

AGREEMENT AND DECLARATION OF TRUST
EVERGREEN TEACHERS ASSOCIATION
HEALTH & WELFARE TRUST

This Trust Agreement is made this FIRST day of JULY, 1985, by the EVERGREEN TEACHERS ASSOCIATION, hereinafter referred to as "Trustor". The Trustor hereby transfers and assigns the property herein described to the Administrators, defined hereinafter as "Trustee".

WITNESSETH:

WHEREAS, the Association and the Employer have heretofore entered into a collective bargaining agreement, which is now in effect, and from time to time hereafter may execute further and additional collective bargaining agreements, and/or amendments thereto, which in addition to other provisions provides Health Care Plans for the Employees covered by the aforesaid collective bargaining agreement, and which provides for payments as shall be required to be paid under the terms of said collective bargaining agreement, and,

WHEREAS, the sums payable for the purpose of providing protection and care for the Employees covered by said collective bargaining agreement and, if possible, their dependents, with respect to health and such other medical benefits and purposes as the Trustees may hereinafter adopt and make available, and,

WHEREAS, the Employer and the Association have agreed that all sums due as hereinafter provided shall be payable to and be deposited in the Trust Fund created and established by this Agreement and Declaration of Trust, and,

WHEREAS, it is desired to establish and maintain a Trust Fund, which will conform to the applicable requirements of the California Education Code and California Government Code as well as the Employee Retirement Income Security Act and any other

applicable federal or state law, and comply with the conditions for qualification, exemption and full deductibility for state and federal income tax purposes under the pertinent provisions of the Internal Revenue Code, and corresponding provisions of California law, as either of the above may be amended from time to time,

NOW, THEREFORE, the Trustor creates this Trust as hereinafter provided:

ARTICLE I
DEFINITIONS

For the purpose of this Trust, the following words and phrases shall have the following meanings, unless a different meaning is required by the context:

Section 1: The term "Collective Bargaining Agreement" shall mean:

a. The current agreement between the Association and the Employer, which provides for the making of Employer contributions to this Trust Fund.

b. Any extensions, amendments, modifications, or renewal of the above described collective bargaining agreement.

c. Any agreement which requires employer contributions be made to this Trust Fund.

Section 2. The term "Employer" shall mean Evergreen School District Board of Trustees.

Section 3. The term "Association" shall mean Evergreen Teachers Association.

Section 4. The term "Employee" shall mean any employee on whose behalf contributions are paid to this fund

pursuant to a written agreement accepted and approved by the Board of Trustees.

The term "Employee" may also include retired employees, and employees who have lost eligibility for benefits and who are permitted to make self-contributions to this Trust Fund under such terms and conditions as the Trustees may prescribe.

Section 5. The term "Fund" or "Trust Fund" shall mean the Trust Fund created by this Agreement and Declaration of Trust into which all money paid by the Employer on behalf of employees shall be deposited.

Section 6. The term "Plans" or "Health Care Plans" shall mean the plans adopted by the Trustees pursuant to this Trust Agreement which provides for health care benefits to eligible employees and/or their dependents.

Section 7. The term "Trust Agreement" shall mean this Agreement and Declaration of Trust and any modifications, amendments, extensions or renewals thereof.

Section 8. The term "Contributions" shall be the payments made or to be made to the Trust Fund by any Employer under the terms of the collective bargaining agreement or pursuant to any arrangement agreed to by the Board of Trustees.

Section 9. The terms "Trustees" or "Board of Trustees" shall mean those persons appointed as Trustees or successor Trustees in accordance with this Agreement and Declaration of Trust.

Section 10. The term "Benefits" shall mean the health care benefits provided under the Plan, as agreed to and determined by the Board of Trustees, as defined in insurance policies, or contracted by the Trustees, or made available by the Trustees on a self-funded basis to the extent permitted by law.

Section 11. The term "Participant" shall mean any employee or former employee who is or may become eligible to receive a benefit of any type from the plan or program adopted pursuant to this Trust Agreement.

Section 12. The term "Beneficiary" shall mean any dependent of a participating employee, or person so designated, who is entitled to benefits, as defined in the benefit plans.

Section 13. The term "Signatory Parties" shall mean the parties who created this Trust Agreement and whose signatures appear on the last page hereof (or their successors).

ARTICLE II

CREATION AND PURPOSE OF TRUST FUND

Section 1. There is hereby established the Evergreen Teachers Association Health & Welfare Trust Fund to be used for the purpose set forth in this Agreement and Declaration of Trust.

Section 2. This Trust shall consist of the entire and total Trust estate and corpus, which is created, held and established pursuant to the terms of this Trust Agreement, as it may from time to time be constituted, including but not limited to policies of insurance, investment, the income from any and all investments, Employer contributions, and any and all assets, property or money received by or held by the Trustees for the uses and purposes of this Trust.

Section 3. This Trust Fund shall have its principal office in the County of Santa Clara, State of California.

Section 4. This Trust is established for the purpose of providing, either from principal or income, or both, any or all of the following benefits, either through the purchase of insurance policies or on a self-funded basis, long term

disability, medical benefits, or any other similar benefits as the Trustees shall determine, for eligible Employees and/or their dependents, and on such terms and conditions as the Trustees shall prescribe. This Trust is also responsible for paying the necessary costs of administering and continuing this Trust and for the accumulation of necessary reserves.

Section 5. The Board of Trustees shall have the continuing supervision, control and direction of the Trust for the uses, purposes and duties set forth in this Trust Agreement and it is vested with all right, title and interest to it. The Trust shall be administered by the Board of Trustees for the exclusive benefit of Participants pursuant to the provisions of this Trust. Notwithstanding anything to the contrary contained in this Trust Agreement or in the Plan, any modification, amendment, extension or renewal hereof or of the Plan, no portion of the Trust shall at any time revert to, or be recoverable by the Employer, or the Association, or be used for or diverted to, purposes other than for the exclusive benefit of Participants, and the payment of the administrative expenses of the Trust and the Plan, or refund of erroneous payments.

Section 6. Neither the Employer, the Association, any Participant, nor any other person shall have any right, title or interest in or to the Trust other than as specifically provided in this Trust Agreement or in the Plan. Neither the Trust nor any contributions to the Trust shall be in any manner liable for or subject to the debts, contracts or liabilities of any Employer, the Association or any Participant.

Section 7. No Participant, dependent or beneficiary shall be entitled to receive any part of the contributions made or required to be made to the Trust in lieu of the benefits provided by the Health & Welfare Trust Fund.

Section 8. Each Participant, dependent or beneficiary is hereby restrained from selling, transferring, anticipating, assigning, hypothecating or otherwise disposing of his

benefits or any other right or interest in the Plan, and the Board of Trustees shall not recognize, nor be required to recognize any such sale, transfer, anticipation, assignment, hypothecation or other disposition. Any benefits or right or interest therein shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permissible by law.

Section 9. The Employer shall not be liable to make contributions to the Trust or be under any other liability to the Trust or with respect to the Plan, except to the extent that he or it may be required to make contributions to the Trust.

Section 10. Neither the Employer, the Association, nor any participant shall be liable or responsible for any debts, liabilities or obligations of the Trust or the Trustees.

Section 11. Any money judgment against the Trust Fund shall be enforceable only against the Trust Fund entity and shall not be enforceable against any Trustee or other person, unless liability against the Trustee or other person, in his individual capacity, is established.

ARTICLE III PARTICIPATION

Section 1. The following organizations (or their successors), shall be allowed to participate in the Trust Fund:
EVERGREEN TEACHERS ASSOCIATION.

Section 2. The Trustees shall have the authority to permit organizations (other than those specified above) to participate in the Trust Fund. Should the classified employees (CSEA) of the Evergreen School District be granted participation in this Trust, this Trust will be amended to allow them to

designate a Trustee or Trustees as is agreed upon between the CSEA and the Association.

The participation of such bargaining units shall be entirely discretionary with the Trustees and shall be subject to whatever terms and conditions are agreed upon prior to the participation of such additional bargaining units.

Section 3. The Trustees shall have the authority to enter into subscription agreements wherein contributions are required to be paid to the Fund on behalf of individuals who the Trustees find are acceptable to participate in the Fund. The acceptance of such subscription agreements shall be subject to the discretion of the Trustees and shall be subject to whatever terms and conditions the Trustees may impose or as are agreed upon with the participants or their bargaining representative.

The acceptance of such subscription agreements shall be entirely discretionary with the Trustees and shall be subject to whatever terms and conditions they may impose.

Section 4. The only individuals who shall be entitled to participate in and receive benefits from the Trust Fund shall be those employees who are described above. It is expected that the Employer will submit contributions only on behalf of such employees. The receipt by the Trust Fund of contributions which may be submitted on behalf of individuals who are not eligible to participate shall not stop the Trustees from declining or terminating the participation of such individuals nor shall it constitute a waiver of any of the provisions of this Article or of the benefit plans.

ARTICLE IV

CONTRIBUTIONS TO THE TRUST

Section 1. Contributions shall be paid into the

Trust in such manner and at such time and place, and on monthly transmittal reports as the Board of Trustees may prescribe.

Section 2. Contributions to the Trust shall be payable monthly. Said contributions shall be forwarded to a central depository to be designated by the Board of Trustees. Said payments are to continue from month to month subject to the provisions of the collective bargaining agreement.

Section 3. The amount of the contribution shall be such amount as is set forth in the current collective bargaining agreement between the Employer and the Association or the applicable Subscription Agreement. If the amount of the contribution is changed by the collective bargaining agreement, or subscription agreement, the employer shall contribute the changed amount as required by the collective bargaining agreement or a subscription agreement.

Section 4. Each monthly contribution to the Trust shall be made promptly and shall include all Participants covered by this Agreement who shall have been employed during the Employer's payroll month and shall be paid on or before the 15th day of the calendar month following the payroll month in which the participant has been employed.

Section 5. In the event an employer is delinquent in paying contributions due hereunder or defaults in his obligation hereunder, and the participant under this Trust is financially damaged by lost benefits, then the employer shall be liable not only to pay contributions due, but shall be liable to the participant for all financial loss suffered by the participant due to its failure to make timely contributions hereunder. Furthermore should the participant or the Trustees initiate litigation reasonable attorney's fees shall be awarded to the prevailing party in such litigation. To the extent allowed by ERISA, employers shall pay liquidated damages to the Fund in the event of delinquent contributions.

Upon the failure of the Employer to make the required contributions, the Trustees shall have authority to pay or provide for the payment from the Trust the amount of the benefit to the eligible Participants of the Employer, but the Trustees shall not be obligated either to said Participant or said Employer to make or provide such payments and they shall incur no liability whatsoever, either individually or collectively, for their failure or refusal to do so. In the event such payments are made by the Trustees from the Trust on behalf of the Employer, the Trust shall be reimbursed by said Employer for such payments and the Trustees shall have the authority to enforce such right of reimbursement.

Section 6. To the extent permitted by law, the Trustees or the Association, collectively or individually, shall have no liability with respect to the nonpayment of contributions by the Employer.

ARTICLE V BOARD OF TRUSTEES

Section 1. The Trust Fund shall be administered by a Board of Trustees which shall consist of five (5) Trustees appointed by the Executive Board of the Association.

Section 2. The Trustees so appointed shall sign this Trust Agreement, or a counterpart thereof, and such signature shall constitute their acceptance of office and their agreement to act under and be subject to all of the terms and conditions of this Trust Agreement.

Section 3. Each original Trustee and each successor Trustee shall serve until his death, incapacity, resignation or removal, as herein provided. Any retiring Trustee shall forthwith turn over to the Chairman of the Board of Trustees any and all records, books, documents, monies and other property in his possession owned by the Trust or incident to the administration of the Trust.

Section 4. Any Trustee may be removed from office as a Trustee at any time and for any reason by an instrument in writing served upon the removed Trustee from the Executive Board of the Association.

Section 5. Any Trustee may resign and remain fully discharged from all future duty or responsibility hereunder by giving notice in writing to the Chairman of the Board of Trustees, the Administrator, and the Evergreen Teachers Association Executive Board.

Section 6. No individual who has been convicted of any of the crimes listed in Section 411(a) of the Employee Retirement Income Security Act of 1974 shall serve as a Trustee during the period of disqualification specified in the statute.

Section 7. The appointment of a Trustee shall be automatically terminated if such Trustee fails to attend three (3) consecutive meetings of the Trustees, without being excused from attendance by specific action of the remaining Trustees noted in the minutes.

The appointment of a Trustee shall be automatically terminated if such Trustee is convicted of any of the crimes listed in Section 411(a) of the Employer Retirement Income Security Act of 1974.

The appointment of a Trustee shall be automatically terminated if such Trustee is declared mentally incompetent by court decree.

Section 8. In the event of the removal, resignation, legal disability, or death of any Trustee, the Association shall promptly appoint a successor Trustee, who, upon acceptance of his appointment, shall have the same powers and duties as those conferred upon any Trustee hereunder, and who shall succeed to the interest of his predecessor Trustee.

Section 9. The Trustees shall select one of their number to act as Chairman and another of their number to act as Secretary.

Section 10. Any Trustee who resigns or is removed from office or is for any other reason unable to serve as such as above set forth shall forthwith turn over to the Chairman of the Board of Trustees any and all records, books, documents, monies and other properties in his possession or under his control which belong to the Fund, or which were received by him in his capacity as such Trustee.

Section 11. Three (3) Trustees shall constitute a quorum of the Board of Trustees for the transaction of business.

Section 12. No decision shall be made by the Trustees except upon majority vote.

Section 13. The procedures through which the Trustees are to be appointed, removed or replaced are to be determined exclusively by the Association.

Section 14. The Board of Trustees shall determine the time and place for regular periodic meetings of the Board. Either the Chairman or the Secretary or the Association may call a special meeting of the Board by giving written notice to all other Trustees of the time and place of such meeting at least ten (10) days before the date set for the meeting; provided, however, the notice shall contain an agenda of the items to be discussed and the special meeting shall be confined to the discussion of such items. Any such notice of special meeting shall be sufficient if sent by certified mail or by wire addressed to the Trustee at his address as shown in the records of the Board.

Section 15. Any meeting at which all Trustees are present, or concerning which all Trustees have waived notice in writing, shall be a valid meeting without the giving of any

notice. Upon any matter which may properly come before the Board of Trustees, the Board may act in writing, without a meeting, provided such action has the written concurrence of all the Trustees.

Section 16. The Secretary of the Board of Trustees shall have the responsibility to see that minutes or records are kept of all meetings, proceedings and actions of the Board of Trustees and a copy shall be sent to the President of the Association; any such minutes or records need not be verbatim.

ARTICLE VI ARBITRATION

Section 1. In the event of a deadlock on any matter properly before the Board of Trustees, or in the event of an inability of the Board of Trustees to agree with respect to any matter properly before it, the Board of Trustees shall select a neutral person as an impartial referee to decide said dispute. In the event of the failure of the Board of Trustees to agree upon an impartial referee within seven (7) days thereafter, any Trustee may thereupon request the American Arbitration Association to submit the names of five (5) persons qualified to act as impartial referees. When said list has been presented, each group of Trustees shall have the choice of rejecting two (2) of the five (5) persons, with the order of choice being determined by lot, and the remaining or fifth person shall be the impartial referee. The decision of the impartial referee shall be final and binding as to the matter in dispute. The decision of the impartial referee shall be within the scope and intent of this Agreement and Declaration of Trust. The expenses of the impartial referee shall be paid for out of the Trust Fund.

Section 2. The impartial referee shall be bound by all the terms and conditions of this Agreement and the collective bargaining agreement and shall have no authority to alter or amend the terms of any of the above. The decision of the impartial referee shall be in writing.

Section 3. No matter in connection with the interpretation or enforcement of the collective bargaining agreement shall be subject to arbitration under this Article. No matter which is subject to arbitration under this Article shall be subject to the grievance procedure or any other arbitration procedure provided in the collective bargaining agreement.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF TRUSTEES

Section 1. The signatory parties hereto expressly designate each of the Trustees as the named fiduciaries, who shall have the exclusive authority and discretion to control and manage the assets, operation, and administration of the Trust Fund, except as may otherwise be provided herein. Each of the current Trustees expressly accepts designation as fiduciary, and as Trustee, by written acceptance and signature of this Agreement and Declaration of Trust, and assumes the duties, responsibilities, and obligations of the Trustees as created and established by this Agreement and applicable State and Federal law. Any successor Trustee named hereafter shall do likewise by signing this Agreement and Declaration of Trust.

Section 2. The Board of Trustees shall have the power to control and manage the assets, operation and administration of the Trust and the Plan as fiduciaries, which power and duty is expressly accepted by each of the Trustees and shall be exercised 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; provided, however, the Trustees may designate and appoint a person or entity to act as a fiduciary and may designate and may also appoint a qualified Investment Manager. The Trustees may also designate and appoint an Administrator to carry on the day-to-day operations of the administrative office of the Trust and Plan.

Any such fiduciary shall act solely in the interests of the participants and beneficiaries of the Trust and the Plan.

Section 3. Any other person shall be a fiduciary only to the extent that he has discretionary authority or discretionary control respecting the management of the Trust or the Health Care Plans; or exercises any authority or control effecting management or disposition of Trust assets.

Section 4. The Trustees shall have general supervision of the operation of the Trust Fund and shall conduct the business and activities of the Trust Fund in accordance with this Agreement and Declaration of Trust and applicable law. The Trustees shall hold, manage and protect the Trust Fund and collect the income therefrom, and the contributions thereto.

Section 5. The Trustees shall have the power to establish, amend, interpret and promulgate rules and regulations regarding the administration and function of the Trust and Health Care Plans.

Section 6. The Board of Trustees shall use all money received by them for the purpose of providing a plan of health and welfare benefits for eligible Participants under a group insurance arrangement in accordance with applicable law. They shall have the power to enter into such contract and procure such insurance, either in the form of insurance policies or on a self-funded basis, individually or in conjunction with or collectively with Trustees of any similar Trust Funds, pursuant to any reciprocal arrangement or relationship as they may deem necessary or desirable to carry out the terms of this Agreement and Declaration of Trust, and the Trustees shall have the power to terminate, modify, renew or amend any such contracts, policies, or arrangements. The Trustees shall also have the power to contract directly with providers.

Section 7. The Board of Trustees shall collect and receive any and all dividends, interest, returns of premiums

or other credits or benefits due from any insurer, person or otherwise, which the Trust is entitled to receive, and shall deposit same and credit same to the Trust, and all deposits and credits shall become part of the Trust and shall be used for the purposes stated in this Agreement and Declaration of Trust.

Section 8. Without limiting the general powers of the Board of Trustees, they shall be expressly empowered to do any or all of the following:

a) To pay out of the Trust the reasonable expenses incurred in the establishment and formation of the Trust and Health Care Plans.

b) To establish and accumulate such reserve funds as they deem adequate to provide for the administration expenses and other obligations of the Trust.

c) To employ or contract for such executive, consultant, administrative, accounting, actuarial, clerical, secretarial and legal personnel, and other employees and assistants, as they deem necessary for the proper administration of the Trust, and to pay or cause to be paid out of the Fund the compensation costs and necessary expenses of such persons, and the costs of office space by the buying or leasing of furnishings, equipment, and supplies and other essentials required in such administration. The powers as set forth in this subparagraph may, in the discretion of the Board of Trustees, be delegated to the Administrator of the Fund.

d) To invest the monies deposited in this Trust Fund in such investments as are legal under federal and state law.

e) To incur and pay out of the Trust Fund any other expenses reasonably incidental to the administration and operation of the Trust Fund or Health Care Plans.

f) To adopt rules and regulations for the administration and operation of the Trust Fund and Health Care Plans, which are not inconsistent with the terms and intent of this Agreement and Declaration of Trust.

g) Increased health and welfare benefits or more liberal eligibility requirements may be granted to the employees or beneficiaries by the Board of Trustees in their sole discretion, if they should find that the funds of the Trust would permit the purchase or funding of such increased benefits. To the extent permitted by law, eligibility requirements may be increased and benefits may be decreased if the Trustees, in their sole discretion, should find that the lack of sufficient Trust Funds necessitates such decrease.

Section 9. The Trustees shall be bonded and insured in such manner and in such amount as may be required by law, together with such other persons, including any fiduciaries, in such manner and to the extent required by law. Said insurance shall include fiduciary liability insurance as may be required by ERISA.

To the extent permitted by law, the Trustees may in their discretion, obtain and maintain policies of insurance to insure themselves and the Trust, as well as employees or agents of the Trust, and the Trustees, while engaged in business and related activities for and on behalf of the Trust with respect to so-called "errors and omissions" insurance and such other insurance deemed desirable by the Trustees.

Section 10. All checks, drafts, vouchers, or other withdrawals of money from the Trust Fund, shall be upon the signature of at least two (2) Trustees. The Trustees, in their discretion, may delegate this authority to the Administrator on such terms and conditions as the Trustees may designate.

Section 11. The Trustees shall maintain suitable and adequate records of and for the administration of the Trust

Fund. The books of account and records of the Board of Trustees shall be audited at least once a year by a qualified, certified public accountant to be selected by the Board of Trustees.

Section 12. The Board of Trustees shall prepare or cause to be prepared such reports, descriptions, summaries and other information as are or may be required by law, or as the Trustees in their discretion deem necessary or advisable, and shall file and furnish such reports, descriptions, summaries and information to Participants, Association, Employer, the Trustees, or other persons or entities, including government agencies, as required by law.

Section 13. The Trustees shall be solely responsible for the administration of this Trust Fund. The Trustees may at their option, delegate the responsibility for such administration to an Administrator appointed by them to act in such capacity, under their direction and control and subject to such terms and conditions as the Trustees shall determine.

Section 14. To the extent permitted by law, anything herein contained to the contrary notwithstanding, the Employer, the Association, and the Trustees shall not be responsible or liable for the validity of this Agreement and Declaration of Trust or for the form, genuineness, validity, sufficiency, or effect of any contract at any time included in the Trust Fund and Health Care Plans or for the act of any person or persons which may render such contract null and void, or for the failure of the Trustees to pay the benefits as and when the same shall become due and payable.

Section 15. The Trustees shall be permitted in their discretion to pay for reasonable expenses incurred by any of the Trustees, the Administrator, or such other persons who perform services to the Trust Fund, to attend any institutes, seminars, conferences, or workshops, which are designated to provide education and information to the persons attending, which information and education, in the opinion of the Trustees, is

essential to the proper maintenance and administration of the Trust Fund.

Section 16. No Trustees shall receive any compensation for any other reason. A Trustee shall be entitled to reimbursement for any reasonable expenditures incurred by him in his capacity as Trustee on behalf of the Trust, subject to the approval of the Board of Trustees. Expenditures shall include actual lost wages or other lost compensation.

Section 17. The Trustees shall have the sole authority and discretion to determine and resolve all questions of the nature, amount, and duration of benefits, the requirements for eligibility for benefits, including when and how said benefits shall be payable, and the trustees shall have the full authority in their discretion to change such requirements from time to time, as shall appear to be necessary or proper under the circumstances.

ARTICLE VIII

GENERAL PROVISIONS APPLICABLE TO TRUSTEES

Section 1. To the extent permitted by law, no party who has verified that he or it is dealing with the duly appointed Trustees, or any of them, shall be obligated to see to the application of any monies or property of the Trust, or to see that the terms of this Trust Agreement have been complied with, or to inquire as to the necessity or expediency of any act of the Trustees. To the extent permitted by law, every instrument executed by the Board of Trustees or by its discretion shall be conclusive in favor of every person who relies on it, that (a) at the time of the delivery of the instrument this Trust Agreement was in full force and effect; (b) the instrument was executed in accordance with the terms and conditions of this Trust Agreement; and (c) the Board was duly authorized to execute the instrument or direct its execution.

Section 2. To the extent permitted by law, the duties, responsibilities, liabilities or disabilities of any Trustee under this Trust Agreement shall be determined solely by the express provisions of this Trust Agreement and no further duties, responsibilities, liabilities, or disabilities shall be implied or imposed.

Section 3. To the extent permitted by law, the Trustees shall incur no liability, either collectively or individually, in acting upon any papers, documents, data or information believed by them to be genuine and accurate and to have been made, executed, delivered or assembled by the proper parties. The Trustees may delegate any of their ministerial powers or duties to any of their agents or employees. To the extent permitted by law, no Trustee shall incur any liability for simple negligence, oversight or carelessness in connection with the performance of his duties as such Trustee. To the extent permitted by law, the Trust shall exonerate, reimburse and save harmless the Trustees, individually and collectively, against any and all liabilities and reasonable expenses arising out of their trusteeship, except (as to the individual Trustee or Trustees directly involved) for expenses and liabilities arising out of willful misconduct or gross negligence. No expense shall be deemed reasonable under this Section unless and until approved by the Board of Trustees.

Section 4. To the extent permitted by law, neither the Employer, the Association, nor any of the Trustees shall be responsible or liable for:

- a) The validity of this Trust Agreement.
- b) The form, validity, sufficiency, or effect of any plan or contract for benefits which may be entered into.
- c) Any delay occasioned by any restriction or provision in this Trust Agreement, the Health Care Plans, the rules and procedures of the Board of Trustees issued hereunder,

any contract procured in the course of the administration of the Trust or Health Care Plans or by any other proper procedure in such administration; provided, however, that this clause shall not excuse any violation of the collective bargaining agreement.

d) The making or retention of any deposit or investment of the Trust, or any portion thereof, or the disposition of any such investment, or the failure to make any deposit or investment of the Trust, or any portion thereof, or any loss diminution of the Trust, except as to the particular person involved, such loss as may be due to the gross neglect or willful misconduct of such person.

Section 5. Neither the Employer nor the Association shall be liable in any respect for any of the obligations, acts or omission of the Trustees or any of them because such Trustees are in any way associated with any such Employer or Association.

Section 6. The Trustees may, but are not required to secure the advice of legal counsel or other consultant or expert on any matter under consideration. To the extent permitted by law, acting upon such advice shall be full protection and justification to the Trustees for anything suffered, done or admitted to be done in good faith and in accordance with and in reliance on such opinion, and the Trustees shall not be liable therefore.

Section 7. A Trustee of this Trust may also be a beneficiary hereof if he otherwise qualifies as a Participant, and nothing contained herein shall be construed or interpreted to prevent any Trustee, who is also a Participant, from participating in the benefits of the Plan.

Section 8. The name of the Trust may be used to designate the Trustees collectively and all instruments may be effected by the Board of Trustees in such name.

ARTICLE IX

CLAIM AND APPEAL PROCEDURE

Section 1. No employee, beneficiary or any other person shall have any right or claim to benefits under this Trust except as specified in the rules of the Trust and Health Care Plans. If any employee has a dispute with the Trust or the Board of Trustees, as to eligibility, or the amount or duration of benefits, the dispute shall be resolved by the Board of Trustees, and its decision shall be final and binding on all parties.

Section 2. Any person whose claim for benefits is wholly or partially denied shall be notified in writing by the Administrator of the decision of the Trust. The notice shall advise the claimant of the reason for the denial; the section of the Trust or Plan on which the denial is based; with a description of any additional material or information needed to perfect the claim, why such material or information is necessary; together with an explanation of his right to appeal said decision.

Section 3. Thereafter, the claimant may file an appeal in writing. Said appeal shall be filed with the Plan Administrator not more than 60 days after the claimant has received written notice of the denial of his application. Failure to file an appeal within 60 days will be a complete waiver of the claimant's right to appeal, and the initial decision of the Trust or the Trustees will be final and binding.

Section 4. The appeal shall be in writing and shall state in clear and concise terms the reason or reasons why the claimant feels that the decision of the Trust or Trustees was in error. All arguments, issues and comments in support of the appeal shall be set forth in the written appeal. The claimant, if he desires, and in order to enable him to perfect his appeal, may examine any pertinent and relevant documents in possession of the Trust or Trustees.

Section 5. After receipt of a timely filed appeal, and upon the written request of the claimant, the Board of Trustees, or a committee of Trustees, shall grant a hearing to be held within a reasonable time, to permit the claimant to personally appear in support of his appeal.

Section 6. After receipt of the appeal, and after the hearing, if any, the Trustees or its committee shall render its decision not later than 60 days after receipt of the written appeal. If special circumstances require additional time, the Trustees or its committee shall render its decision as soon as possible, but not later than 120 days after receipt of the appeal.

Section 7. The decision of the Trustees or its committee shall be in writing and shall state the specific reasons for the decision with specific references to the Trust or Health Care Plans on which the decision is based.

Section 8. The decision of the Board of Trustees or its committee shall be final and binding upon the applicant and all persons claiming under the applicant.

Section 9. This claim and appeals procedure shall apply to and shall include any and every claim or right asserted under the Trust or Health Plan or against the Trust or Health Plans, regardless of when the act or omission upon which the claim is based, occurred.

ARTICLE X

MISCELLANEOUS PROVISIONS

Section 1. Subject to the provisions of the collective bargaining agreement, the rights and duties of all parties, including the Employer, the Association, the Participants and the Trustees, shall be governed by the provisions of this Agreement and Declaration of Trust, and any contracts

procured or executed pursuant to this Agreement and Declaration of Trust.

Section 2. No Participant shall have any right or claims to benefits under this Plan, except as specified in the Health Care Plans. Any dispute as to eligibility, type, amount or duration of benefits shall be resolved by the Board of Trustees and the Participant shall have no right or claim with respect thereto against the Trust or the Trustees. Neither the Employer nor the Association shall be liable for the failure or omission for any reason to pay any benefits under the Health Care Plans.

Section 3. Any notice required to be given under the terms of this Agreement shall be deemed to have been duly served if delivered personally to the person to be notified, in writing or if mailed in a sealed envelope, postage prepaid to such person at his last known address as shown in the records of the Trust, or if sent by wire to such person at said last known address.

Section 4. This Agreement shall be binding upon and inure to the benefit of the Employer, the Association, and the Trustees, and their heirs, executors, administrators, successors, and assigns.

Section 5. Neither the establishment of the Trust hereby created, nor any modification thereof, nor the creation of the Health Care Plans nor any act, nor the payment of any benefits, shall be construed as giving any person whatsoever any legal or equitable rights against the Employer, the Association or the Board of Trustees, unless the same shall be specifically provided for in this Agreement.

Neither the establishment of the Trust hereby created nor any modification thereof, nor the creation of the Health Care Plans, nor any act shall be construed as giving any individual, including any person entitled to benefits under any insurance policy or contracts secured pursuant to the terms of

this Trust, any rights, legal or equitable, in the Trust Fund, except in the form of benefits as set forth in the rules and regulations adopted by the Trustees.

Section 6. The Trust herein is created and accepted in the State of California, all questions pertaining to said Trust, its validity and administration thereof and the construction of this Agreement, shall be determined by the laws of the State of California and federal law where applicable.

Section 7. If any provision of this Trust Agreement, the Health Care Plans, the rules and regulations made pursuant thereto, or any step in the administration of the Trust or the Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of this Agreement, the Plan or the rules and regulations, unless such illegality or invalidity prevents accomplishment of the objectives and purposes of this Agreement and the Plan. In the event of any such holding, the parties affected will immediately commence negotiations to attempt to remedy any such defect.

Section 8. This Agreement may be executed in a number of counterparts, each of which shall have the force and effect of an original, and no more than one counterpart need be signed by any party hereto; provided, however, that each of said counterparts shall be filed in the principal office of the Trust.

Section 9. It is the intent and purpose of the signatory parties that contributions to the Trust shall be at all times deductible by the Employer/contributing party for income tax purposes in the taxable year when paid, and that the Trust created hereby shall be at all times tax exempt. Application for the qualification of the Trust and Plan created by this Trust Agreement and any amendments thereto, under the Internal Revenue Code and the laws of the State of California, shall be made as soon as practicable, and the Board of Trustees shall do whatever may be necessary to secure such qualification as soon as possible. If any administrative or judicial ruling holds that any

provisions of this Trust Agreement or of the Plan prevents or defeats the qualification of the Trust Agreement or of the Plan as herein provided or any other objective stated in this Section, either under presently existing laws or regulations or under any laws or regulations hereafter enacted or adopted, or if for any reason it shall be necessary or desirable to amend this Trust Agreement or the Plan to accomplish any such objective, the parties will forthwith enter into negotiations with regard to the amendment of this Trust Agreement or the Plan in such respects as may be necessary to accomplish such qualification or other objective consistent with the other objectives and purposes of this Agreement, and any such amendment shall be effective, insofar as practicable, as of the effective date of any such law or regulation hereafter enacted or adopted, as the case may require.

Section 10. The Trust shall maintain as a permanent record all of the original agreements, changes, amendments and modifications to which reference is made for any clarification.

ARTICLE XI

AMENDMENT AND TERMINATION

Section 1. The provisions of the Agreement and Declaration of Trust may be amended or modified at any time, and from time to time, by an agreement in writing from the Executive Board of the Association, subject to the terms and conditions of any applicable collective bargaining agreement and any applicable law or regulations. No amendment shall divert any of the Trust's estate or corpus then in the hands of the Trustees from the purposes and objectives of this Trust, nor shall any amendment permit any return or payment of any part of the Trust Fund to any person, including any Employer, Association or Trustee.

Section 2. This Trust Agreement shall remain in effect and this Trust shall continue so long as any collective bargaining agreement exists which provides for contributions to

be made to the Trust Fund hereunder, provided however, that the duration of this Trust shall not exceed the duration under which any such Trust might lawfully exist under any applicable law or statute.

Section 3. This Agreement and Declaration of Trust may be terminated by the Association by any instrument in writing at any time provided said termination complies with applicable State and Federal law.

Section 4. In the event of termination, then the Trustees, after accounting for any and all funds and property remaining in the Trust and after payment of or making adequate provisions for all liabilities relating to or affecting this Trust, shall use the balance of the assets of the Trust, if any, remaining for the purpose of continuing the benefits herein provided for, and they shall adopt a plan or procedure for the fair and orderly administration of said remaining trust assets to accomplish such objective.

Thereafter, the Trustees shall be discharged of their duties and no longer responsible under this Trust Agreement.

IN WITNESS WHEREOF, the Association has executed this Agreement and Declaration of Trust as of the day and year first above written.

EVERGREEN TEACHERS ASSOCIATION

Randal Mitchell (PRESIDENT)

Dorothy M. Schmitt
VICE-PRESIDENT

Irene Lee (Treasurer)

Donna Foglia (Sec.)

The undersigned, hereby accept office as Trustees appointed pursuant to the foregoing Agreement and Declaration of Trust, and agree to act under and be subject to all of the terms and conditions of said Agreement and Declaration of Trust, including the responsibilities imposed upon Trustees by applicable state or federal law. The undersigned hereby declare that they hold the Trust Fund created by said Agreement and Declaration of Trust for the uses and purposes set forth in said Agreement.

TRUSTEES

Alan M. Haydie

Laura Everett

Barry M. ...

Robert M. ...

Lesley A. Lawler