

**EL CAMINO REAL ALLIANCE
PUBLIC SCHOOL EMPLOYEE RETIREMENT HEALTHCARE BENEFITS TRUST**

TRUST AGREEMENT

Dated as of June 1, 2015

Marshall K. Mayotte,

as Grantor and Initial Co-Trustee

and

Melanie Diana Horton,

as Initial Co-Trustee



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THIS TRUST AGREEMENT, dated as of June 1, 2015 (this “**Agreement**”), is made by Marshall K. Mayotte and Melanie Diana Horton, each an adult resident of the State of California (the “**State**”), acting hereunder not in their individual capacities but (a) as to Marshall K. Mayotte, solely as grantor (the “**Grantor**”) and initial co-trustee and (b) as to Melanie Diana Horton, solely as initial co-trustee (together with Marshall K. Mayotte, the “**Trustees**”), and hereby establishes the **EL CAMINO REAL ALLIANCE PUBLIC SCHOOL EMPLOYEE RETIREMENT HEALTHCARE BENEFITS TRUST** (the “**Trust**”) as a common law trust for the purpose of holding assets (the “**Trust Estate**”) solely for the benefit of one or more specified retirement healthcare benefit plans (the “**Plans**”) sponsored and provided to qualified public school employees and beneficiaries by El Camino Real Alliance (“**ECRA**”), a California nonprofit public benefit corporation that commenced operation in August 2011 of El Camino Real Charter High School, a California public charter school (the “**School**”) under a conversion charter (the “**Conversion Charter**”) approved by Los Angeles Unified School District, a California school district (the “**District**”). The Trust is not established for retirement benefits other than public school employee retirement healthcare benefits under the Plans or for retirement benefits with respect to any employee of any employer other than ECRA. Each Plan shall be funded and provided solely in accordance with its terms, as provided in this Agreement and in the Plan Benefit Services Agreement (as hereinafter defined), but subject only to the changes and modifications expressly permitted under this Agreement. This Agreement is made with reference to the following recitals of fact and law:

RECITALS

WHEREAS, (I) pursuant to the District’s approval of the Conversion Charter and the laws of the State, ECRA commenced operation of the School at an existing school campus owned by the District and formerly operated by the District as El Camino Real High School, a California public school (the “**Conversion**”); and

WHEREAS, (II) ~~by virtue of~~ in connection with the Conversion, ECRA ~~is exercised its statutory right to be~~ the exclusive “public school employer” of all ECRA public school employees (the “**Public School Employer**”) within the meaning of the California Educational Employment Relations Act and under the jurisdiction of the Public Employment Relations Board of the State, and ECRA as Public School Employer has assumed certain public school employee retirement benefit obligations of the District to former District public school employees who have become public school employees of ECRA; and

WHEREAS, (III) in connection with the foregoing, ECRA as Public School Employer has relieved the District of the District’s share of the costs of public school employee retirement benefits accruing to former public school employees of the District who have become public school employees of ECRA and who retire subsequent to the Conversion; and

WHEREAS, (IV) in connection with the foregoing, ECRA as the Public School Employer is required to continue, maintain and pay the Public School Employer’s share of public school employee retirement benefits for qualified public school employees and

beneficiaries (the “**Mandatory Obligations**”), which but for the Conversion would have been paid by the District for its public school employees; and

WHEREAS, (V) the Mandatory Obligations other than those regarding public school employee retirement healthcare benefits (primarily pension benefits) include the obligations to continue qualified public school employee participation in the government plans (“**Government Plans**”) within the meaning of section 414(d) of the Internal Revenue Code of 1986, as amended (as further defined in Section 1.1(c)), of the California Public Employees’ Retirement System (“**CalPERS**”) and the California State Teachers’ Retirement System (“**CalSTRS**”) with public school employee accumulation of service credit years to continue in the same accounts and with the same retirement benefit calculations as all other CalPERS and CalSTRS public school employee participants, and to fund the Public School Employer’s share of the costs thereof; and

WHEREAS, (VI) the Mandatory Obligations regarding public school employee retirement healthcare benefits include, in lieu of continued participation in District-sponsored public school employee retirement healthcare benefit plans, the establishment, funding, procurement and provision by ECRA as the Public School Employer under comparable Government Plans providing public school employee retirement healthcare benefits to qualified public school employees and beneficiaries, with the same public school employee accumulation of service credit years and with retirement healthcare benefit calculations comparable to or greater than those established under District-sponsored Government Plans; and

WHEREAS, (VII) based on available actuarial and other information, ECRA has determined that its Mandatory Obligations to establish and fund the Plans as public school employee retirement healthcare benefit plans for qualified public school employees and their beneficiaries (collectively, “**Plan Beneficiaries**”) and the Public School Employer’s cost of benefits under the Plans (“**Plan Benefits**”) has resulted in the accrual of unfunded OPEB Liabilities (as hereinafter defined); and

WHEREAS, (VIII) the Board of Directors of ECRA (the “**Board**”) has determined that it is desirable for ECRA to arrange for the funding and procurement of Plan Benefits under the Plans, both (A) to provide funding solely for the Public School Employer’s (and not public school employees’) contributions for Plan Benefits and (B) to manage ECRA’s budget, operations and certain obligations of ECRA with respect to the Plans and Plan Benefits; and

WHEREAS, (IX) the Board has requested the Grantor and the Trustees to execute and deliver this Trust Agreement substantially in the form approved by the Board, but incorporating such modifications as may be necessary to carry out the purposes of this Trust Agreement (including, without limitation, those provided in this Agreement), and the Grantor and the Trustees are willing to make the grant under this Agreement and to accept the trusts established under this Agreement, in accordance with the terms of this Agreement; and

WHEREAS, (X) the execution and delivery of this Agreement by the Grantor and the Trustees as authorized officers of ECRA ~~is~~are pursuant to due authorization of the Board;

NOW, THEREFORE, the Grantor hereby grants, and the Trustees hereby accept and agree to hold, all assets and funds in trust transferred to the Trust under this Agreement and under the Plan Benefit Services Agreement, but subject to the provisions of this Agreement, as follows:

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1 Definitions.

All references herein to “the Agreement” or “this Agreement” are to this Trust Agreement, and all references herein to Articles, Sections, subsections and Exhibits are to Articles, Sections, subsections and Exhibits of this Agreement, unless otherwise specified. Unless otherwise defined herein, capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in this Section 1.1.

- (a) **“Asset Manager”** means any banking or financial institution engaged by the Trust for the purpose of managing the investment, sale and liquidation of ~~Trust~~ assets of the Trust Estate.
- (b) **“Articles of Incorporation”** means the Articles of Incorporation of ECRA, as amended from time to time.
- (c) **“Authorized Officer”** means (i) as to ECRA, the Chief Financial Officer of ECRA or any designee of the Chief Financial Officer of ECRA; and (ii) as to the Trust, the Executive Director of the Trust or any designee of the Executive Director.
- (d) **“By-Laws”** means the By-Laws of ECRA as adopted and amended by the Board from time to time.
- (e) **“Code”** means the Internal Revenue Code of 1986, as amended, together with regulations, procedures and guidance provided from time to time by the Internal Revenue Service (including, without limitation, any private letter ruling issued with respect to the Trust).
- (f) **“Compliance Manager”** means any firm engaged by the Trust for the purposes of preparing valuations of ~~Trust~~ assets of the Trust Estate, compliance by the Trust with covenants herein for maintaining the federal tax exemption of Trust income pursuant to the provisions of section 115 of the Code, and compliance by Asset Managers with investment policies adopted by the Trust from time to time, including, without limitation, the definition of the term “Permitted Investments” in this Agreement.

- (g) **“Corporate Co-Trustee”** means [you may select a Schwab corporate trust entity or other entity eligible legally qualified to provide corporate trust services in California] or a corporate bank co-trustee eligible under the provisions of Section 5.10 ~~hereof~~, which Trustee shall have no voting power with respect to decisions of the Trustees.
- (h) **“Executive Director”** means the Chief Financial Officer of ECRA or any designee of the Chief Financial Officer of ECRA.
- (i) **“Governing Documents”** means, severally and collectively, the Articles of Incorporation, the By-Laws and the Conversion Charter.
- (j) **“OPEB Liabilities”** means ECRA’s Mandatory Obligations with respect to public school employee retirement healthcare benefits that ECRA has contracted, or contracts in the future, to provide its qualified public school employees and ~~former-retired~~ public school employees and their beneficiaries, other than pension benefits, and excludes any retirement benefits of any nature provided by any entity other than ECRA (including, without limitation, CalPERS, CalSTRS or the District).
- (k) **“Participation Trust”** means any multi-employer trust in which the Trust may deposit funds in accordance with the provisions and limitations of this Agreement; provided, however, that no entity which is not a state, a political subdivision of a state, or an entity the income of which is excluded from gross income under section 115 of the Code, may participate in the Trust or in any Participation Trust in which the Trust may participate.
- (l) **“Permitted Investments”** means any form or type of investment which, after due consultation with and reliance upon the applicable Asset Manager, may be deemed prudent by a majority of the Voting Trustees, with the care, skill, prudence, ~~and~~ diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims, and with diversification of the investments of the funds so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.
- (m) **“Person”** means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, incorporated organization, or government or any agency ~~or,~~ political subdivision or instrumentality thereof.
- (n) **“Plan Benefit Services Agreement”** means the agreement, as it may from time to time be amended and restated, between ECRA and the Trust pursuant to which ECRA agrees to make payments to the Trust as consideration solely

for ~~future~~ Plan Benefits and related services to be procured or provided by the Trust to or for the benefit of the Plans and Plan Beneficiaries.

- (o) **“Qualified Successor Organization”** means any successor to ECRA described in Section 2.1(a), the assets of which are irrevocably dedicated to public benefit purposes, and no part of the net earnings, properties or assets of which, on dissolution or otherwise, shall inure to the benefit of any Person who is not another public charter school, a traditional public school, or a political subdivision, government agency or instrumentality the District or the State.
- (p) **“Responsible Officer”** means (i) when used with respect to an individual Trustee, such Trustee, and (ii) when used with respect to a corporate Trustee, any vice president or other designated officer of such corporate Trustee customarily performing functions similar to those performed by any of the above designated officers in each case assigned to or employed by the corporate trust department of such Trustee and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of applicable provisions of this Agreement.
- (q) **“Trust Account”** means the account established by Section 3.79.
- (r) **“Trustees”** means, severally and collectively, (i) the Trustees initially entering into this Agreement and their respective successors; and (ii) effective upon their appointment pursuant to the provisions of Section 3.6, such additional Trustees so appointed and their respective successors.
- (s) **“Trust Office”** has the meaning assigned thereto in Section 3.2.
- (t) **“Voting Trustee”** means each Trustee not appointed pursuant to the provisions of Section 3.6(a) ~~or (c)~~ of this Agreement.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the Grantor.

The Grantor hereby represents and warrants to the Trustees and any Corporate Co-Trustee, and acting by and on behalf of and at the direction of ECRA, that:

- (a) Each of the Recitals in the forepart of this Agreement is true and correct.
- (b) ECRA is a California nonprofit public benefit corporation whose assets are irrevocably dedicated to public benefit purposes, and no part of the net earnings, properties or assets of ECRA, on dissolution or otherwise, shall inure

to the benefit of any Person who is not a political subdivision, government agency or instrumentality thereof. On liquidation or dissolution, all properties and assets remaining after payment, or provision for payment, of all debts and liabilities of ECRA shall be distributed to a nonprofit fund, foundation or corporation that is organized and operated exclusively for educational purposes and is an organization described in section 501(c)(3) of the Code ~~(or~~ a Qualified Successor Organization, as such term is defined in Section 1.1(l).

- (c) Pursuant to the ~~By Laws of ECRA duly adopted by the Board at its public meeting held January 13, 2015 (the "By Laws"), and in satisfaction of District requirements pursuant to the Conversion Charter~~Governing Documents, ECRA's activities and affairs are managed, and all of its corporate powers are exercised, by or under the direction of the Board, which shall have no fewer than six (6) and no more than eleven (11) members, of which: (i) not more than one (1) of whom may be a representative appointed by the District; (ii) at least two (2) of whom shall be community representatives elected by the Board; (iii) at least one (1) of whom shall be a parent representative elected by the parent body (one vote per family); (iv) two to three (2 – 3) of whom shall be teacher representatives elected by all teachers; and (v) one (1) of whom shall be a classified representative elected by all classified public school employees. No teacher or classified representative elected to the Board shall be employed or compensated by ECRA. If the District appoints a Board representative, then the Board may appoint an additional community representative.
- (d) Pursuant to the Conversion Charter as approved by the District, upon closure of the School, whether by charter revocation, charter non-renewal or otherwise, the School will revert back to a District school.
- (e) In accordance with the transition relief prior to the effective date of final regulations under section 414(d) of the Code regarding participation in a state or local retirement system that covers public school employees of a charter school consistent with the "governmental plan" characterization of any such system, as published in Internal Revenue Bulletin 2015-6 as Notice 2015-7 (the "**Notice**"), ECRA desires as the Public School Employer to fulfill the Mandatory Obligations, in accordance with the guidance and example described in the Notice, and for that purpose the Grantor makes the representations and warranties in the following subparagraphs of this Section 2.1(e):
 - (i) in accordance with paragraph (a) of Part III(A) of the Notice, the Conversion Charter and State law, ECRA is a nonsectarian independent public school of choice that serves an essential governmental purpose by providing tuition-free secondary education for grades 9 through 12;

- (ii) in accordance with paragraph (b) of Part III(A) of the Notice, the Conversion Charter and State law, ECRA is established and operated in accordance with specific State statutes authorizing the granting of charters to create independent public schools and the establishment of independent public schools;
- (iii) in accordance with paragraph (c) of Part III(A) of the Notice, the Conversion Charter and State law, participation in State or local retirement systems by ECRA's public school employees is expressly required and permitted ~~under applicable law~~ thereunder;
- (iv) in accordance with paragraph (d)(2) of Part III(A) of the Notice, the Conversion Charter and State law:

(A) the primary source of ECRA's funding is the State, funded through State appropriations based on the School's average daily attendance on a basis similar to the funding mechanism for traditional public schools;

(B) the rights of the public school employees of ECRA to their accrued benefits under defined benefit governmental plans as described in section 414(d) of the Code (including CalPERS, CalSTRS and the Plans as State and local retirement systems in which ECRA participates as a Public School Employer and has Mandatory Obligations imposed by the District to make all public school employer contributions that otherwise would be the legal responsibility of the District and to the same or greater extent than those that apply to District public school employees) are not dependent on whether ECRA continues to participate in any system, and in the event ECRA were to cease participation, a governmental entity (being CalPERS, CalSTRS, the Plans or, in the event of reversion of the School to the District, ECRA and/or the District, as applicable) has responsibility for the accrued benefits of ECRA's public school employees, including the continued funding of the accrued benefits, to no lesser extent than a governmental entity has responsibility for the continued funding of the accrued benefits of the public school employees of any other participating public school employer in such system in the event that ECRA were to cease to be a participating Public School Employer;

(C) as the Public School Employer, ECRA is part of a local educational agency, as defined in 20 U.S.C. § 7801(26) and is subject to the significant regulatory control, audit and oversight by the State (including, without limitation, the State Department of Education, or the "S~~DOE~~") and by the District, being a political subdivision of the State;

(D) ECRA is held accountable by the District as the authorizing public chartering agency as defined in 20 U.S.C. § 7221i(4), which has the power and authority under State law to approve, renew and revoke the Conversion Charter of ECRA and to approve charters for the creation of independent public schools and to hold ECRA accountable for results;

(E) ECRA is required to comply with the same health and safety standards, as well as academic accountability standards (including without limitation participation in State-mandated testing programs) and financial accountability standards (including without limitation generally accepted accounting standards of fiscal management), that are similar to those that are generally applicable to other public schools in the State, and ECRA is required to engage and does engage in an annual, independent, outside audits by a firm of certified public accountants of its financial and administrative operations and is required to provide and does provide copies of each audit to the SDOE and the District; and

(F) ECRA must comply with rules and implementing statutes of the State and policies of the District that prescribe how appropriations of State and other governmentally sourced funds may be spent; and

(G) all financial interests of ownership in ECRA are held by ECRA as an instrumentality of the District as a political subdivision of the State, and upon dissolution or final liquidation of ECRA, the ~~governing documents of ECRA (including without limitation the By-Laws)~~ Governing Documents require ECRA's net assets to be distributed to another public school that meets the requirements set forth in paragraphs (a) through (e) of Part III(A) of the Notice.

- (f) the Grantor has been duly authorized and directed by ECRA and has full power, authority, and legal right to execute, deliver, and perform this Agreement and to create the Trust created hereby, and the Grantor has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the creation of the Trust;
- (g) the execution, delivery, and performance by the Grantor of this Agreement and the creation of the Trust do not violate the Constitution of the State or any requirement of the law of the State governing the Grantor's power or authority, any order, writ, judgment, or decree of any court, arbitrator or governmental authority applicable to the Grantor or any of the assets granted hereunder, or applicable to the creation or existence of the Trust;

- (h) the execution, delivery, and performance of this Agreement and the creation of the Trust do not require the authorization, consent or approval of, the giving of notice to, the filing or registration with, or the taking of any other action in respect of, any governmental authority or agency; and
- (i) this Agreement has been duly executed and delivered by the Grantor and constitutes the legal, valid, and binding agreement of the Grantor, enforceable against the Grantor in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, and other similar laws affecting the enforcement of creditors' rights in general and by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

Section 2.2 Representations and Warranties of the Trustees.

Each Trustee and Corporate Co-Trustee hereby represents and warrants to the Grantor that:

- (a) he is an adult resident of the State or is a Person authorized to conduct business in the State, with full capacity, power, authority and legal right to execute, deliver and perform this Agreement and to act as Trustee or Corporate Co-Trustee, as applicable, hereunder;
- (b) the execution, delivery, and performance of this Agreement and acceptance of the Trust created hereby do not violate any order, writ, judgment or decree of any court, arbitrator or governmental authority applicable to such Trustee;
- (c) the execution, delivery, and performance of this Agreement and acceptance of the Trust created hereby do not require the authorization, consent or approval of, the giving of notice to, the filing or registration with, or the taking of any other action in respect of, any governmental authority or agency; and
- (d) this Agreement has been duly executed and delivered by such Trustee and constitutes the legal, valid and binding agreement of such Trustee, enforceable against such Trustee in accordance with the terms hereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, and other similar laws affecting the enforcement of creditors' rights in general and by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

**ARTICLE 3
ORGANIZATION AND APPOINTMENTS**

Section 3.1 Name.

The Trust created hereby shall be known as the “El Camino Real Alliance Public School Employee Retirement Healthcare Benefits Trust”, in which name the Trustees and Corporate Co-Trustee may conduct the business of the Trust, make and execute contracts and other instruments on behalf of the Trust and sue and be sued on behalf of the Trust. ~~In~~ In addition, the Trustees and Corporate Co-Trustee may conduct the business of the Trust in their own names, as trustees hereunder, to the extent deemed necessary or appropriate by such Trustees, in their sole discretion.

Section 3.2 Office; Fiscal Year.

The office of the Trust shall be in care of the Trustees at the administrative headquarters of ECRA (the “**Trust Office**”), or at such other address as the Trustees may designate by written notice to ECRA. Each fiscal year of the Trust shall commence July 1 and end on the next following June 30; provided, however, that the first fiscal year of the Trust began as of June , 2015, and shall end June 30, 2015.

Section 3.3 Purposes and Powers.

The purpose of the Trust is to engage solely in the following activities and no other activities:

- (a) to accept and hold in trust payments made from time to time by or on behalf of ECRA (but in all cases excluding any payments made by public school employees, retired public school employees or their beneficiaries or any other third party) pursuant to the Plan Benefit Services Agreement and to fund, procure and deliver to or solely for the benefit of the Plans and no other benefit plan, the services and benefits designated under the Plan Benefit Services Agreement, and otherwise to perform its obligations under the Plan Benefit Services Agreement;
- (b) to acquire, manage, administer, pledge, assign, sell, and collect Permitted Investments and all other assets of the Trust and to apply any amounts collected with respect thereto;
- (c) to accumulate assets for the sole benefit of the Plans and thereby satisfy all or a portion of ECRA’s Mandatory Obligations under the Plans and not any other benefit plans or plans which are not solely for the benefit of ECRA public school employees, retired ECRA public school employees and their eligible beneficiaries;

- (d) to procure and deliver, or to reimburse ECRA for the procurement and delivery of, benefits and services as provided under the Plan Benefit Services Agreement and for no other purpose, and specifically excluding any other benefit plan or plans which are not solely for the benefit of ECRA public school employees, retired ECRA public school employees and their eligible beneficiaries; and
- (e) to engage in those activities, including (without limitation) entering into agreements, that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith, excluding, however, any activity that would in and of itself result in any default under this Agreement.

The Trust shall not engage in any activity other than in connection with the foregoing (subject, however, the foregoing restrictions of this Section 3.3) or as required by applicable law. Without limitation on the foregoing, the Trust shall not accept funds provided to it with regard to any benefit plan other than the Plans, nor shall the Trust provide benefits to any Person other than an ECRA public school employee, retired ECRA public school employee or eligible beneficiary.

Section 3.4 Declaration of Trust.

The Trustees and the Corporate Co-Trustee hereby declare that they shall hold the Trust ~~assets-Estate~~ as herein provided solely for the benefit of the Plans and for no other benefit, from and after the date hereof until termination of the Trust as herein provided. It is the intention of the parties that the Trust shall constitute a common law trust under the laws of the State and that this Agreement shall constitute the governing instrument of such trust. The Trustees and the Corporate Co-Trustee shall have all rights, powers, and duties set forth herein and, to the extent not inconsistent herewith, in the applicable laws with respect to accomplishing the purposes of the Trust.

Section 3.5 Expenses.

Pursuant to the Plan Benefit Services Agreement, the Trust shall obtain funds for the payment of its organizational and administrative expenses as they may arise or shall, upon the request of any Trustee, promptly reimburse such Trustee for any such expenses paid or incurred by such Trustee. Such expenses may be paid from the Trust ~~assetsEstate~~.

Section 3.6 Appointment of Trustees.

As soon as practicable, but in any event prior to the deposit in or payment to the Trust of any funds or assets other than the deposit provided under Section 3.9(a) ~~hereof~~, the Trustees, acting solely on the authorization of ECRA, shall appoint additional and/or successor Trustees as specifically designated by an Authorized Officer of ECRA acting pursuant to the authorization of ECRA, as follows:

- (a) one directed Corporate Co-Trustee shall be [you may select a Schwab corporate trust entity or other entity eligible to provide corporate trust services in California], or a corporate bank co-trustee eligible under the provisions of Section 5.10 ~~hereof~~, which Corporate Co-Trustee shall have no voting power with respect to decisions of the Trustees hereunder; and
- (b) at all times the number of Trustees with voting power shall be at least three (3) or any greater number which is not integrally divisible by two (2), but in all events solely as determined by an Authorized Officer of ECRA acting under the authorization of ECRA.

All of the provisions of this Section 3.6 and any other provisions of this Agreement referring to this Section 3.6 shall be subject to the following limitations: (i) any limitation on the term of any Trustee may be established from time to time solely as directed by an Authorized Officer of ECRA acting upon the authorization of ECRA; and (ii) no Trustee shall be appointed by any other Trustee or Trustees, excepting only an Authorized Officer if acting as Trustee pursuant to the authorization of ECRA.

Section 3.7 Appointment of Service Providers.

As soon as practicable, the Voting Trustees shall appoint one or more Asset Managers, one Compliance Manager and such actuaries, auditors, consultants, counsel and other professional service providers, and any successors thereto, each to serve on terms satisfactory to the Voting Trustees but in any event without violation of the covenants provided in Section 4.2 ~~hereof~~. In the event the Voting Trustees fail to appoint an Asset Manager, the Voting Trustees shall have the authority to direct the investment of assets under this Trust Agreement.

Section 3.8 Title to Trust Assets.

Legal title to the Trust ~~assets~~ Estate shall be vested at all times in the Trust as a separate legal entity except where applicable law in any jurisdiction requires title to any part of the Trust ~~assets~~ Estate to be vested in a trustee or trustees, in which case title shall be deemed to be vested in the Trustees, a co-trustee, and/or a separate trustee, as the case may be.

Section 3.9 Establishment of Trust Account.

There is hereby created and established a trust account to be established with the Trustees and Corporate Co-Trustee in trust hereunder and known as the El Camino Real Alliance Public School Employee Retirement Healthcare Benefits Trust Account. Any cash in the Trust Account shall be held in the name of the Trust or the Trustees and/or the Corporate Co-Trustee at any depository that is eligible to hold funds of the Trust. Other assets in the Trust Account shall be invested solely in Permitted Investments as provided under Section 3.3(b) ~~hereof~~. The Trustees shall deposit the following to the Trust Account:

- (a) an amount equal to \$1,000 provided by ECRA as its initial payment under the Plan Benefit Services Agreement and deposited therein by the Grantor upon the establishment of the Trust;
- (b) any proceeds received from Permitted Investments and any other investment proceeds of the Trust Estate, but in no event any funds (i) provided by current or former public school employees of ECRA or ECRA retirees or their beneficiaries or any third party or (ii) any funds with respect to any pre-tax salary reduction or other pre-tax reduction of compensation applicable to any ECRA public school employee or ECRA retiree or their beneficiaries; and
- (c) any other amount paid to the Trust by ECRA under the Plan Benefit Services Agreement from time to time solely for the payment of Plan Benefits or related purposes.

Section 3.10 Limitations on Certain Actions.

Unless an Authorized Officer of ECRA shall direct otherwise pursuant to the Plan Benefit Services Agreement, but subject to the provisions of Section 4.2, the Trust may from time to time:

- (a) sell or redeem any Permitted Investments; and
- (b) invest any amounts in the Trust Account in Permitted Investments;

~~in each case subject to the provisions of Section 4.2 and Section 4.3 hereof.~~

ARTICLE 4
ACTIONS BY TRUSTEES

Section 4.1 Prior Notice to ECRA with Respect to Certain Matters.

The Voting Trustees shall cause the Trust to take any action, not inconsistent with this Agreement or applicable law, that the Voting Trustees determine in their discretion to be necessary or desirable in carrying out the activities of the Trust as set out in Section 3.3. Subject to Section 5.3(g), the Trustees and the Corporate Co-Trustee shall take any action or refrain from taking any action on behalf of the Trust but solely in accordance with written directions by an Authorized Officer of ECRA acting under authorization of ECRA, and shall be fully protected in acting, or refraining from acting, as the case may be, in accordance with such written directions.

Section 4.2 Tax Covenant.

Neither the Trust nor any Trustee shall take any action that (a) is inconsistent with the purposes of the Trust set forth in Section 3.3 or (b) would, to the actual knowledge of a Responsible Officer of such Trustee, result in the Trust becoming taxable as a corporation or otherwise impair the tax exemption of trust income pursuant to section 115 of the Code.

Without limitation on the foregoing, the Trust shall not enter into any arrangement with any Participation Trust without first obtaining a legal opinion satisfactory in form and substance to the Voting Trustees and to the effect that such arrangement will not impair said tax exemption or expose the Trust or its assets to any proceeding involving the Participation Trust other than through satisfaction of the requirements of this ~~Section 4.2 and of Section 4.3 of this Agreement~~. Without limitation on the foregoing provisions, neither the Trust nor any Trustee shall cause any funds of the Trust however derived to be provided to ECRA or any other Person with respect to any property or operations of ECRA or any other third party or any liability of ECRA that is not included in the OPEB Liabilities of ECRA, nor shall the Trust have any right or responsibility or other role whatsoever in the management or operations of ECRA.

~~Action by the Trustees with Respect to Bankruptcy.~~

~~The Trust shall not commence any proceeding under Title 11 of the United States Code or otherwise seek protection under any bankruptcy, moratorium, reorganization or other law affecting the rights of creditors generally, without the prior unanimous approving vote of all Voting Trustees voting with respect thereto including the Trustee appointed pursuant to Section 3.6(b) hereof; and whether or not the Trustee position specified in Section 3.6(b) shall then be vacant, for all purposes of this Section 4.3, there shall be deemed to be cast by such Trustee or with respect to such position a vote against any such actions.~~

**ARTICLE 5
THE TRUSTEES IN GENERAL**

Section 5.1 Appointment Effectiveness.

- (a) No appointment of a Trustee or a Corporate Co-Trustee shall become effective until a written acceptance of appointment is delivered by such Trustee or Corporate Co-Trustee to ECRA and each other Trustee. Following compliance with the preceding sentence, such Trustee and Corporate Co-Trustee shall become fully vested with all the applicable rights, powers, duties and obligations provided hereunder.
- (b) A vacancy shall not be deemed to exist upon the resignation, removal, death or disability to act of any Trustee or Corporate Co-Trustee at any time when there would remain at least three (3) Trustees hereunder, ~~one of whom is the Trustee specified under Section 3.6(b).~~

~~Upon acceptance of appointment by an additional or successor Trustee or Corporate Co-Trustee pursuant to this Section 5.1, the additional or successor Trustee shall mail notice of such appointment to any Lender or Indenture Trustee.~~

Section 5.2 Duties.

- (a) The Trustees including the Corporate Co-Trustee undertake to perform such duties, and only such duties, as are specifically set forth for said Trustees in this Agreement, including (without limitation) the administration of the Trust in the interest of the Plans. No implied covenants or obligations shall be read into this Agreement.
- (b) Notwithstanding the foregoing, the Trustees shall be deemed to have discharged all of their duties and responsibilities hereunder to the extent ECRA has agreed to perform any act or to discharge any duty of the Trustees or of the Trust hereunder, and the Trustees shall not be liable for the default or failure of ECRA to carry out its obligations hereunder.
- (c) In the absence of bad faith on his, her or its part, each Trustee or Corporate Co-Trustee may rely conclusively upon certificates or opinions furnished to such Trustee and conforming to the requirements of this Agreement in determining the truth of the statements and the correctness of the opinions contained therein; provided, however, that such Trustee shall have examined such certificates or opinions so as to determine compliance of the same with the requirements of this Agreement.
- (d) No Trustee or Corporate Co-Trustee may be relieved from liability for his, her or its own negligent action, negligent failure to act or willful misconduct, except that:
 - (i) this Section 5.2(d) shall not limit the effect of Section 5.2(a) or Section 5.2(b); and
 - (ii) no Trustee or Corporate Co-Trustee shall be liable for any error of judgment made in good faith by a Responsible Officer unless it is proved that such Trustee or Corporate Co-Trustee was negligent in ascertaining the pertinent facts.
- (e) Moneys received by the Trustees or Corporate Co-Trustee hereunder need not be segregated in any manner except to the extent required by law and may be deposited under such general conditions as may be prescribed by law, and the Trustees or Corporate Co-Trustee shall not be liable for any interest thereon, except for interest or other earnings actually received pursuant to the investment of such moneys.
- (f) Without limitation on the requirements of the Plan Benefit Services Agreement, the Trustees shall prepare or cause to be prepared, and delivered to ECRA as ECRA may require, annual financial statements (including, without limitation, asset valuations and actuarial determinations) sufficient to enable

ECRA properly to reflect in its audited financial statements the net beneficial interest of its Plans in the Trust, together with the report and verification of the Compliance Manager, if applicable.

- (g) Solely upon the direction of an Authorized Officer of ECRA, and solely at the expense of ECRA, the Trustees shall prepare or cause to be prepared and filed, any and all reports, returns, forms and other documents required to maintain compliance with the provisions of Section 4.2, as may be determined by the Compliance Manager, or if such position shall then be vacant, by an Authorized Officer of ECRA.

Section 5.3 Acceptance of Trusts and Duties.

Except as otherwise provided in this Article 5, in accepting the trusts hereby created, each Trustee or Corporate Co-Trustee acts solely as a trustee hereunder and not in his, her, or its individual capacity and all Persons having any claim against any Trustee or Corporate Co-Trustee by reason of the transactions contemplated by this Agreement shall look only to the Trust ~~assets~~-Estate for payment or satisfaction thereof. The Trustees and Corporate Co-Trustee accept the trusts hereby created and agree to perform the Trustees' duties hereunder with respect to such trusts but only upon the terms of this Agreement. The Trustees and Corporate Co-Trustee also agree to disburse all moneys actually received by them constituting part of the Trust ~~assets~~-Estate upon the terms of this Agreement. No Trustee or Corporate Co-Trustee shall be liable or accountable hereunder under any circumstances, except for (i) subject to Section 5.2(d), such Trustee's negligent action, such Trustee's negligent failure to act or such Trustee's willful misconduct or (ii) the inaccuracy of any representation or warranty made by such Trustee herein or in any certificate or instrument delivered pursuant hereto. In particular, but not by way of limitation:

- (a) no Trustee or Corporate Co-Trustee shall at any time have any responsibility or liability for or with respect to the legality, validity, or enforceability of any Permitted Investment or other investment security, or the perfection and priority of any security interest created in any Permitted Investment or other investment security, or any other Trust ~~assets~~Estate, or the maintenance of any such perfection and priority, or for or with respect to the sufficiency of the Permitted Investments or other investment securities or the Trust's ability to generate the payments to be distributed to any creditors of the Trust or to satisfy obligations under the Plan Benefit Services Agreement, including, without limitation: (i) the existence and ownership of any Permitted Investment; or (ii) the validity or perfection of the assignment of any Permitted Investment;
- (b) no Trustee or Corporate Co-Trustee shall be liable with respect to any action taken or omitted to be taken by such Trustee in accordance with the terms hereof and the instructions of an Authorized Officer of ECRA, including

without limitation the preparation and filing of any report, return, form or other document required pursuant to Section 5.2(g) ~~hereof~~;

- (c) no provision of this Agreement shall require any Trustee or Corporate Co-Trustee to expend or risk funds or otherwise incur any financial liability in the performance of any of such Trustee's rights or powers hereunder, if such Trustee shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to such Trustee;
- (d) under no circumstances shall the Trustees or Corporate Co-Trustee be liable for any indebtedness or other obligation of the Trust;
- (e) no Trustee or Corporate Co-Trustee shall be responsible for or in respect of nor does any Trustee make any representation as to the validity or sufficiency of any provision of this Agreement or for the form, character, genuineness, sufficiency, value, or validity of either the Trust or the Trust ~~assets~~ Estate, any Permitted Investment or any portion of the Trust ~~assets~~ Estate or related documents or instruments, and no Trustee shall in any event assume or incur any liability, duty or obligation to any creditor of the Trust;
- (f) no Trustee or Corporate Co-Trustee shall be liable for the default or misconduct of ECRA under any of the Plans or otherwise, and no Trustee or Corporate Co-Trustee shall have any obligation or liability to perform the obligations of the Trust under this Agreement that are required to be performed by or on behalf of ECRA hereunder;
- (g) no Trustee or Corporate Co-Trustee shall be under any obligation to exercise any of the discretionary rights or powers vested in such Trustee by this Agreement, or to institute, conduct, or defend any litigation under this Agreement or in relation to this Agreement at the request, order, or direction of ECRA unless ECRA has offered to such Trustee security or indemnity satisfactory to such Trustee against the costs, expenses and liabilities that may be incurred by such Trustee (including, without limitation, the reasonable fees and expenses of such Trustee's counsel) therein or thereby; the right of the Trustees or Corporate Co-Trustee to perform any discretionary act enumerated in this Agreement shall not be construed as a duty, and a Trustee or Corporate Co-Trustee shall only be answerable for such Trustee's negligence or willful misconduct in the performance of any such act;
- (h) the provisions of this Agreement, to the extent that they restrict the duties and liabilities of the Trustees or Corporate Co-Trustee otherwise existing at law or in equity, are agreed to and accepted by such Trustees, and all other Persons who may succeed to any duties and liabilities of any Trustee or Corporate Co-Trustee;

- (i) no Trustee or Corporate Co-Trustee shall be required to take any action hereunder if such Trustee shall have reasonably determined, or shall have been advised by counsel, that such action is likely to result in liability on the part of such Trustee or is contrary to the terms hereof or is otherwise contrary to law; this Section 5.3(i) shall not obligate any Trustee or Corporate Co-Trustee to make any investigation of, or determination with respect to, any written instruction from an Authorized Officer of ECRA; and
- (j) no Trustee or Corporate Co-Trustee shall be personally liable for any action or omission of any other Trustee (including any predecessor or successor).

Section 5.4 Action upon Instruction by ECRA.

- (a) Any Authorized Officer of ECRA may, by written instruction, direct the Trustees or Corporate Co-Trustee in the management of the Trust.
- (b) At such time as any Trustee is an Authorized Officer of ECRA, any action taken by such Trustee hereunder shall be deemed to be pursuant to written direction of an Authorized Officer of ECRA, and such Trustee shall not be required to obtain any such writing. However, any Trustee may, in his, her or its discretion, require such a writing to be delivered. If at any time there shall be no Trustee which is an Authorized Officer of ECRA, then for all purposes of this Agreement any Trustee directed by an Authorized Officer of ECRA shall be deemed to be appointed by ECRA.
- (c) Whenever the Trustees are unable to decide between or among alternative courses of action permitted or required by the terms of this Agreement, or are unsure or disagree as to the application, intent, interpretation or meaning of any provision of this Agreement, the Trustees shall promptly give notice (in such form as shall be appropriate under the circumstances) to an Authorized Officer of ECRA requesting instruction as to the course of action to be adopted, and, to the extent a Trustee acts in good faith in accordance with any such instruction received, such Trustee shall not be liable on account of such action to any Person. If a Trustee shall not, in the reasonable judgment of such Trustee, have received appropriate instructions within ten (10) days after such notice has been given (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances), such Trustee may, but shall be under no duty to, take or refrain from taking such action which is consistent, in such Trustee's view, with this Agreement, and as such Trustee shall deem to be in the best interests of the Plans, and such Trustee shall have no liability to any Person for any such action or inaction.

Section 5.5 Furnishing of Documents.

The Trustees or Corporate Co-Trustee shall furnish to ECRA, promptly upon receipt of a written request therefor, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements, and any other instruments furnished to the Trustees with respect to any Permitted Investments or any other assets of the Trust.

Section 5.6 Reliance; Advice of Counsel.

- (a) No Trustee or Corporate Co-Trustee shall incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond, ~~or paper~~ or other document ~~or paper~~ believed by such Trustee to be genuine and believed by such Trustee to be signed by the proper party or parties and need not investigate any fact or matter pertaining to or in any such document. The Trustees or Corporate Co-Trustee may accept a certified copy of a resolution of the Board of ECRA or of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the method of the determination of which is not specifically prescribed herein, the Trustees or Corporate Co-Trustee may for all purposes hereof rely on a certificate, signed by an Authorized Officer of ECRA or by the president or any vice president or by the treasurer or other authorized officers of any other relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Trustees or Corporate Co-Trustee for any action taken or omitted to be taken by such Trustees in good faith in reliance thereon.
- (b) In the exercise or administration of the trusts hereunder and in the performance of the Trustees' or Corporate Co-Trustee's duties and obligations under this Agreement, the Trustees or Corporate Co-Trustee: (i) may, at the expense of ECRA, act directly or through agents, attorneys, custodians, or nominees (including, without limitation, the granting of a power of attorney to any Trustee's Responsible Officers on behalf of such Trustee) pursuant to agreements entered into with any of them, and no Trustee or Corporate Co-Trustee shall be liable for the conduct or misconduct of such agents, attorneys, custodians, or nominees if such agents, attorneys, custodians or nominees shall have been selected by the Voting Trustees with reasonable care; and (ii) may, at the expense of ECRA, consult with counsel, accountants, and other professionals to be selected with reasonable care by the Trustees. No Trustee or Corporate Co-Trustee shall be liable for anything done, suffered or omitted in good faith by such Trustee in accordance with the opinion or advice of any such counsel, accountant or other such Persons and which is not contrary to this Agreement.

Section 5.7 Replacement of the Trustees.

- (a) Subject to Section 5.7(e), any Trustee or Corporate Co-Trustee may resign at any time and be discharged from the trusts hereby created by giving thirty (30) days' prior written notice thereof to ECRA and to each other Trustee.
- (b) Subject to Section 5.7(e), and with or without cause, any Authorized Officer of ECRA may remove any Trustee or Corporate Co-Trustee by delivering a written instrument to each Trustee. An Authorized Officer of ECRA shall remove a Trustee or Corporate Co-Trustee if:
 - (i) such Trustee shall cease to be eligible in accordance with the provisions of Section 5.10 and shall fail to resign after written request therefor by an Authorized Officer of ECRA;
 - (ii) such Trustee shall be adjudged bankrupt or insolvent;
 - (iii) a receiver or other public officer shall be appointed or take charge or control of such Trustee or of such Trustee's property or affairs for the purpose of rehabilitation, conservation or liquidation; or
 - (iv) such Trustee shall otherwise be incapable of acting.
- (c) Pursuant to the Plan Benefit Services Agreement, ECRA shall pay any fees and expenses owed to any former Trustee.
- (d) If a vacancy (for purposes of Section 5.1(b) ~~hereof~~) would exist in the office of Trustee upon the resignation or removal of any Trustee, an Authorized Officer of ECRA shall promptly appoint a successor Trustee as provided in Section 3.6 ~~hereof~~.
- (e) Any resignation or removal of a Trustee or Corporate Co-Trustee shall not become effective until any fees and expenses due to the former Trustee are paid. No resignation or removal of a Trustee that would result in a vacancy (for purposes of Section 5.1(b) ~~hereof~~) shall become effective until a successor Trustee is appointed as provided in Section 5.7(d).
- (f) Any former Trustee or Corporate Co-Trustee shall upon payment of such Trustee's fees and expenses transfer and (where applicable) deliver to a remaining Trustee or the successor Trustee all documents (including, without limitation, all Permitted Investments) and statements and moneys held by such Trustee under this Agreement. The Trustees and the former Trustee shall execute and deliver such instruments and do such other things as may reasonably be required for fully and certainly vesting and confirming in the successor Trustee all such rights, powers, duties and obligations.

Section 5.8 Merger or Consolidation of Trustee.

At such time as there is a Corporate Co-Trustee, any corporation into which such Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion, or consolidation to which such Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of such Trustee, shall be the successor of such Trustee hereunder, provided such corporation shall be eligible pursuant to Section 5.10, and without the execution or filing of any instrument or any further act on the part of any of the parties hereto; provided, however, that such Trustee shall mail notice of such merger or consolidation to ECRA and to each other Trustee.

Section 5.9 Appointment of Co-Trustee or Separate Trustee.

- (a) Notwithstanding any other provisions of this Agreement, at any time: (i) for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located, or (ii) for such other purposes as ECRA and the Trustees may determine, any Authorized Officer of ECRA shall have the power and shall execute and deliver all instruments to appoint one or more Persons to act as co-trustee or co-trustees, jointly with the Trustees, or as separate trustee or trustees, of all or any part of the Trust Estate, and to vest in such Person or Persons, in such capacity, such title to the Trust Estate, or any part thereof, and, subject to the other provisions of this Section 5.9, such powers, duties, obligations, rights, and trusts as ECRA may consider necessary or desirable. If no Authorized Officer of ECRA shall have made any such appointment under clause (i) above within fifteen (15) days after the receipt by ECRA of a request so to do, for all purposes of this Agreement ECRA shall be deemed to have appointed such Trustee as the Trustees may designate. No co-trustee or separate trustee under this Agreement shall be required to meet the terms of eligibility as a successor trustee pursuant to Section 5.10 ~~and no notice of the appointment of any co-trustee or separate trustee shall be required pursuant to Section 5.1.~~
- (b) Each separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:
- (i) all rights, powers, duties, and obligations conferred or imposed upon the Trustees shall be conferred upon and exercised or performed by the Trustees and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Trustees joining in such act), except (A) to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, the Trustees (or any of them) shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties, and obligations (including,

- with-out limitation, the holding of title to the Trust Estate or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, or jointly by such separate trustee or co-trustee and any competent or qualified Trustee, but solely at the direction of the Trustees, or (B) as expressly provided by the terms of such appointment;
- (ii) no trustee under this Agreement shall be personally liable by reason of any act or omission of any other trustee under this Agreement; and
 - (iii) Any Authorized Officer of ECRA acting or expressly deemed under the provisions of this Agreement to be acting as a Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.
- (c) Any notice, request, or other writing given to the Trustees shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Agreement and the conditions of this Article 5. Each separate trustee and co-trustee, upon his, her or its acceptance of the trusts conferred, shall be vested with the estates or property specified in the instrument of appointment, either jointly with the Trustees or separately, as may be provided therein, subject to all of the provisions of this Agreement, specifically including every provision of this Agreement relating to the conduct of, affecting the liability of or affording protection to the Trustees. Each such instrument shall be filed with the Trustees and a copy thereof given to ECRA.
- (d) Any separate trustee or co-trustee which is an Authorized Officer of ECRA or pursuant to Section 5.9(a) may at any time appoint the Trustees as his, her or its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Agreement on behalf and in the name of such separate trustee or co-trustee. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of his, her, or its estates, properties, rights, remedies, and trusts shall vest in and be exercised by the Trustees, to the extent permitted by law, without the appointment of a new or successor trustee.

Section 5.10 Eligibility Requirements for Section 3.6(a) Trustees.

Each Corporate Co-Trustee appointed pursuant to Section 3.6(a) hereof shall at all times be a corporate trustee that: (a) is authorized to exercise corporate trust powers, (b) has a combined capital and surplus of at least \$50,000,000, and (c) is subject to supervision or examination by federal or state authorities. If such corporation shall publish reports of condition at least annually, pursuant to law or the requirements of any supervising or examining authority, then for the purpose of this Section 5.10, the combined

capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time any such Trustee shall cease to be eligible in accordance with the provisions of this Section 5.10, such Trustee shall resign immediately in the manner and with the effect specified in Section 5.7.

ARTICLE 6 TERMINATION OF AGREEMENT

Section 6.1 Termination of Agreement.

- (a) This Agreement and the Trust shall terminate and be of no further force or effect upon the final disbursement by the Trustees of all moneys or other property or proceeds of the ~~Trust~~ assets of the Trust Estate in accordance with the terms of this Agreement (the “**Trust Termination Date**”).
- (b) No Person shall be entitled to revoke or terminate the Trust (except as provided in Section 6.1(a)).
- (c) Any funds remaining in the Trust after such Trust Termination Date shall be deemed property of the applicable Plan; provided, however, that in no case will any property of the Trust be distributed to an entity that is not: (i) a state, (ii) a political subdivision of a state or (iii) an entity the income of which is excluded from gross income under section 115 of the Code.

ARTICLE 7 MISCELLANEOUS

Section 7.1 No Legal Title to Trust Assets; No Diversion of Trust Assets.

ECRA shall not have legal title to any part of the Trust Estate. No transfer, by operation of law or otherwise, of any right of ECRA hereunder shall operate to terminate this Agreement or the trusts hereunder or entitle any transferee to an accounting or to the transfer to it of legal title to any assets of the Trust. Without limitation on the foregoing provisions, all ~~Trust~~ assets of the Trust Estate shall be held in trust for the exclusive purpose of providing post-employment health care and related benefits to the applicable Plan for distribution to eligible ECRA retirees and their dependents to the extent said retirees and dependents are entitled to receive such benefits under such Plan and defraying the reasonable administrative, legal, actuarial, audit, reporting and compliance expenses of ~~the Trust~~ such Plan.

Section 7.2 Limitations on Rights of Others; Exclusive Benefit.

Except as expressly provided in herein, the provisions of this Agreement are solely for the benefit of the Trustees, including the Corporate Co-Trustee, the Plans and ECRA, and nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Trust ~~assets~~ Estate or under

or in respect of this Agreement or any covenants, conditions or provisions contained herein; provided, however, that in all events the assets of the Trust shall be held in trust for the exclusive purpose of providing post-employment health care and related benefits to the applicable Plan for distribution to eligible ECRA retirees and their dependents pursuant to ECRA's policies and applicable collective bargaining agreements, and defraying the reasonable expenses associated with the providing of such benefits, and shall not be used for or diverted to any other purpose.

Section 7.3 Notices.

All demands, notices, and communications upon or to ECRA or the Trustees under this Agreement shall be in writing, personally delivered, sent by electronic mail or mailed by first class mail or sent by overnight courier, and shall be deemed to have been duly given upon receipt:

- (a) in the case of ECRA at the following address:

El Camino Real Alliance
Attention: Chief Business Officer
5440 Valley Circle Boulevard
Woodland Hills, California 91367

- (b) in the case of the Trust or the Trustees, to the Trustees at the Trust Office and any additional office designated in writing by any Trustee to all Trustees; and
- (c) in the case of the Corporate Co-Trustee to the office of the Corporate Co-Trustee designated in writing by such Trustee.

Any of the above addresses for notice may be changed by the party to receive such notice hereunder by providing written notice of such change to each of the other parties as provided in this Section 7.3.

Section 7.4 Severability.

If any one or more of the covenants, agreements, provisions, or terms of this Agreement shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions, or terms shall be deemed severable from the remaining covenants, agreements, provisions, or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

Section 7.5 Amendments.

This Agreement may not be amended without the prior written consent of an Authorized Officer of ECRA; subject to the foregoing, this Agreement may be amended by the Trustees (and Corporate Co-Trustee, to the extent any interest, duty, liability or immunity or other provision of this Agreement may be affected thereby); provided, however, that the provisions of Section 4.2 ~~and Section 4.3 hereof~~ shall not be amended

without ~~(a) as to Section 4.2, a legal opinion of nationally recognized counsel to the Trust, to the effect that such amendment, in and of itself, will not cause the Trust to become an entity the income of which is not exempt from federal income taxation pursuant to section 115 of the Code; and (b) as to Section 4.3, a legal opinion of nationally recognized counsel to the Trust, to the effect that such amendment, in and of itself, will not cause the Trust to become an entity which is not bankruptcy remote.~~

Section 7.6 Form of Amendments.

- (a) Subject to the conditions and limitations provided in Section 7.5, no amendment of this Agreement shall be effective unless it is contained in a writing executed by not less than two Voting Trustees.
- (b) Promptly after the execution of any amendment pursuant to Section 7.5 and subsection (a) above, the Trustees shall furnish full copies of such amendment to each Trustee not an original signatory to such amendment.
- (c) Prior to the execution of any amendment to this Agreement, the Trustees shall be entitled to receive and rely upon an opinion of counsel stating that the execution of such amendment is authorized or permitted by this Agreement, including without limitation the provisions of Section 7.5. The Trustees may, but shall not be obligated to, enter into any such amendment that affects the Trustees' own rights, duties, or immunities under this Agreement or otherwise.

Section 7.7 Counterparts.

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

Section 7.8 Successors and Assigns.

All covenants and agreements contained herein shall be binding upon, and inure to the benefit of the Plans and the Trustees and Corporate Co-Trustee and their respective successors and permitted assigns, all as herein provided.

Section 7.9 Headings.

The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 7.10 Valuation.

The Assets of the Trust shall be valued at their fair market value on the date of valuation, as determined by the Trustee based upon such sources of information as it may deem reliable; provided, however, that ECRA or a Compliance Manager, if applicable, shall

instruct the Trustee as to valuation of assets which are not readily determinable on an established market. The Trustee may rely conclusively on such valuations provided by the ECRA or a Compliance Manager, as the case may be, and shall be indemnified and held harmless by ECRA with respect to such reliance. If neither ECRA nor any Compliance Manager provides such values, any ~~the~~ Corporate Co-Trustee or any Voting Trustee may take whatever action it deems reasonable, including employment of attorneys, appraisers or other professionals, the expense of which will be an expense of administration of the Trust. Transactions in the Trust Account involving such hard-to-value assets shall be postponed until appropriate valuations have been received, and no Trustee or Co-Trustee shall have liability therefor.

Section 7.11 Governing Law.

This Agreement shall be construed in accordance with the laws of the State, without reference to its conflict of law provisions, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws; provided, however, that any provision of this Agreement relating to the exemption from federal income taxation of Trust income under section 115 of the Code ~~or to the bankruptcy remote status of the Trust~~ shall be construed in accordance with the federal laws of the United States.

[\[signatures appear on next page\]](#)

IN WITNESS WHEREOF, the Grantor and the Initial Co-Trustees have caused this Trust Agreement to be duly executed, all as of the day and year first above written.

MARSHALL K. MAYOTTE,
as Grantor and Initial Co-Trustee

MELANIE DIANA HORTON,
as Initial Co-Trustee