

**DECLARATION OF TRUST**  
**FOR THE**  
**EGYPTIAN AREA SCHOOLS EMPLOYEE BENEFIT TRUST**  
(As amended and restated effective January 1, 1999)

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## DECLARATION OF TRUST

(As amended and restated effective January 1, 1999)

THIS DECLARATION OF TRUST, is made and entered into by and between certain school districts in the State of Illinois (the "Participating Employers"), by the vote of their duly appointed representatives, the members of The Board of Managers (the "Board of Managers" or "Managers"), and Union Planters Bank, NA as Trustee.

Effective January 1, 1984 certain of the Participating Employers by a Declaration of Trust established the Egyptian Area Schools Employee Benefit Trust (the "Trust"). The Trust is intended to provide for the payment of benefits to employees and their eligible dependents or beneficiaries under the group benefit programs for life, sick, hospitalization, major medical, accident, disability, dental or other similar benefits adopted by the Board of Managers from time to time. The Trust has obtained from the Internal Revenue Service recognition of its tax exempt status under Section 501(a) of the Code as a voluntary employees' beneficiary association as described in Section 501(c)(9) of the Code.

The original Declaration of Trust was amended and restated effective January 1, 1987 and was thereafter further amended. The Managers now deem it advisable to make certain further amendments and to restate the Declaration of Trust in its entirety by the adoption of this document.

NOW, THEREFORE, the Managers, as the duly appointed representatives of the Participating Employers, hereby amend and restate the Declaration of Trust, effective January 1, 1999, to read in its entirety as follows:

### 1. DEFINITIONS

1.1 The terms "**Board of Managers**" or "**Managers**" shall mean collectively the members of the Board of Managers of the Trust.

1.2 The term "**By-Laws**" shall mean the duly adopted By-Laws of the Board of Managers, as amended from time to time.

1.3 The word "**Chairman**" shall mean the Chairman of the Board of Managers.

1.4 The word "**Code**" shall mean the Internal Revenue Code of 1986 as amended from time to time.

1.5 The term "**Contract Administrator**" shall mean DBL Services, Inc., or such other individual, firm, or corporation with which the Managers shall contract from time to time to provide administrative services for the Trust and the Plan.

1.6 The word “**District**” shall mean any public or special education school district or regional office of education in the State of Illinois other than districts and regional offices in the Illinois counties of Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake, McHenry, and Will.

1.7 The term “**Effective Date**” with respect to this restatement shall mean January 1, 1999. The original effective date of the Trust was January 1, 1984.

1.8 The term “**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended.

1.9 The term “**Executive Committee**” shall mean the Executive Committee of the Board of Managers.

1.10 The term “**Funding Agreement**” shall mean the agreement setting forth the contribution requirements for funding the Trust, as amended from time to time. The Funding Agreement is attached hereto as Exhibit A and made a part hereof by this reference.

1.11 The term “**Health Service Provider**” shall mean any physician, surgeon, dentist, hospital, or any person, firm or corporation providing medical or custodial care, skilled nursing services or physical restoration services, or drugs, goods, devices or supplies to Participants pursuant to the terms of the Plan.

1.12 The word “**Participant**” shall mean an employee (or former employee) of a Participating Employer eligible to receive benefits from the Trust in accordance with the terms of the Plan, and the spouse and/or dependents of such employee (or former employee) to whom coverage has been extended.

1.13 The term “**Participating Employer**” shall mean such Districts as may in writing elect and receive the continuing consent of the Managers to have the Trust hereby created serve as the funding vehicle for the purpose of providing benefits to their employees under the Plan. In order to become a Participating Employer, a District may have no more than 1,000 employees; provided, however, that once a District becomes a Participating Employer, it may continue as such even if the number of its employees thereafter exceeds such maximum number.

1.14 The word “**Plan**” shall mean The Egyptian Area Schools Employee Benefit Plan, as amended from time to time, and any other insured or self-funded benefit plan or program adopted by the Managers, pursuant to the terms of which benefits are provided to participants from the Trust.

1.15 The term “**Taxable Year of the Trust**” shall mean the period commencing with the first day of July and ending with the last day of June of the following year.

1.16 The word “**Trust**” shall mean this Declaration of Trust, as amended from time to time, and the trust created hereby known as the Egyptian Area Schools Employee Benefit Trust.

1.17 The word “**Trustee**” shall mean the Trustee or Trustees appointed pursuant to the provisions of Section 8.1 and its or their successor or successors as Trustee hereunder.

## **2. THE TRUST**

2.1 **Purpose.** The Trust shall be for the purpose of receiving, holding, investing, reinvesting and disbursing, for the benefit of the Participants, the monies or property contributed to or otherwise received by the Trustee, in accordance with the provisions of the Trust and the Plan. The Trust shall consist of all reserves or monies comprising assets of any insurance policy assigned by the Participating Employers to the Trustee, all Participating Employer and Participant contributions, and all cash, securities, property, insurance policies and assets of whatever kind and nature, owned, held or otherwise acquired by the Trustee pursuant to the Trust, and all earning thereon.

2.2 **Qualification.** The Trust is intended to qualify as a voluntary employees' beneficiary association under Section 501(c)(9) of the Code and to be tax exempt under Section 501(a) of the Code. In the event the Trust at any time fails to maintain the requirements for qualification and exemption, all contributions previously made to the Trust and the earnings thereon shall be retained in trust until the same shall have been fully paid out in benefits provided by the Trust. The Trust is established and maintained solely by public school districts in the State of Illinois for the benefit of their eligible employees. Accordingly, the Plan funded through the Trust is a governmental plan as such term is defined in Section 3(32) of ERISA.

2.3 **Principal Place of Business.** The principal place of business of the Trust shall be the office of the Contract Administrator, or such other place as may be determined by the Executive Committee from time to time.

## **3. CONTRIBUTIONS**

3.1 **Participating Employer Contributions.** The Participating Employers shall make contributions to the Trust from time to time in accordance with the requirements of the Funding Agreement.

3.2 **Contributions Irrevocable.** All Participating Employer contributions to the Trust shall be irrevocable and shall be used solely to pay the expenses of administration of the Trust and to provide the benefits payable by the Trust. Except as provided in Section 7.5, no portion of any Participating Employer contribution shall revert to any Participating Employer.

3.3 **Assignment of Insurance Company Reserves or Policies.** Subject to the approval of the Executive Committee, Participating Employers may make contributions to the Trust by assigning to the Trustee any portion of the reserve for incurred but unreported claims held by an insurance company pursuant to policies owned by such Employers. In such case, the Participating Employer shall execute appropriate instruments of assignment to the Trustee. The

Participating Employers may, from time to time, assign additional policies to the Trustee or cause the Trustee to purchase such policies, subject to the approval of the Executive Committee.

3.4 **Participant Contributions.** The Participating Employers shall deliver to the Trustee all amounts contributed to the Trust by Participants and all amounts any Participating Employer may withhold from the salaries and/or wages of Participants in the future pursuant to any plan or program funded through the Trust. Each Participating Employer shall maintain accurate and complete records of all such contributions made by each of its Participants.

#### **4. BENEFITS**

4.1 **Nature of Benefits.** The benefits to be provided under the Trust shall be such life, medical and hospitalization, accident and disability, dental and other benefits similar thereto as shall be determined by the Managers from time to time, consistent with the requirements of Section 501(c)(9) of the Code and the Regulations. The kind and extent of and eligibility requirements for benefits to be provided to Participants from the Trust shall be as described in the Plan and/or in such policies or contracts of insurance as may be purchased by the Trust from time to time.

4.2 **Non-Assignability of Benefits.** Except as otherwise provided in Section 5.4 and Section 5.5 and this Section 4.2, the interests of Participants in the Trust shall not be subject to garnishment, attachment, levy or execution of any kind for the debts of any person, natural or legal, having an interest under this Trust, and shall not be subject to any manner or form of anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge on the part of any person claiming any interest under the Trust. Any attempt to so garnish, attach, levy, execute, anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the interests of Participants shall be void. Nothing herein shall prevent the assignment of a benefit payable to a Participant hereunder to the Health Service Provider which rendered the care, treatment or service for which such Participant became entitled to such benefit.

4.3 **Claims Procedure.** Rules and procedures relating to the filing and payment of claims of Participants for benefits from the Trust shall be prescribed in the By-Laws and the Plan.

#### **5. DISTRIBUTIONS**

5.1 **Payments.** Payments from the Trust to Participants entitled to benefits hereunder in accordance with the terms of the Plan may be made on the order of the Executive Committee or the Contract Administrator. The Trustee shall have no responsibility in respect of the purpose or propriety under the Plan of such payments.

5.2 **Source of Payments.** The Managers shall only be under a duty to enforce payment of any Participating Employer contribution required by the Funding Agreement, but shall not be responsible for the adequacy of Trust assets to meet and discharge any liabilities and

obligations of the Trust, except as such adequacy is determined by the Funding Agreement. It is expressly understood that the duties and obligations of the Trustee, the Managers and the Participating Employers shall be only those expressly stated herein and in the Funding Agreement without reference to the provisions of any plan or program.

5.3 **Disputes.** If a dispute arises as to entitlement to any benefit or payment, the Contract Administrator may withhold or cause to be withheld such payment until the dispute has been resolved pursuant to Section 4.3 and an order of payment has been received from the Executive Committee.

5.4 **Recovery From Third Parties.** In the event of payment to or on behalf of any Participant under the Plan:

(a) The Trust shall be entitled, to the extent of such payment, to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such Participant against any person or organization legally responsible for the bodily injury or illness for which such payment is made;

(b) such Participant shall hold in trust for the benefit of the Trust all rights of recovery which he shall have against such other person or organization because of the damages which are the subject of a claim for payment under the Plan;

(c) such Participant shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(d) if so requested in writing, such Participant shall take, through any representative designated by the Managers, such action as may be necessary or appropriate to recover such payment as damages from such other person or organization, such action to be taken in the name of such Participant, in which case the Trust shall pay its proportionate share of expenses incurred by such participant in connection with the recovery effort;

(e) if such Participant proceeds himself to attempt recovery against such other person or organization, the provisions of subparagraphs (a) and (b) of this Section 5.4 shall apply and the Trust shall pay, in the event of collection of any judgment or settlement, its proportionate share of expenses incurred by such Participant in connection with the recovery effort; and

(f) upon receipt of the proceeds of any settlement or judgment, such Participant shall immediately notify the Contract Administrator and refund to the Trust all amounts due the Trust in accordance with subparagraph (a) of this Section.

In order to assure compliance with the foregoing provisions of this Section 5.4, with respect to claims for which there is potential third party liability, the Contract Administrator shall have discretion to require the Participant, as a precondition to payment of his claim, to acknowledge in writing his acceptance of his obligations under this Section.

5.5 **Returned Benefit Payments.** In the event that any payments from the Trust shall be mailed by registered mail directed to the Participant at his latest known address, and shall be returned because such Participant cannot be located at such address, the Contract Administrator shall promptly notify the Participant's Participating Employer of such return. Neither the Managers nor the Trustee shall have any duty to search for or ascertain the whereabouts of any such Participant or his legal representative.

## 6. EXECUTIVE COMMITTEE

6.1 **Composition.** The Executive Committee shall be comprised of the Chairman, the Vice-Chairman and 23 additional members. The members of the Executive Committee shall be elected from among the Managers in accordance with the provisions of the By-Laws. The Board of Managers shall adopt such By-Laws for the operation of the Executive Committee as it may determine from time to time.

6.2 **Powers and Duties.** Except as otherwise expressly reserved to the full Board of Managers in Section 7.2, the Executive Committee shall have full and complete discretionary authority and responsibility for operation and administration of the Trust, and shall have all powers and duties as may be necessary or advisable for such purposes, including but not limited to the following:

(a) To advise the Managers in connection with the administration of the Trust, including recommendations with respect to contribution rates and benefit changes;

(b) to self-administer or to contract for or delegate the administration of all or any portion of the Plan or programs provided under the Trust;

(c) pursuant to the provisions of Section 8, to appoint and remove the Trustee and to appoint successor Trustees;

(d) to adopt and publish such rules and procedures as may be necessary or desirable to carry out the provisions of the Plan and the Trust;

(e) to establish late payment penalties and withdrawal liability rates and procedures pursuant to the provisions of the Funding Agreement, and to establish contribution rates and payment procedures for Participants no longer affiliated with a Participating Employer but entitled to continued coverage under applicable law;

(f) to verify and investigate claims of Participants and Health Service Providers;

(g) to determine all questions arising in connection with the administration, interpretation and application of Plan benefits, including but not limited to the power, pursuant to the claims procedure required by Section 4.3, to hear, review, compromise, compound, settle or arbitrate any claim, debt or obligation in respect of a benefit due a Participant;

(h) to construe the Trust and the Funding Agreement and to carry out their terms, to supply omissions and to reconcile and correct any errors or inconsistencies, subject to the power reserved to the Managers to amend the Trust and the Funding Agreement;

(i) to recommend to the Managers appropriate amendments to the Trust, the Funding Agreement, the Plan and the By-Laws;

(j) to adopt and revise from time to time a funding policy and investment goals and objectives for the Trust;

(k) to notify the Trustee periodically of the needs of the Trust in respect of liquidity;

(l) to select and enter into contracts with insurance companies for the purpose of providing insured benefits for Participants and excess loss coverage;

(m) to delegate such of its powers and duties as it may see fit to committees of the Managers or such independent individuals, firms, or corporations as it may determine from time to time;

(n) to employ such agents, administrators, attorneys, auditors, actuaries and other administrative personnel as may be necessary and advisable for the administration and operation of the Trust;

(o) to prepare, execute and file such documents and reports as may be required of the Trust by applicable law; and

(p) to do all other acts and things, and in connection therewith to execute all such instruments and documents, as may be necessary, appropriate, desirable or convenient for the accomplishment of the purposes and objectives of the Plan and the Trust.

## **7. THE BOARD OF MANAGERS**

7.1 **Selection.** The general administration of the Trust and the general responsibility for carrying out the provisions of the Trust and of the Plan shall be placed in a Board of Managers. The Board of Managers shall be comprised of one Manager selected by each Participating Employer in the manner and as described by the By-Laws. Upon resignation or removal of a Manager, the Participating Employer shall appoint a successor Manager. Any successor Manager shall succeed to all the rights, powers, privileges and duties of the predecessor Manager.

7.2 **Powers and Duties.** The Board of Managers shall have such powers as may be necessary, expedient or advisable for administration of the Trust. The Executive Committee

shall exercise most such powers on behalf of the Managers; provided, however, that the following powers and duties shall be expressly reserved to the full Board of Managers:

- (a) To terminate the participation of any Participating Employer in accordance with the provisions of Section 14.3;
- (b) to amend this Declaration of Trust and the Funding Agreement;
- (c) to adopt and amend By-Laws of the Board of Managers not inconsistent with the provisions of this Declaration of Trust;
- (d) to determine the types of benefits to be provided under the Trust and the Plan and any changes in such benefits, and to amend or terminate the Plan or any plan or program of benefits provided hereunder;
- (e) to determine whether benefits from the Trust shall be provided by means of direct or self-funding, or by the procurement of group or individual insurance contracts, or by any combination thereof;
- (f) to establish the contribution rates for Participating Employer contributions pursuant to the provisions of the Funding Agreement;
- (g) to terminate and dissolve the Trust.

Except as specifically provided in this Section 7.2, any other power, authority, or responsibility given to the Managers by this Declaration of Trust, the Funding Agreement, the By-Laws, the Plan or by applicable law shall be exercised by the Executive Committee on behalf of the Managers without further delegation by the Managers.

7.3 **Acts of Managers Binding on Parties.** Subject to Section 11.3, all decisions, interpretations or rules made by the Managers in good faith shall be binding on all parties and shall not be subject to review by anyone.

7.4 **Agents, Auditors, Actuaries and Counsel.** The Managers and the committees of the Managers may employ suitable agents (including a Participating Employer or an employee of a Participating Employer), auditors, actuaries and legal counsel (who may also be legal counsel to a Participating Employer) as may be reasonably necessary for the proper management and administration of the Trust and the Plan and pay their reasonable expenses and compensation.

7.5 **Expenses.** The expenses incurred by the Managers and the committees of the Managers in the performance of their duties, including fees for legal services rendered to the Managers and all other proper charges and disbursements of the Managers, and expenses incurred incident to the termination of any plans or programs covered by the Trust, shall be paid from and constitute a charge upon the Trust. The Managers and the committees of the Managers shall have the right to use the Participating Employers' clerical facilities in discharging their

duties and obligations hereunder and shall be authorized to incur reasonable expenses in and about the performance of their duties hereunder, and all such expenses, including those charged by a Participating Employer, shall be paid from the Trust. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon or in respect of the Trust or the income thereof shall be paid from the Trust.

7.6 **Compensation.** The Managers and the members of the committees of the Managers shall serve without compensation as such, except as otherwise provided in the By-Laws.

7.7 **Operation.** Meetings of the Managers shall be held at such times and in the manner prescribed by the By-Laws. The selection, removal and replacement of the Managers, and any other provisions relating to the operation of the Managers, shall be prescribed by the By-Laws; provided, however, that nothing contained in the By-Laws shall detract from or be inconsistent with the provisions of this Section 7.

7.8 **Committees.** The Managers shall have the right from time to time to establish one or more committees in addition to the Executive Committee to carry out any of the responsibilities of the Managers not specifically reserved to the full Board of Managers. The Managers shall adopt such By-Laws for the creation and operation of such committees as they may determine from time to time.

## **8. THE TRUSTEE**

8.1 **Records and Books of Account.** The Trustee shall maintain books of account which shall show all investments, receipts, disbursements and expenditures and shall be a complete record of the financial operations of the Trust. All accounts, books and records relating to the Trust shall be available at all reasonable times for inspection by the Managers, the Participating Employers and by any persons the Managers may designate for such purpose.

8.2 **Accounting.** At least annually, the Trustee shall submit to the Board of Managers a written accounting and report of the administration of the Trust for the previous 12 month period. The accounting shall contain such information as may be prescribed by the By-Laws. Any such report shall be deemed approved by the Board of Managers upon written approval or upon failure to file in writing with the Trustee exceptions or objections thereto within 60 days after the same shall have been received by the Board of Managers. No Participant, former Participant, beneficiary, or other person, except the Board of Managers and any Participating Employer, shall at any time have the right to demand or be entitled to an accounting by the Trustee except as herein specifically provided.

8.3 **Judicial Settlement.** The Trustee shall have the right to have its accounts settled by a judicial proceeding if it so desires.

8.4 **Trustee's Acceptance of Third Party Acts.** The Trustee may accept as true all papers, certificates, statements and representations that are presented to it, without the

requirement of investigation, questioning and verification, if the Trustee believes them to be true and authentic.

8.5 **Limited Purpose.** The Trustee is a party to the Trust solely for the purposes set forth herein and to perform the acts set forth herein, and no obligation or duty shall be expected or required of the Trustee except as expressly stated herein.

8.6 **Dispute Over Payment.** In the event that any dispute shall arise as to the persons as to whom payment and the delivery of any funds or property shall be made by the Trustee, the Trustee may retain such payment and/or postpone such delivery until adjudication of such dispute shall have been made in a court of competent jurisdiction and/or the Trustee shall have been indemnified against loss to the Trustee's satisfaction.

8.7 **Indemnification.** The Trust shall indemnify, defend and otherwise hold harmless the Trustee, to the extent allowed by law, for any loss, claim, liability, penalty, surcharge or related expense arising out of or in connection with any act or omission of the Board of Managers or other fiduciary with respect to the Trust, including, without limitation, any direction to the Trustee by the Board of Managers or other party which the Trustee is required to follow under the terms hereof. The Trustee shall not be entitled to indemnity, however, in any case in which the Trustee itself is guilty of gross negligence or willful misconduct. The foregoing shall not be construed to relieve the Trustee from the performance of any duty it may have hereunder to any Participants, former Participants and beneficiaries.

8.8 **Fees and Expenses.** The Trustee's fees for administering the Trust shall be determined in accordance with its published schedule of charges in effect at the time its services are rendered, unless otherwise agreed upon by the Managers and the Trustee. If there is no such schedule, the Trustee's fees shall be such as may be mutually agreed upon by the Managers and the Trustee. The Trustee's fees and any and all necessary expenses incurred by the Trustee in administering this Trust shall be paid from the Trust.

8.9 **Resignation or Removal of Trustee.** The Trustee may resign by mailing to the Chairman of the Board of Managers a written notice of resignation or by delivering written notice of such resignation to the Chairman. The Managers may remove the Trustee by written notice of such removal mailed to such Trustee or by delivering written notice to such Trustee. Such resignation or removal shall take effect on the date specified in the letter of removal but not less than 30 nor more than 60 days following the date of mailing or delivery of such notice. Upon such resignation or removal, any and all expenses incurred by the Trustee in connection with the settlement of such Trustee's accounts shall be paid from the Trust. Upon the resignation or removal of the Trustee, the Trustee shall deliver to the successor Trustee all insurance policies and all books, receipts, accounts and other records which relate to the Trust.

8.10 **Successor Trustee.** In no event shall the death, resignation or removal of a Trustee terminate the Trust. The Managers shall have the duty of forthwith appointing a successor Trustee in the event of the death, resignation or removal of all of the then acting Trustees or the sole then acting Trustee, which successor Trustee shall be any individual, bank and/or trust company the Managers may select. Every successor Trustee shall have all of the

same full powers, rights, duties and obligations as are herein specified with respect to each original Trustee.

## 9. TRUST INVESTMENTS

9.1 **Funding Policy.** The Managers shall establish a funding policy in keeping with the objectives of the Trust and the requirements of applicable law. The discretion of the Trustee in investing and reinvesting the principal and income of the Trust shall be subject to such funding policy.

9.2 **Permitted Investments.** Subject to the funding policy, the Trustee shall invest and reinvest the assets of the Trust, without distinction as to principal and income, with such diversity as will minimize the risk of large losses unless under the circumstances it is prudent not to do so, in such common stocks, preferred stocks, bonds, debentures, mortgages or real or personal property wherever situated, equipment trust certificates, savings deposits in any bank or other financial institution, notes or other evidences of indebtedness, or any other securities, and in any other property or joint or other part interest in property (including without limitation part interests in bonds and mortgages or notes and mortgages), real or personal, foreign or domestic and wherever situated and of any kind, class or character, which the Trustee may in its discretion deem suitable for the Trust, and in any and all annuity contracts and insurance policies of such kinds and in such amounts as the Trustee and the Managers deem proper for the purposes of the Trust, and to use the assets of the Trust to maintain any such contracts and policies in force. The Trustee may cause any or all of the Trust to be commingled, to the extent such investment and the issuance thereof would be exempt under the provisions of Sections 2(a)(36), 3(b)(1) or 3(c)(11) of the Investment Company Act of 1940 or Section 3(a)(2) of the Securities Act of 1933, with the assets of trusts created by others, causing such money to be invested as part of a common trust fund. Except as otherwise herein provided, any such investment and reinvestment shall not be restricted to property authorized for investment by trustees under any present or future law, except the Code, and each such investment and reinvestment is authorized whether or not the property acquired is productive of income, is marketable, or constitutes a wasting asset. The Trustee may keep such portion of the Trust in cash or cash balances as the Trustee may from time to time deem to be in the best interests of the Trust without liability for the payment of interest thereon.

9.3 **Trustee's Investment Powers.** Subject to the funding policy and the provisions of Section 9.5, if applicable, the Trustee shall have exclusive authority and complete discretion with respect to the investment management and control of the assets of the Trust and shall have the following powers, rights and duties in addition to those provided elsewhere herein or by law:

(a) To purchase and subscribe for any securities or other property and to retain such securities or other property in trust;

(b) to sell, exchange, convey, transfer or otherwise dispose of any property, real or personal, at any time held by it, by private contract or at public auction, for cash or on credit, upon such conditions, at such prices and in such manner as the Trustee shall deem

advisable, and no person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition;

(c) to vote upon any stocks, bonds or other securities of any company or other issuer; to give general or special proxies or powers of attorney with or without power of substitution, to sell or exercise any conversion privileges, subscription rights or other options and to make any payments incidental thereto; to consent to or otherwise participate in and take any action in connection with corporate reorganizations, recapitalizations, mergers, consolidations, liquidations, dissolutions or other changes effecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Trust;

(d) to form corporations and to create trusts under the laws of any state for the purpose of acquiring and holding title to any securities or other property, all upon such terms and conditions as it deems advisable;

(e) to make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(f) to register any securities or any property held by it in its name, or in the name of its nominee, with or without disclosure that the same are held in a fiduciary capacity, to take or keep the same unregistered, and to retain the same or any part thereof in such manner that title thereto will pass by delivery; provided, however that on the books and records of the Trustee, such investments shall be shown to be part of the Trust and no such registration or holding, as herein provided, shall relieve the Trustee of liability for the safe custody and proper disposition of such investments, in accordance with the terms and provisions hereof;

(9) to manage, administer, operate, lease for any number of years (regardless of any restrictions on leases made by fiduciaries), develop, improve, repair, alter, demolish, mortgage, pledge, grant options with respect to or otherwise deal with any real property or interest therein at any time held by it;

(h) to make temporary advances to the Trust, on a cash or overdraft basis;

(i) except in respect of a claim by a Participant for a Plan benefit, to compromise, contest, settle or arbitrate any claim, debt or obligation due to or from the Trust and to reduce the rate of interest on, extend or otherwise modify, or to foreclose upon default or otherwise enforce any such obligation; to bid in property on foreclosure or to take a deed in lieu of foreclosure with or without paying consideration therefor and in connection therewith to release the obligation on the bond secured by the mortgage; provided, however, the Trustee shall not be required to institute or continue litigation unless it is in possession of funds adequate for that purpose, or unless it is indemnified to its satisfaction by the Trust or the Participating Employers against its counsel fees and all other expenses, costs and liabilities to which, in its

judgment, it may be subjected by any such action; provided, further, however, that the Trustee shall have no power or authority to deviate from such directions as the Executive Committee may give to it with respect to payment of money, either as to amount or the time or times of such payments, or as to the persons entitled thereto;

(j) to purchase, if so required by the Managers, from legal reserve insurance companies one or more insurance contracts insuring against permanent loss, or loss of use of, a member or function of the body, or the permanent disfigurement of a Participant, or loss of life, or to provide benefits in the event of the illness or personal injury of a Participant;

(k) except as provided in Section 11.6, to borrow money from any lender, upon such terms, for such periods of time, at such rates of interest, and upon the giving of such collateral, as the Trustee may determine; and

(l) to exercise, generally, any of the powers which an individual owner might exercise in connection with property, either real, personal, or mixed, held by the Trust.

9.4 **Appointment of Investment Adviser.** The Board of Managers may appoint an investment adviser or advisers to manage any portion of or all assets of the Trust, which may include the power to acquire and dispose of any of such assets. Any such investment adviser must (a) be registered as an investment adviser under the Investment Advisers Act of 1940, a bank as defined in that act, or an insurance company qualified to perform services relating to the management, acquisition and disposition of trust assets under the laws of more than one state, and (b) acknowledge in writing that he or it is a fiduciary with respect to the Trust.

9.5 **Protection of Trustee.** In the event that any investment adviser is so appointed pursuant to Section 9.4, the Trustee shall follow the direction of the investment adviser regarding the investment and reinvestment of the assets of the Fund under the management of the investment adviser, and the Trustee shall have no responsibility for the investment and reinvestment of such assets. The Trustee shall be under no duty or obligation to review any investments to be acquired, held or disposed of pursuant to such direction nor to make any recommendations with respect to the disposition or continued retention of any such investment. The Trustee shall have no liability or responsibility for acting or not acting pursuant to the direction of, or failing to act in the absence of any direction from, the investment adviser. The Trust shall indemnify the Trustee and hold it harmless from and against any claim or liability which may be asserted against the Trustee arising out of or in connection with any act or omission of the investment adviser or which may be asserted against the Trustee by reason of its acting or not acting pursuant to any direction from the investment adviser or failing to act in the absence of any such direction.

9.6 **Insurance Contracts.** No insurance company issuing any policy or contracts held by the Trust shall be deemed to be a party to this Trust for any purpose, or to be responsible in any way for the validity of the Trust, or to have any liability under the Trust other than as stated in any contracts that are so issued by it. Any insurance company may deal with the Trustee as absolute owner of any contract issued by it and held by the Trust, without inquiry as to the authority of the Trustee to so act, and may accept and rely upon any written notice,

instruction, direction, certificate or other communication from the Trustee believed by the insurance company to be genuine and to be signed by an officer of the Trustee, and shall incur no liability or responsibility by so doing. Any sums paid by an insurance company under any of the terms of a contract issued by it either to the Trustee, or, in accordance with the direction of the Trustee, to any other person or persons designated in such contract as the person or persons to whom such payment shall be made, shall be a full and complete discharge of the liability to pay such sums, and the insurance company shall have no obligation to look to the disposition of any sums so paid. The Trustee shall follow the directions of the Managers concerning any contracts held in the Trust. To the extent permitted by law, neither the Managers nor the Trustee shall be liable for (a) the refusal of any insurance company to issue, modify or convert any contract or to take any other action requested by the Trustee; (b) the form, genuineness, validity, sufficiency or effect of any contracts held in the Trust; (c) the act of any person that may render any such contracts null and void; (d) the failure of any insurance company to pay the proceeds of any such contracts as and when the same shall become due and payable; (e) any delay in payment resulting from any provision contained in any such contract; (f) the fact that for any reason whatsoever any contract shall lapse or otherwise be uncollectible.

## **10. CONTRACT ADMINISTRATION**

10.1 **Appointment of Contract Administrator.** The Managers shall have the power to contract with any qualified individual, firm or corporation for the provision of administrative services to the Trust and the Plan, and any such individual, firm or corporation shall be known as the Contract Administrator.

10.2 **Duties and Responsibilities.** Subject to the terms of any contract between the Managers and the Contract Administrator, the Contract Administrator shall exercise such administrative duties as may be delegated to it by the Managers, which may include but shall not be limited to some or all of the following duties and responsibilities:

(a) To apply for, secure in the name of the Trustee, and maintain in force such insurance policies and contracts as are selected from time to time by the Managers;

(b) to advise the Managers as to the contributions required to maintain trust assets at a level adequate to support anticipated disbursements and charges and to retain adequate reserves for future claims and charges;

(c) to collect from each Participating Employer the contributions approved by the Managers, to confirm receipt of such contributions and to deposit such contributions and any other moneys received in the Trust;

(d) to require from the Participating Employers whatever reports are necessary for the proper determination of the contributions due from each Participating Employer;

(e) to process Participant claims for benefits, to make initial determinations of eligibility for or denial of benefits, and to refer appeals or disputed claims to the Executive Committee;

(f) to maintain full and complete records of eligible Participants and benefit payments made from the Trust;

(g) to prepare such documents and reports as may be required by the Trustee or the Managers or applicable law; and

(h) to provide such other administrative services to the Trust as may be delegated to the Contract Administrator by the Managers from time to time.

10.3 **Liability.** The Contract Administrator shall furnish at its expense such insurance or bond as may be required by law or as directed by the Managers.

10.4 **Compensation.** The Contract Administrator shall receive such service fees as may be agreed upon between the Contract Administrator and the Managers, which fees shall be paid from the Trust. The Contract Administrator shall not receive compensation in any form from an insurer issuing policies to the Trust with respect to services provided to the Trust, Participating Employers, or Participants, except to the extent otherwise specified in a written agreement between the Contract Administrator and the Managers.

10.5 **Administrative Costs.** If the Contract Administrator incurs an extraordinary expense for the administration of the Trust, including but not limited to legal and accounting fees, it may with the consent of the Managers be reimbursed out of the Trust for such amounts.

10.6 **Books and Records.** The Contract Administrator shall keep accurate books of account which shall show all receipts and disbursements and shall report the results of the Trust and the Plan to the Managers at least annually. Such accounts shall include records of the amounts contributed by each Participating Employer and the amount and type of benefits paid from the Trust to or on behalf of each Participant. The Managers may at any time demand an accounting from the Contract Administrator with respect to its accounts. The Managers may at any reasonable time inspect the books of the Contract Administrator, or require an independent audit thereof.

10.7 **Resignation and Removal.** Subject to the terms of any contract between the Contract Administrator and the Managers, the Contract Administrator may resign at any time by mailing to the Chairman written notice of its resignation to take effect no less than 60 days after delivery thereof, unless such notice shall be waived by the Managers. The Contract Administrator may be removed by the Managers effective no less than 60 days after delivery of written notice thereof, unless such notice shall be waived by the Contract Administrator.

## 11. GENERAL PROVISIONS REGARDING FIDUCIARIES

11.1 **Discharge of Duties.** The Trustee, the Managers and all fiduciaries of the Trust shall discharge its or their duties with respect to the Trust solely in the interest of the Participants, and:

(a) For the exclusive purpose of providing benefits to Participants and defraying reasonable expenses of administering the Trust;

(b) 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 a like character and with like aim;

(c) by diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) in accordance with the documents and instruments governing the Trust insofar as such documents and instruments are consistent with the provisions of applicable law.

11.2 **Non-liability.** No fiduciary shall:

(a) Have any liability for any act or omission of any other person or entity except to the extent otherwise required by applicable law;

(b) be personally liable or answerable for any debts or liabilities of the Trust;

(c) be liable for any acts or omissions of any predecessor or successor.

11.3 **Indemnification.** To the extent permitted by applicable law, the Trust shall indemnify, defend and hold harmless each Manager against any and all expenses and liabilities arising out of membership on the Board of Managers and any of its committees, except only expenses and liabilities arising out of the Manager's own fraud, misfeasance or willful neglect. The Managers shall not be liable or otherwise responsible for any acts or omissions of any individual, firm, or other entity with whom they contract for the payment and/or provision of any benefits under the Trust or upon whom they are required to rely in the performance of their duties under the Trust. The Managers shall be entitled to rely on the correctness of all reports and information supplied to them by Participating Employers, Participants, the Trustee, and/or any other person to whom they or any of them delegate all or any of their duties, obligations, responsibilities or powers hereunder. The foregoing indemnity shall not be construed to relieve the Managers from their duty to perform any act otherwise required of them.

11.4 **Bonding.** The Trustee and all other persons handling assets of the Trust shall be bonded if and to the extent required by applicable federal or state law. The costs of such bonding may be paid out of the corpus or income of the Trust.

11.5 **Insurance.** The Managers may obtain and maintain insurance policies for the Board of Managers, the members of any committee thereof, or any fiduciary to cover liability or losses occurring by reason of their errors or omissions, provided such insurance shall permit

recourse by the insurer against the fiduciary if required by applicable law. The cost of such insurance shall be paid from the Trust. In addition, any fiduciary may, at its or his own expense, purchase such insurance for such fiduciary's own account.

11.6 **Prohibited Transactions.** Notwithstanding anything contained in any other provision hereof, no fiduciary shall (a) lend any part of the income or corpus of the Trust to, (b) pay any compensation for personal services rendered to the Trust to, (c) make any part of the services of the Trust available on a preferential basis to, or (d) acquire for the Trust any property from, or sell any property to, a Participating Employer or any employee of a Participating Employer, or (e) engage in any other transaction with a Participating Employer or any employee of a Participating Employer which would be prohibited by Sections 406 through 408 of ERISA if ERISA applied to this Trust. Nothing herein shall prohibit the Managers from contracting or making reasonable arrangements with a Participating Employer or any employee of a Participating Employer for office space or accounting, administrative or other services necessary for the establishment or operation of the Plan and the Trust if no more than reasonable compensation is paid therefor.

11.7 **Self-Dealing.** No fiduciary shall deal with the Trust for his or its own account, act in any transaction involving the Trust on behalf of a party adverse to the interests of the Trust or any Participant, or receive any personal consideration from any party in connection with any transaction involving the Trust.

## 12. AMENDMENTS

12.1 **Amendment of Trust.** The Participating Employers have heretofore delegated to the Managers the right to amend this Trust, in whole or in part, at any time and from time to time. Any such amendment shall be adopted by vote of a two-thirds majority of the Managers present at a duly called regular or special meeting at which a quorum is present.

12.2 **Prohibited Amendments.** No amendment shall:

- (a) Vest in any Participating Employer any interest or control over any assets of the Trust;
- (b) cause any portion of the Trust to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and for the reasonable expenses of Trust administration; or
- (c) increase the duties or liabilities of the Trustee without its consent.

12.3 **Amendment of Plan.** The Managers shall have exclusive authority to amend or terminate the Plan, or to adopt new or additional plans, at any time and from time to time. Any such amendment or adoption shall be by vote of a two-thirds majority of the Managers present at a duly called regular or special meeting at which a quorum is present.

### 13. TERMINATION

13.1 **Lack of Participation.** If at any time there are fewer than 15 Participating Employers, the Executive Committee shall call a special meeting of the Managers to consider termination of the Trust for lack of participation. The Executive Committee shall give not less than 30 days' prior notice to each Participating Employer of such meeting. Thereafter, the Participating Employers may terminate the Trust at any time by vote of a two-thirds majority of the Managers present at a duly called regular or special meeting at which a quorum is present.

13.2 **Disposition of Assets upon Termination.** In the event that any decision is made to terminate the Trust, Trust assets shall be used first to provide benefits to Participants in accordance with the terms of the Plan and for payment of reasonable expenses of Trust administration. In the event any funds remain after the payment of all such benefits and Trust expenses, the Trustee shall, at the direction of the Managers, apply or distribute such remaining Trust assets in one or both of the following ways:

(a) To fund any successor plan of health and welfare benefits adopted by the Participating Employers for the benefit of their employees, pursuant to criteria that do not provide for unequal benefits to similarly situated persons or in disproportionate benefits to highly-compensated employees; or

(b) to and among Participants, provided that any such distribution shall be made on the basis of objective and reasonable standards which do not result in either unequal payments to similarly situated persons or in disproportionate payments to highly-compensated employees. In no event shall any part of the Trust assets revert to the Participating Employers.

13.3 **Transfer of Assets to Successor Trust.** Nothing herein contained shall prevent the transfer of any funds or property held hereunder to any successor trust created for the purpose of providing similar benefits, contributions to which are irrevocable and which precludes, except by distribution of benefits provided thereunder, reversion to a Participating Employer or inurement to the benefit of any individual.

13.4 **Continuance of Trust.** The Participating Employers do not hereby assume any contractual liability as to the continuance of the Trust and, except as provided in the Funding Agreement, the Participating Employers do not hereby assume any contractual obligation to make future contributions to the Trust, but expressly reserve the right to cease contributions and terminate participation in accordance with the provisions of Section 14.2 and this Section 13.

### 14. ADOPTION BY AND WITHDRAWAL OF PARTICIPATING EMPLOYERS

14.1 **Adoption Procedure.** Adoption of this Trust and the Funding Agreement by any District is subject to prior review and approval by the Trust's actuary and excess loss carrier, based on such underwriting criteria as they deem appropriate. If admission of a District is approved by the excess loss carrier but declined by the actuary, the District may, nevertheless, be

approved for admission by vote of the Executive Committee. Subject to such approval, any District may adopt this Trust and the Funding Agreement as the funding vehicle for employee benefits under the Plan by a duly adopted resolution of its Board of Education. To be effective, such resolution must be evidenced by the execution and filing with the Managers or their designee an Adoption Agreement substantially in the form attached hereto as Exhibit B. A District shall become a Participating Employer as of the first day of the month coinciding with or next following the date of execution of the Adoption Agreement. The Adoption Agreement incorporates by reference all terms of this Declaration of Trust and the Funding Agreement.

14.2 **Withdrawal.** A Participating Employer may discontinue participation in this Trust as of the last day of any month upon 60 days' prior notice to the Managers. In the event of a merger, consolidation or dissolution of a Participating Employer, such Participating Employer shall give not less than 60 days' prior notice to the Chairman. Arrangements may be made for participation in the Plan to be continued by any successor to a Participating Employer.

14.3 **Involuntary Termination.** The participation of any Participating Employer may be terminated effective as of the last day of any month, in the Managers' sole discretion, upon the affirmative vote of a two-thirds majority of the Managers present at a duly called regular or special meeting at which a quorum is present, and the giving of 60 days' prior notice to such Participating Employer. Notwithstanding the foregoing or any other provision of the Trust, if a Participating Employer offers its employees a competing program of health coverage and as a result the number of employees of such Participating Employer who are Participants in the Trust falls below 50% of the number of employee Participants such Participating Employer had at the time it was admitted to the Trust, the continued participation of such Participating Employer in the Trust shall be subject to review by the Executive Committee and may upon review be terminated by action of the Executive Committee without the vote of the full Board of Managers.

14.4 **Withdrawal Liability.** In the event of any withdrawal or termination, the withdrawing or terminated Participating Employer shall be liable for payment of any delinquent contributions, late payment penalties and withdrawal liability pursuant to Sections 2, 3 and 4 of the Funding Agreement. In addition, in the event of a reduction in the number of Participants of a Participating Employer, such Participating Employer may be subject to a partial withdrawal liability pursuant to the provisions of Section 4.3 of the Funding Agreement.

14.5 **Resignation of Manager.** A Manager shall be deemed to resign upon withdrawal or termination of his Participating Employer.

14.6 **Audit of Participating Employer Records.** The books, records and accounts of each Participating Employer (or former Participating Employer), including its records of Participant contributions required by Section 3.4, shall, upon reasonable notice and at reasonable times, be open to inspection and audit by the Board of Managers or such administrator, accountant or auditor as it shall designate from time to time.

## 15. MISCELLANEOUS.

15.1 **Notice.** Except as otherwise expressly provided herein or in the By-Laws, any and all notices required by the provisions of this Declaration of Trust, the By-Laws, the Plan and the Funding Agreement shall be in writing and shall be deemed given the day any such notice is mailed by first class mail, postage prepaid.

15.2 **Notices to Participants and Participating Employers.** The Managers shall adopt such By-Laws as are necessary to insure that adequate notice is given to Participants and Participating Employers of matters relating to or affecting the Trust.

15.3 **No Employee Contract.** The adoption and maintenance of this Trust shall not be deemed to be a contract between any Participating Employer and any employee, or to give any Participant or other person any legal or equitable right against a Participating Employer, the Managers or the Trustee, except as provided herein. Nothing herein contained shall be deemed to give to any employee the right to continue as an employee with a Participating Employer or to interfere with the right of a Participating Employer to terminate an employee, nor shall it be deemed to give a Participating Employer the right to require any employee to continue as such with a Participating Employer, nor shall it interfere with the right of any employee to terminate employment with a Participating Employer.

15.4 **Applicable Law.** The Trust, its By-Laws, the Funding Agreement and the Plan shall be construed and administered in accordance with the laws of the State of Illinois, and shall be adjudicated solely by the courts of said State or of the United States.

15.5 **Illegality or Invalidity of any Provision.** If any of the provisions hereof shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions hereof, but shall be fully severable, and this Trust shall be construed and enforced as if said illegal or invalid provisions had never been inserted.

15.6 **Gender and Number.** Unless the context otherwise indicates, words used herein of the masculine gender shall include the feminine, and the plural shall include the singular and the singular the plural.

15.7 **Captions.** The captions of the Sections hereof are included for convenience and reference, and in the event of any conflict between such captions and the text, the text shall control.

15.8 **Inurement to Benefit of Private Individual.** No part of the net earnings or principal of the Trust shall inure to the benefit of any private individual other than by payment of the benefits provided hereunder or by payment of reasonable compensation for services rendered to the Trust.

15.9 **Entire Agreement.** This Declaration of Trust, including its By-Laws, the Funding Agreement, the Plan or any plan adopted hereunder, and the executed counterparts of the Adoption Agreement shall constitute the entire agreement between the parties. This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the Managers and the Trustee have adopted this amendment and restatement of the Declaration of Trust by the vote of a two-thirds majority of the Managers present at a duly called meeting at which a quorum was present on the 4th day of November, 1998, effective as of January 1, 1999.

BOARD OF MANAGERS  
EGYPTIAN AREA SCHOOLS  
EMPLOYEE BENEFIT TRUST

By: \_\_\_\_\_

Title: \_\_\_\_\_

“Managers”

UNION PLANTERS BANK, NA

By: \_\_\_\_\_

Title: \_\_\_\_\_

“Trustee”

**FIRST AMENDMENT TO  
DECLARATION OF TRUST  
FOR THE  
EGYPTIAN AREA SCHOOLS EMPLOYEE BENEFIT TRUST**  
(As amended and restated effective January 1, 1999)

Pursuant to the provisions of Section 12.1 of the Declaration of Trust for the Egyptian Area Schools Employee Benefit Trust, as amended and restated effective January 1, 1999 (the "Trust"), the Board of Managers of the Trust hereby amends the Trust effective as of January 1, 2002, in the following respect:

Section 14.2 of the Trust is amended to read in its entirety as follows:

"14.2 **Withdrawal.** A Participating Employer may discontinue participation in this Trust as of the last day of any month by giving not less than 30 days' prior notice to the Managers. Such notice shall be in writing, addressed to the Chairman of the Board of Managers, and shall include payment of the Employer's estimated withdrawal liability, if any, in accordance with Section 4 of the Funding Agreement. In the event of a merger, consolidation or dissolution of a Participating Employer, such Participating Employer shall give not less than 30 days' prior written notice to the Chairman. Arrangements may be made for participation in the Plan to be continued by any successor to a Participating Employer."

IN WITNESS WHEREOF, the Managers have adopted this amendment of the Declaration of Trust by the vote of a two-thirds majority of the Managers present at a duly called meeting at which a quorum was present on the 5<sup>th</sup> day of November, 2001, effective as of January 1, 2002.

BOARD OF MANAGERS  
EGYPTIAN AREA SCHOOLS  
EMPLOYEE BENEFIT TRUST

By: \_\_\_\_\_  
Thomas J. Dahncke  
Chairman, Board of Managers

**SECOND AMENDMENT TO  
DECLARATION OF TRUST  
FOR THE  
EGYPTIAN AREA SCHOOLS EMPLOYEE BENEFIT TRUST**  
(As amended and restated effective January 1, 1999)

Pursuant to the provisions of Section 12.1 of the Declaration of Trust for the Egyptian Area Schools Employee Benefit Trust, as amended and restated effective January 1, 1999 (the "Trust"), the Board of Managers of the Trust hereby amends the Trust effective as of July 1, 2004, in the following respects:

A new Section 14.7 is added to the Trust to read as follows:

14.7 **Indemnification**. Each Participating Employer shall indemnify, defend and hold harmless the Trust and its officers and representatives against any and all claims, losses, damages, expenses and liabilities arising out of or as a result of such Employer's failure to comply with the terms of this Agreement or the Funding Agreement or such Employer's failure to fulfill any obligation imposed on the Employer by the terms of this Agreement or the Funding Agreement or any applicable law.

IN WITNESS WHEREOF, the Managers have adopted this amendment of the Declaration of Trust by the vote of a two-thirds majority of the Managers present at a duly called meeting at which a quorum was present on the 2<sup>nd</sup> day of June, 2004, effective as of July 1, 2004.

BOARD OF MANAGERS  
EGYPTIAN AREA SCHOOLS  
EMPLOYEE BENEFIT TRUST

By: \_\_\_\_\_  
Lawrence G. Busch  
Chairman, Board of Managers