

NORTH CAROLINA TEACHERS' AND  
STATE EMPLOYEES' BENEFIT TRUST

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Agreement made the 25th day of October, 1979 between the Board of Trustees under the Teachers' and State Employees' Retirement System of North Carolina hereinafter referred to as the "Retirement System" in its capacity as Trustee, and in that capacity hereinafter referred to as the "Settlor", under the "Death Benefit Plan" for Teachers and State Employees who are covered under the Retirement System hereinafter referred to as the "Death Benefit Plan" and the State Treasurer of the State of North Carolina, hereinafter referred to as the "Trustee".

WHEREAS, by duly ratified Bills, the State of North Carolina has established the Board of Trustees and charged it with responsibility for administering certain funded pension and other employee welfare benefit plans which are under the control of the Board of Trustees and delegated to the Board of Trustees in its capacity as Trustee under the Death Benefit Plan the power and authority, among others, to establish and amend trusts for such Death Benefit Plan; and

WHEREAS, the Settlor administers a welfare benefit plan for employees and teachers which provides life insurance benefits, before and, in certain cases, after retirement that may be funded through a Section 501(c)(9) trust; and

WHEREAS, the Settlor deems it advisable to fund the above-mentioned welfare benefit plan through the medium of a trust which is qualified under Section

501(c)(9) of the Internal Revenue Code, herein referred to as a "Section 501(c)(9) Trust"; and

WHEREAS, the Settlor has authorized the establishment of a Section 501(c)(9) trust for the purpose of funding the life insurance benefits for teachers and employees as described in the Death Benefit Plan, and for the purpose of funding such other employee welfare plans that may be funded through a Section 501(c)(9) trust as the Settlor may include under said Trust from time to time and for such other plans administered by Participating Affiliates of the Settlor as may from time to time be authorized by the Settlor to participate in the Trust; all such plans to be made a part hereof and together with all amendments thereto and substitutions therefor are hereinafter referred to as the "Plan" and each of which is maintained for the exclusive benefit of the eligible teachers and employees for whom the Settlor or the Participating Affiliates administer a benefit plan; and

WHEREAS, under such Section 501(c)(9) trust contributions are to be made for the purpose of providing benefits to the participants and beneficiaries under the Plan and the corpus and income of the fund shall be accumulated by the trust for such purposes; and

NOW, THEREFORE, the Settlor and the Trustee agree as follows:

1. DEFINITIONS

1.1 The following terms when used herein shall have the meaning set forth below:

Settlor - The term Settlor shall, except as otherwise indicated herein collectively include the Board of Trustees under the Teachers' and State Employees' Retirement System of North Carolina in its separate capacity as Trustee under the Death Benefit Plan for Teachers and State Employees covered under the said Retirement System and any Participating Affiliate.

Participating Affiliate - Any Affiliate of the Settlor which, by appropriate action of the Settlor, has been designated as a Participating Affiliate.

Fiscal Year - The twelve-month period ending December 31 in each year, or such other twelve-month period as shall be established as the fiscal year of the Plan.

Administration Committee - The committee, appointed by the Settlor, is responsible for carrying out all phases of Plan administration except asset management.

1.2 Any other term that is defined in the Plan shall have in this Agreement the same meaning ascribed to it in the Plan, unless the context clearly indicates a different meaning.

2. THE TRUST AND THE TRUST PROPERTY OR FUND

2.1 Establishment of Trust - To provide benefits under the Plan, the Settlor hereby establishes with the Trustee, and the Trustee hereby accepts a

trust designated as the North Carolina Teachers' and State Employees' Benefit Trust.

2.2 The Trust Property or the Fund

- (a) The Trust Property shall consist of an initial deposit of \$6,159.30; delivered on January 2, 1980, and such additional cash and other property acceptable to the Trust as shall from time to time be paid or delivered to the Trustee and all investments made therewith and proceeds thereof and all earnings and profits thereon, less the payments which at the time of reference shall have been made by the Trustee in accordance with this Agreement. Such Trust Property is sometimes herein referred to as the "Trust Fund" or the "Fund".
- (b) The Trust Property or Fund shall be held by the Trustee IN TRUST and shall be managed and administered in accordance with the provisions of this Agreement.

2.3 Receiving and Investing - The Trustee shall receive, hold, manage, invest and reinvest the Fund, collect the income thereof and make payments therefrom pursuant to the provisions of this Agreement.

2.4 Tax-Exempt Status of Trust - The Settlor intends that the trust hereby established shall at all times be tax-exempt under Section 501(c)(9) of the Internal Revenue Code, as amended (or under successor provisions of law to said Section); and the Trustee may assume the trust is so tax-exempt until advised to the contrary.

2.5 Copy of Plan and Amendments - Concurrently with the execution of this Agreement, the Settlor shall provide the Trustee with a copy of the Plan as currently in effect, and promptly following the adoption of any subsequent amendment to the Plan, the Settlor shall provide a copy thereof to the Trustee.

2.6 Funding Standards and Other Information - From time to time the Settlor will communicate to the Trustee in writing the current funding policy and method that has been established to carry out the objectives of the Plan, and will furnish to the Trustee such additional information as the Trustee may reasonably require to comply with his fiduciary responsibilities.

3. STANDARD OF CONDUCT

3.1 The Trustee shall discharge his duties under this Agreement solely in the interest of the participants in the Plan and their beneficiaries and (i) for the exclusive purpose of providing benefits to such participants and their beneficiaries and defraying reasonable expenses of administering the Plan, (ii) with the care, skill, prudence, and dilligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (iii) in accordance with the documents and instruments governing the Plan.

3.2 If any standard of performance stricter than that stated in this Section or any other obligation should be imposed upon trustees of employee

benefit trusts by any applicable law of the Government of the United States or by the State whose laws are applicable to this Trust, then the Trustee will also comply therewith from and after the effective date thereof.

3.3 The Trustee shall not be required to give any bond or any other security for the faithful performance of his duties under this Agreement.

4. PARTICIPATING AFFILIATES

4.1 Inclusion in Agreement - This Trust Agreement and Trust Fund are established on behalf of the Settlor and such Affiliates of the Settlor as the Settlor may certify to the Trustee and which shall make contributions to the Fund in accordance with the provisions of this Agreement.

4.2 Inclusion Effective Without Action by Trustee - Upon receipt by the Trustee of certification by the Settlor and upon receipt of a contribution by or on behalf of a Participating Affiliate, the Trustee shall be deemed to accept such Affiliates as a party to this Agreement without further action by the Trustee.

4.3 Settler Appointed Agent of Affiliates - Each Participating Affiliate which joins in this Trust Agreement as above provided, thereby appoints the Settlor as its agent to exercise in its behalf, or through such members of the Settlor as are authorized by the Settlor to act in such matters, all the powers and authority of the Participating Affiliate

under the provisions of this Agreement, including, but not by way of limitation, the power to amend this Agreement and to terminate the trust created hereunder.

4.5 Administration as a Single Fund - Unless otherwise directed by the Settlor or such members of the Settlor as may be designated by the Settlor to act in such matter(s), the Trustee shall hold, invest and administer the Fund as a single Fund. However, unless otherwise directed by the Settlor, the Trustee shall on his books and records maintain a separate identification or allocation of the funds attributable to the Plan(s) maintained by the Settlor and to Plans maintained by any Affiliate of the Settlor designated by it as a Participating Affiliate under the Plan.

5. PAYMENT FROM THE TRUST

5.1 On Written Orders signed by any two members of the Administration Committee or any other persons authorized in or pursuant to 6.1, the Trustee shall pay from the Fund life insurance benefits, invoices for compensation to the Trustee, fees for actuarial services to the Plan or the Trust, expenses for publication of documents and notices, if any, relating to the Plan or the Fund for distribution to Plan members or their beneficiaries, any income tax that may be assessed upon or with respect to the Fund and other expenses incurred in the administration of the Plan.



- 5.2 Without Such Written Orders, the Trustee is authorized to pay from the Fund and shall pay when due brokerage costs and transfer taxes incurred other taxes (excluding income taxes) that may be lawfully assessed upon or with respect to the Fund and except for those items or expenses requiring approval under 5.1, all other expenses reasonably incurred in the performance of the Trustee duties hereunder including reasonable compensation of any agent or counsel that may be engaged by the Trustee to assist in the management and administration of the Trust; provided, however, that the services rendered by such agent or counsel are not service paid for by the compensation to the Trustee under 5.7.
- 5.3 Guarantee by Settlor - If the Fund is insufficient to pay the expenses, the Settlor will cause the same to be paid when due.
- 5.4 Taxes on Fund - In the event that any taxes, other than transfer taxes incurred in connection with the investment and reinvestment of the Trust Fund, are assessed upon or in respect of the Trust Fund, or any transaction involving the Trust Fund, or in the event the Trustee in his discretion elects to contest the validity of any taxes assessed upon or in respect of the Trust Fund or any transaction involving the Trust Fund, including transfer taxes incurred in connection with the investment and reinvestment of the Trust Fund, the Trustee shall give prompt written notice to the Settlor of each such event prior to the commencement of any action thereon; thereupon the Settlor at the Settlor's election and expense, shall have the right in the Settlor's own name or the name of

the Trustee, as appropriate, to contest the validity of any such tax or, if such proceedings have already been commenced by the Trustee to assume responsibility for the continued prosecution thereof.

5.5 Disputes as to Payments - If any dispute arises as to who is entitled to receive any benefit or payment, the Trustee may withhold such payment until the dispute has been resolved.

5.6 Payment to Another Trust Fund - If so directed in writing by the persons authorized in or pursuant to Section 6.1, the Trustee shall transfer to the trustee of any other trust fund maintained for the purposes of the Plan such part or all of the Trust Fund as may be specified in such written direction.

5.7 Compensation of Trustee - The compensation, if any, of the Trustee will be as agreed in writing from time to time by and between the Settlor and the Trustee.

6. ACTION BY OR ON BEHALF OF SETTLOR

6.1 Persons Authorized to Act for Settlor - Whenever action is required of the Settlor with respect to this Agreement, and the terms of this Agreement do not specify who is to act for or on behalf of the Settlor, such action may be taken or effected by such person(s) acting for the Settlor as may be designated by the Settlor to so act in such matters.

Orders for making payments under Section 5.1 may be signed by the Administration Committee, or by any two members of the Administration Committee, or by any two members of the Settlor who are otherwise duly authorized to sign checks and drafts made or drawn against any funds at any time standing to the credit of the Settlor, in any authorized bank account.

6.2 Reliance on Communications - Written directions to the Trustee by a person authorized under 6.1 to act in such matters shall be deemed to constitute a certification that the action so directed by such person is authorized and proper.

The Trustee may accept as proof of any fact or matter that he deems necessary or desirable to have established in the administration of the Fund a certificate signed by a person authorized under 6.1 to act in such matters, unless other evidence of such fact or matter is expressly prescribed herein or required by applicable law; and the Trustee shall be fully protected in relying upon the statement in the certificate.

The Trustee shall be entitled conclusively to rely upon any written notice, instruction, direction, certificate or communication believed by him to be genuine and to be signed by the proper person(s); and, unless clearly imprudent under the circumstances of the particular instance not to do so, shall be under no duty to make investigation or inquiry as to the truth or accuracy of any statement contained therein. Notwithstanding the foregoing, no payments

or transfers of Trust Fund assets shall be made pursuant to a direction which bears an unauthorized and/or improper signature.

6.3 Certification of Names of Authorized Persons - From time to time the Settlor shall furnish to the Trustee certificates by the Administration Committee on the Settlor certifying the names and specimen signatures of the persons designated in Section 6.1 who are authorized to take or effect any action under this Agreement.

6.4 Evidence of Action by the Settlor and/or Administration Committee - Action shall be evidenced by a copy of the resolutions adopted by said Settlor certified by the Chairman or Director of the Settlor. Action by the responsible Administration Committee under the Plan shall be evidenced by a copy of the resolutions adopted by such Committee certified by the Chairman of said Committee or by the Director or Assistant Director of the Settlor.

7. INVESTMENT OF THE FUND

7.1 It shall be the duty of the Trustee to invest the cash of the funds of each respective Plan, in excess of the amount required to meet the current needs and demands on such funds, subject to the terms and conditions of this Agreement, the provisions of any applicable law and such investment standards and criteria as may be prescribed by the provisions of State law, as may be amended from time to time, relating to the management of funds applicable to the Retirement Systems of which the

participants of the Death Benefit Plans participating in this Trust are members.

7.2 Equity Investment Advisory Committee - With respect to investments in equity securities, an Equity Investment Advisory Committee, appointed by the State Treasurer pursuant to State law shall serve as Equity Investment Advisory Committee under this Trust. Such Committee shall have advisory powers only and, except as otherwise agreed, shall serve the Trust without compensation.

8. GENERAL AND ADMINISTRATIVE POWERS OF TRUSTEE

8.1 Subject to the terms and conditions of this Agreement and the provisions of applicable law and in accordance therewith, the Trustee is authorized and empowered;

- (a) To invest, reinvest and hold the property of the Trust in accordance with the provisions of this Agreement;
- (b) To sell, exchange, convey, transfer, lend or otherwise dispose of any property, at any time held by the Trustee, by private contract or at public auction, for cash or credit;
- (c) To sell or exercise any conversion privileges, subscription rights or other rights or options and to make any payments incidental thereto;
- (d) To consent to or otherwise participate in or oppose any corporate recapitalization, reorganization, merger, consolidation, liquidation, sale or other change affecting corporations or corporate

- properties and to delegate discretionary powers and to pay any assessments, charges or subscriptions in connection therewith and to accept securities or property issued upon any such transactions;
- (e) To compromise, compound, settle or arbitrate any claim, debt or obligation due to or from it as Trustee and to reduce the rate of interest on, extend or otherwise modify, or to foreclose upon default or otherwise enforce any such obligation; to bid on property on foreclosure or to take a deed in lieu of foreclosure with or without paying consideration therefor and in connection therewith to release the obligation on the bond secured by the mortgage;
  - (f) To vote in person or by proxy on any stocks, bonds or other securities held by him, and to appoint one or more individuals or corporations as voting trustees under voting trust agreements and to delegate to such voting trustees discretion to vote;
  - (g) To borrow from any lender money, in any amount and upon appropriate terms and conditions, for purposes of this Agreement, and to pledge or mortgage any property held in the Fund to secure the repayment of any such loan;
  - (h) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
  - (i) To cause any investment of the Fund to be registered and held in the Trustee's own name as Trustee, in the name of one or more of his nominees (or in the name of one or more depository trust companies serving as nominee under a system for the central handling of

securities) without disclosure of the Trust or in bearer form so that it will pass by delivery, but no such holding shall relieve the Trustee of his responsibility for the safe custody and disposition of the Fund in accordance with the provisions of this Agreement, and the books and records of the Trustee shall at all times show that all such investments are part of the Fund; and the Trustee shall be absolutely liable for any loss occasioned by the acts of his nominee(s) (and/or depositary trust company serving as nominee) with respect to securities registered in the name of such nominee(s) (or depositary trust company);

- (j) To employ suitable agents and consult with the Attorney General of North Carolina. The Trustee shall be protected, to the extent permitted by law, in acting upon the advice of the Attorney General of North Carolina, provide, however, that if such action involves a material conflict of interest between or among the Trustee and the Settlor and/or the Plan or its participants or their beneficiaries, the selection of counsel (who may be counsel for the Settlor or for the Trustee in their individual capacity) shall be determined by the Attorney General of the State of North Carolina.
- (k) Generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Fund.

9. TRUSTEE'S ACCOUNT

- 9.1 The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions hereunder, and all

accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by the Settlor or the Administration Committee.

9.2 Notice of Claims and Litigation - The Trustee will notify the Settlor promptly of any disputed claim that is asserted or any litigation that is initiated by or on behalf of or against the Fund.

9.3 Notice of Change in Applicable Law - The Trustee will notify the Settlor promptly of any change in applicable law which materially affects the investment of the Fund, the duties and responsibilities of the parties, and/or the powers of the Trustee hereunder.

#### 10. RESIGNATION, REMOVAL OR SUBSTITUTION OF TRUSTEE

10.1 Resignation of Trustee - The Trustee may resign at any time by filing with the Settlor his written resignation. Such resignation shall take effect sixty (60) days from the date of such filing or upon appointment of a successor evidenced as provided in 10.3, whichever shall occur first.

10.2 Removal of Trustee - The Settlor or a designee of the Settlor duly authorized by the Settlor to act in such matters may remove the Trustee at any time by delivering to the trustee a written notice of his removal and an appointment of a successor pursuant to 10.3. Such removal shall not take effect prior to sixty (60) days from such delivery unless the Trustee agrees to an earlier effective date.



10.3 Appointment of Successor Trustee -

- (a) The appointment of a successor to the Trustee shall be evidenced by delivery to the Trustee of a copy of the written instrument(s) containing the appointment of such successor and its acceptance of such appointment.
- (b) If a successor is not appointed within sixty (60) days after the Trustee gives notice of his resignation pursuant to 10.1, the Trustee or the Settlor may apply to any court of competent jurisdiction for appointment of a successor.

10.4 Transfer of Fund to Successor -

- (a) Upon the resignation or removal of the Trustee and appointment of a successor and upon direction by the Settlor or designee of the Settlor duly authorized by the Settlor to act in such matters, the Trustee shall transfer and deliver the Trust Fund to such successor.
- (b) The Trustee is authorized, however, to reserve such sum of money as he may deem advisable for payment of his fees, if any, and expenses in connection with the settlement of his account or otherwise and any balance of such reserve remaining after the payment of such fees and expenses shall be paid over to the successor trustee.

11. AMENDMENT OR TERMINATION

- 11.1 The Settlor reserves the right at any time and from time to time to amend or terminate, in whole or in part, any or all of the provisions

of this Agreement, provided, however, that no such amendment which affects the rights, duties or responsibilities of the Trustee may be made without his consent in writing; and provided further that if the Trustee shall not consent, he may be removed in accordance with the provisions of Section 10 hereof, except that there shall be no minimum period before the removal shall be effective.

11.2 Subject to the preceding provision, any such termination or amendment shall become effective upon delivery to the Trustee of a written instrument of termination or amendment duly executed and acknowledged by the Settlor or any designee of the Settlor duly authorized by the Settlor to act in such matters and accompanied by a certified copy of the authorizing resolutions of the Settlor.

12. LIMITATION ON USE

12.1 Provision Against Diversion of Funds - Prior to the satisfaction of all liabilities with respect to persons entitled to benefits, except for the payment of expenses, no part of the corpus or income of the Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of persons who are or may become entitled to benefits under the Plan.

12.2 Restriction on Termination - In the event of termination of the trust, all cash, securities and other property then constituting the Fund, less any amounts constituting charges and expenses payable from the Fund

shall be paid over or distributed by the Trustee on the order of the Administration Committee for the purpose of continuing coverage under the Plan for participants and their beneficiaries; provided however if the Fund assets are insufficient to provide full coverage specified in the Plan such coverage shall be reduced pro rata. If, after such coverage is provided in full, Fund assets remain, such assets will be applied by the Trustee in the manner directed by the Administration Committee under the Plan for the sole benefit of participants of the Plan. In no event shall such assets inure to the benefit of the Settlor or contributing Employers. In making distributions to or on order of the Administration Committee however, the Trustee shall have no duty to determine whether or not they constitute any use or diversion of the Fund for purposes other than the payment of provision for the payment of the benefits provided for under the plan.

12.3 Effect of IRS Disqualification - Notwithstanding anything to the contrary contained in the Agreement with respect to a Plan, if any, which shall be added after the establishment of the Trust on January 1, 1980, if a determination shall be made by the Internal Revenue Service to the effect that with respect to such Plan the Trust does not qualify as a Section 501(c)(9) trust, any balance in the Trust with respect to such Plan shall instantly revert to the Settlor.

13. NONALIENATION OF BENEFITS

13.1 No benefit under the Plan or interest, right or claim in or to any part of the fund or payment therefrom shall be subject in any manner to

anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, hypothecation or commutation, nor shall any such benefit or interest, right or claim in or to any part of the Fund or payment therefrom be in any manner liable for or subject to garnishment, attachment, execution or levy, or liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled thereto, and the Trustee shall not recognize any attempt to make it so, except as provided by the Plan, consistent with applicable law.

14. LAW APPLICABLE

14.1 This Agreement shall be administered and construed in accordance with the laws of the State of North Carolina or any other present or future applicable Federal law, as the same may be amended from time to time, together with the implementing rules and regulations and the decisions and other actions thereunder, having the effect of law, of any government agency or instrumentality having jurisdiction in the matter.

15. SUCCESSORS AND ASSIGNS

15.1 This Agreement shall bind and inure to the benefit of the successors and assigns of the Settlor and the Trustee, respectively.

16. COUNTERPARTS AND SECTION HEADINGS

16.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which shall together constitute but one instrument, which may be sufficiently evidenced by

any counterpart. Titles, Section Headings and Sub-Section Headings are for convenience of reference only and shall not be construed to affect the meaning of the text.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized officers or other person(s) of the day and year first above written.

ATTEST:

Dennis Tucker

By [Signature]

Secretary to the Board of Trustees under the Teachers' and State Employees' Retirement System of North Carolina in its separate capacity as Trustees under the Death Benefit Plan for Teachers and State Employees who are covered under said Retirement System.

ATTEST:

Dennis Tucker

By John P. Booker Jr.

Member of the Board of Trustees in its separate capacity as Trustee of the Death Benefit Plan for Teachers and State Employees who are covered under the Teachers' and State Employees' Retirement System of North Carolina.

State Treasurer of the State of North Carolina

By [Signature]

ATTEST:

Elizabeth B. Surratt