI other than as permitted or required by the plan documents or as required by law;

7.10.3.2 Ensure that any agents, including subcontractors, to whom the Plan Sponsor provides PHI received from Health Plan agree to the same restrictions and conditions that apply to Plan Sponsor with respect to such information;

7.10.3.3 Not use or disclose PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Plan Sponsor;

7.10.3.4 Report to Health Plan any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware;

7.10.3.5 Make PHI available to an individual based on access requirements in accordance with 45 C.F.R. § 164.524;

7.10.3.6 Make PHI available for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526;

7.10.3.7 Make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528;

- 7.10.3.8 Make its internal practices, books and records relating to the use and disclosure of PHI received from the Health Plan available to the Secretary of the U.S. Department of Health and Human Services to determine the Health Plan's compliance with HIPAA;
- 7.10.3.9 If feasible, return or destroy all PHI received from the Health Plan that Plan Sponsor still maintains in any form and retain no copies of such PHI when no longer needed for the purpose for which disclosure was made, 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 infeasible; and
- 7.10.3.10 Ensure that the adequate separation between the group health plan and the plan sponsor is established as required in accordance with 45 C.F.R. § 164.504(f)(2)(iii).
- 7.10.4 There shall at all times be adequate separation between the Plan and the Plan Sponsor. Only the following persons may be given access to PHI:
  - 7.10.4.1 The administrator of the Plan; and
  - 7.10.4.2 Staff designated by the administrator of the Plan.
- 7.10.5 The persons described in subsection 7.10.4 above may only have access to and use and disclose PHI for Plan administration functions.
- 7.10.6 If the persons described in subsection 7.10.4 above do not comply with this Section 7.10, the Plan Sponsor shall take appropriate action for resolving such issues of noncompliance, including disciplinary action if appropriate.
- 7.10.7 For purposes of complying with the HIPAA Privacy Regulations, this Plan is a "Hybrid Entity" because it has both health plan and non-health plan functions. The Plan designates that its health care components that are covered by the HIPAA Privacy Regulations include only health benefits and not other Plan functions or benefits.

## **ARTICLE VIII**

### **Amendment and Termination of Trust**

- 8.1 This Trust Agreement may be amended from time to time by the Trustees voting under the procedures set forth in Article V, provided, however, that no such amendment shall permit the application of any assets of the Trust to any purpose other than the purposes of the Trust set forth herein.
- 8.2 This Trust Agreement shall remain in effect until terminated by the Trustees.
- 8.3 In the event that this Trust is merged into another trust for the provision of employee benefits, this Trust Agreement shall be terminated, after the transfer of Trust assets to the successor Trust pursuant to a valid agreement under Section 6.13 of this Agreement.
- 8.4 The Trust shall be wound up and terminated in the event that no Employer has any obligation to contribute to the Trust under a Collective Bargaining Agreement or Participation Agreement.
- 8.5 In any termination of the Trust, the Trustees, after accounting for any and all funds and property remaining in the Trust, and after the payment of or adequate provision for all liabilities relating to or affecting this Trust, shall use the balance of the funds remaining on hand in the Trust for the purpose of continuing to provide benefits permissible for a Voluntary Employees Benefit Association to employees sharing an employment-related common bond with Employees within the meaning of this Trust (including, but not limited to former Employees and their Dependents within the meaning of this Trust) as permissible under section 501(c)(9) of the Internal Revenue Code. Under no circumstances shall any portion of the Trust's assets revert to or inure to the benefit of any Employer or Union, or be used for any purpose other than the purposes permitted by this Agreement and by applicable law.
- 8.6 Upon termination of this Trust, the Trustees shall be discharged of their duties and shall have no further responsibilities under this Trust Agreement.

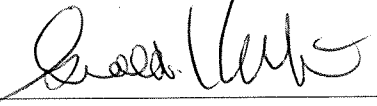
## **Article IX**

### **Execution of Agreement**


The adoption of this Agreement and Declaration of Trust providing for the Santa Monica UNITE HERE Health Benefit Trust Fund, As Last Amended and Restated

Effective May 1, 2015, is witnessed by the following signatures of the Trustees.

**EMPLOYER TRUSTEES**


By: 

Date: 6/11/, 2015

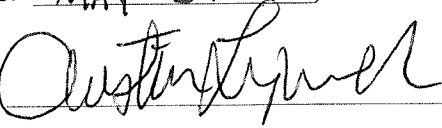
By: 

Date: 6-18-, 2015

**UNION TRUSTEES**

By: 

Date: MAY 29, 2015

By: 

Date: May 29, 2015