

AGREEMENT AND DECLARATION OF TRUST
OF THE
BAY AREA DELIVERY DRIVERS SECURITY FUND

The Trust Agreement between certain Employers and certain Unions dated October 18, 1950, establishing the BAY AREA DELIVERY DRIVERS SECURITY FUND (formerly known as the Bay Area Beverage Drivers and Bottlers Security Fund) which was subsequently reaffirmed and amended effective December 9, 1975, is hereby reaffirmed and amended effective February 11, 1993, as follows.

ARTICLE I

Establishment and Purpose of the Trust

1.1 The Unions and Employers, as hereinafter defined, have entered into Collective Bargaining Agreements under which the Employers are obligated to make contributions to a Trust Fund to provide health and welfare benefits on behalf of their employees and dependents of their employees.

1.2 It is the purpose of this Agreement to provide for the establishment and administration of the Trust Fund. This Trust is therefore established to receive Employer payments and to provide employees and their dependents with health and welfare benefits consistent with applicable laws. The Plans established by the Trust Fund shall be maintained for the sole and exclusive benefit of the employees and their dependents.

1.3 The name of this Trust shall be the BAY AREA DELIVERY DRIVERS SECURITY FUND.

ARTICLE II

Definitions

2.1 The term "Union" means any local union which is or may become a party to a Collective Bargaining Agreement requiring payments by the Employer into the Bay Area Delivery Drivers Security Fund. In addition, the term "Union" shall mean any other Local Union as agreed upon by the Trustees of this Trust Fund.

2.2 The term "Employer" means a firm, company, corporation or other signatory party to a Collective Bargaining Agreement and/or a Subscriber Agreement under which payments are to be made to this Trust Fund on behalf of Employees and who, by so contributing to the Trust Fund, agrees to be bound by the terms of the Agreement and Declaration of Trust, as amended.

2.3 The term "Employee" means a person employed under the terms of a Collective Bargaining Agreement between a Union and an Employer or a person who is covered by a Subscriber Agreement or any other employee authorized by the Trustees to participate in a Plan, and the dependents of such persons as defined in the applicable Plan. At the discretion of the Trustees, the term Employee shall also include the retired employees of an Employer.

2.4 The term "Bay Area Delivery Drivers Security Fund Trust" means this instrument including all amendments and modifications hereto. The aforesaid Trust is sometimes hereinafter referred to as the "Bay Area Delivery Drivers Security Fund."

2.5 The term "Trust Fund," means the assets of Bay Area Delivery Drivers Security Fund Trust established in Article IV herein.

2.6 The term "Plan" or "Plans" means the program or programs of benefits developed and established by the Trustees, consistent with federal law and this Trust Agreement.

2.7 The term "Collective Bargaining Agreement" means any written contract between an Employer and a Union, together with any amendment, extension or renewal of such contract, which contract has been accepted by the Trustees and under which the Employer is required to make payments to the Trust Fund.

2.8 The term "Subscriber Agreement" means a written obligation by which an Employer affirms its obligation to make contribution to the Trust Fund and agrees to be bound by the terms and conditions of this Trust Agreement and any amendments thereto.

2.9 The term "Trustees" means the Trustees of this Trust Fund and their successors.

ARTICLE III

Trustees

3.1 Number of Trustees

The administration of the Trust Fund shall be vested in a Board of Trustees which shall consist of equal numbers of representatives from Employers and Employees. There shall be six (6) Trustees, three (3) to be Union Trustees, and three (3) Employer Trustees.

3.2 Election of Trustees by Employers

(a) The three (3) Employer Trustees shall be designated by the Employers signatory to the Collective Bargaining Agreements

requiring payments by Employers into the Trust Fund. Each of such Trustees shall hold office until his successor is elected or designated and qualified.

(b) The election of the original Employer Trustees, designation of successor Employer Trustees and removal of same shall be made in accordance with procedures established by the Employer Trustees.

3.3 Election of Trustees by Unions

(a) The three (3) Union Trustees shall be designated by Unions which are signatory to the Collective Bargaining Agreements requiring payments by Employers into the Trust Fund. Each such Trustee shall hold office until his successor is elected or designated and qualified.

(b) The election of the original Union Trustees, designation of successor Union Trustees and removal of same shall be made in accordance with procedures established by the Union Trustees.

3.4 Acceptance by Trustees

A Trustee shall be deemed to accept this Trust upon signing this instrument, or upon written acceptance filed with the other Trustees and, in the case of any successor or additional Trustee, shall be deemed to accept the Trust created and established hereby and shall be deemed to consent to act as a Trustee and to agree to administer the Trust Fund as provided herein.

3.5 Continuance in Office

Each Trustee shall continue to serve as such until death, incapacity, resignation, or removal as provided herein.

3.6 Resignation of Trustees

A Trustee may resign from all future duty or responsibility hereunder by giving notice in writing to his appointing authority and to the remaining Trustees, which notice shall state the date such resignation shall take effect, and such resignation shall take effect on the said date unless a successor Trustee shall have been appointed at an earlier date, subsequent to his giving notice of resignation, in which event such resignation shall take effect as of the date of appointment of his successor.

3.7 Successor Trustees

(a) In the event any Union Trustee shall die, become incapable of acting, resign or be removed, a successor Union Trustee shall be immediately designated by the remaining Union

Trustees in accordance with such procedures or methods as established by the Union Trustees. Upon the filing with the remaining Union Trustees of the acceptance of the trusteeship by the designated successor Trustee, such designation shall be effective and binding in all respects.

(b) In the event that an Employer Trustee shall die, become incapable of acting, resign, or be removed, a successor Employer Trustee shall be immediately designated by the remaining Employer Trustees in accordance with such procedures or methods as established by the Employer Trustees. Upon the filing with the remaining Employer Trustees of the acceptance of the Trusteeship by the designated successor Trustee, such designation shall be effective and binding in all respects.

(c) Any successor Trustee shall, immediately upon his acceptance of the Trusteeship in writing filed with the Trustees, become vested with all the property, rights, powers and duties of a Trustee hereunder. The insurance company, if there be one, and all the persons connected with the administration of the Trust Fund shall be immediately notified.

(d) In case of the death, resignation, refusal or inability to act of any one or more of the Trustees, the remaining Trustees shall have all the powers, rights, estates and interest of this Trust and shall be charged with its duties, provided that at least two Employer Trustees and two Union Trustees shall be required to act in any such case.

Section 3.8 Removal of Trustees

Any Union Trustee may be removed at any time in accordance with the procedures established by the Union Trustees and any Employer Trustee may be removed at any time in accordance with the procedures established by the Employer Trustees. Such removed Trustees shall be removed from all future duty herein. Removal may be effected upon no less than five (5) days' written notice to all Trustees and upon the designation and acceptance of a successor Trustee.

Section 3.9 Meetings of Trustees

The Trustees shall meet at least once a year at a time and place to be determined by the Chairman for the purpose of acting upon matters connected with the administration of the Trust. In addition, Trustees may hold such special meetings as the Chairman of the Trustees shall determine or upon joint call of two Employer Trustees and two Union Trustees, or upon call by a majority of the Trustees from either side. Trustees shall adopt such rules and regulations relative to the holding of such meetings, regular and special, as they shall determine necessary; provided that such rules and regulations shall include a requirement that special

meetings shall be held only after special notice given of the business proposed to be taken up at such special meeting, the required notice to be subject to written waiver or waiver by attendance at such meeting.

Section 3.10 Quorum

A majority of the Union Trustees and a majority of the Employer Trustees shall constitute a quorum for the conduct of business.

Section 3.11 Voting by Trustees

Any action to be taken by the Trustees shall be by unanimous vote of the Employer and Union Trustees present at a meeting of the Trustees, or by unanimous vote of all Trustees in writing without a meeting. There shall be but two votes: the Union Trustees shall have one vote among them and the Employer Trustees shall have one vote among them. The Union Trustees and the Employer Trustees shall each establish requirements to decide their vote. The Trustees jointly shall establish procedural rules governing, among other things, the calling and conducting of meetings and the existence of a deadlock.

Section 3.12 Deadlocks

(a) In the event of a deadlock between Union Trustees on the one hand and Employer Trustees on the other, questions shall be submitted for a decision to an impartial umpire selected by the Trustees. In the event of their inability to agree upon such impartial umpire, the Union Trustees, or Employer Trustees, or upon their failure to act, any Trustee, shall petition the District Court of the United States where the Trust Fund has its principal office to appoint an impartial umpire.

(b) The decision of such impartial umpire shall be final and binding and shall be adopted by the Trustees and deemed to be the vote of the Trustees. The cost and expense incidental to any proceedings needed to break a deadlock shall be borne by the Trust Fund. Any impartial umpire chosen or designated to break a deadlock shall be required to enter his decision within the time fixed by the Trustees.

Section 3.13 Execution of Instruments

Any instrument in writing may be executed on behalf of the Trustees by the signature of any two of the Trustees, one of whom shall be a Union Trustee and one an Employer Trustee, or by a person designated by the Trustees for such purposes, and all persons, partnerships, corporations and associations may rely thereon that such instrument has been duly authorized.

Section 3.14 Officers

The Trustees shall elect from their membership a Chairman and a Secretary provided that one of such office holders shall be a Union Trustee and one shall be an Employer Trustee.

Section 3.15 Compensation of Trustees

The Trustees shall serve without compensation from the Trust Fund. Trustees may, however, be reimbursed by the Trust Fund for expenditures properly and actually incurred in the conduct of Trust business.

ARTICLE IV

Creation, Purpose and Application of the Trust Fund

4.1 Creation of Trust

(a) The Trust Fund hereby created and established shall comprise the entire assets hereof including those derived from Employer contributions, together with all insurance policies, if any (including dividends, refunds, or other sums payable to the Trustees on account of such policies), all investments made and held by the Trustees, all income therefrom and any other property received and held by the Trustees.

(b) The Trustees are hereby designated as the persons to receive Employer contributions and the Trustees are vested with all right, title and interest in and to the Trust Fund for the uses, purpose and duties set forth in this Trust Agreement.

4.2 Purpose of Trust

The Trust Fund is created, established and maintained for the sole and exclusive purpose of providing life, accident, health and welfare and other benefits for employees and their dependents, consistent with applicable laws.

4.3 Plan or Plans

(a) The Trustees are hereby authorized:

(1) To establish and administer a Plan or Plans pursuant to Section 4.2 hereof, which will embody the benefits to be provided by the Employer contributions, the conditions of eligibility for such benefits, and such other items as the Trustees shall deem it necessary to include. The aforesaid items of the Plan shall be determined by the Trustees in their sole discretion on the basis of actuarial principles, and shall be subject to change by the Trustees retroactively, or otherwise, from time to

time; provided, however, that the Trust Fund and the Plan or Plans thereby adopted shall be consistent with applicable law and further provided that the contributions made by Employers to the Trust Fund shall be deductible as an item of expense of such Employers for income tax purposes.

(2) To apply for and enter into a group insurance policy or policies from an insurer or insurers or to enter into other agreements which provide eligible persons with insurance on account of death, disability, accident, sickness, medical expense, hospitalization, or other benefits. The Trustees shall in their sole discretion determine which, if any, of the above described group insurance policy benefits shall be provided as the Trust Fund may afford.

(3) To procure fidelity bonds required by law and other insurance covering claims against the Trust Fund based upon conduct of any Trustee, Trust employee or agent or anyone providing services to the Trust. Such insurance shall provide for recourse against any person for whose conduct the Trust may be liable, in accordance with the Employee Retirement Income Security Act of 1974 ("ERISA"). Nothing herein shall be construed to prohibit any Trustee or other person in a fiduciary relationship under the Trust from purchasing insurance to cover liability for his own account, or a Union or Employer from purchasing insurance to cover the liability of one or more persons who serve in a fiduciary capacity under the Trust Fund.

(b) Any employee covered by any benefit program adopted by the Trustees whose claim is denied in whole or in part by the Administrator shall be entitled to appeal said denial to the Trustees, except for denials based upon the failure of the employee's employer to make such contribution as is required for current eligibility. Any such appeals shall be in writing and shall be delivered to the Administrator, who shall submit the matter for disposition by the Trustees. The Trustees may delegate their authority to decide such matters to a committee consisting of one Employer Trustee and one Union Trustee. The decision of the Board of Trustees or its Committee shall be final and binding.

(c) The authorities vested in the Trustees pursuant to this Article, or exercised with respect to any other matter in the conduct of Trust business, shall be carried out in accordance with the standard of care provided in ERISA.

4.4 Application of the Fund

To effect the aforesaid, the Trustees shall have the power, but shall not be required to use and apply the Trust Fund for the following purposes:

(a) To make payments to insurance companies or other

persons qualified under applicable regulations to provide the benefits specified within the purposes of this Trust Fund for such benefits and payments as may be designated by the Board of Trustees;

(b) To pay or provide for the payment of the amounts determined by the Trustees as reasonable for the services of any person, persons or organization retained for collecting Employer contributions and administering the affairs of the Trust Fund, subject to the provisions of ERISA;

(c) To pay or provide for the payment of all reasonable and necessary expenses, costs and fees, other than those covered in subsection (b) above, incurred by the Trustees in connection with the maintenance of this Trust Fund, including the employment of such actuarial, legal, and expert assistance, as the Trustees in their discretion deem necessary or appropriate in the performance of their duties, subject to the provisions of ERISA;

(d) To pay or provide for the payment of all real and personal property taxes income taxes and other taxes or assessments of any and all kinds levied or assessed under the existing or future laws upon or in respect to the Trust Fund or any property forming a part thereof;

(e) To maintain a reserve for expected administrative expenses; and,

(f) To invest and reinvest such portion of the Trust Fund as is not required for current expenditures and charges in accordance with an investment policy established by the Trustees in writing from time to time, as permitted by ERISA, as amended, and deemed appropriate for comparable health and welfare funds. All income from such accounts and investments shall be set aside for the exclusive purpose of this Trust.

ARTICLE V

Collection of Employer Contributions

5.1 Employer contributions to the Trust Fund shall be overdue if not paid by the tenth (10th) day of the month in which such contributions are due. If an Employer fails to make a proper payment when due, he shall be notified by certified mail, return receipt requested, that payments are due.

5.2 If payment is not made within ten (10) days of the date when said payment is due, the Employer shall be considered delinquent. It is recognized and acknowledged that the regular and prompt payment of required Employer contributions to the Trust Fund is essential to the maintenance and effectiveness of the Fund and

that it would be extremely difficult and impractical to fix the actual expense and damage to the Fund which would result from the failure of an individual Employer to make the required payment in full within the time above provided. Therefore, the amount of damage to the Trust Fund resulting from any such failure is agreed as follows:

(a) The sum of six percent (6%) of the amount of payment due or \$25.00, whichever is greater, during the two (2) weeks immediately following the date on which payments become delinquent, and;

(b) The sum of twelve percent (12%) of the amount of payment due, if the delinquency remains unpaid after the first two weeks immediately following the date on which payments become delinquent.

These amounts shall become due and payable to the Fund as liquidated damages and shall be in addition to interest, legal fees and costs reasonably expended by the Trust in collection.

5.3 Simple interest at seven percent (7%) per annum shall be added to any and all delinquent amounts of contributions and liquidated damages owed to the Trust Fund from the date of delinquency to the date of payment or collection.

5.4 The Trustees may, but shall not be required to institute legal proceedings to collect delinquent employer contributions, liquidated damages, interest and attorneys' fees. Such proceedings may be instituted by the Administrator of the Fund if he has received general or specific instructions from the Trustees to do so, and may be brought in the name of the Trust Fund or the claim may be assigned to a third person for collection.

5.5 In connection with the procedures set forth in this Article, or any other action taken by the Trust Fund to assure that contributions are paid promptly and in full, each participating employer shall furnish to the Administrator, on demand, any and all records and information required by the Administrator. The Administrator or his authorized representative may examine the payroll books and records of each participating Employer whenever such examination is directed by the Trustees or deemed necessary or advisable by the Administrator. In the event that an audit of a participating Employer's payroll record or books is performed outside the State of California, the Employer shall pay costs incurred by the Trust Auditor for transportation, meals and lodging in connection with the audit.

5.6 Nothing in this Article shall be deemed to preclude any party to the Trust from taking any action otherwise available to it, or to relieve any participating Employer of its contractual obligations to make contributions.

5.7 Excess contributions paid to the Trust Fund by mistake shall be returned to the Employer, subject to the following conditions.

(a) Refunds or credits for mistaken contributions discovered as a result of the Trust Fund's payroll audit of an Employer or through Employer notification of the Fund are limited to payments made by the Employer during the twelve (12) calendar months preceding the date the Fund receives notice of the error.

(b) Refunds or credits will be permitted only to the extent possible without loss to the Trust Fund. Administrative costs, the costs of reviewing records in connection with the refund request, and the amount of any benefits or premiums paid in reliance on the mistaken contribution will be deducted from the amount to be refunded.

ARTICLE VI

Administration of the Trust Fund

6.1 General

The administration of the Trust Fund shall be vested wholly in the Trustees, and for such administration the Trustees shall, consistent with the purposes of this Trust Fund, have the power and it shall be their duty to:

(a) Administer the Trust Fund by retaining for that purpose a person, persons, or service organization, and such person, persons or organization shall be deemed an agent or agents of the Trustees;

(b) Make such uniform rules and regulations as are consistent with and necessary for effectuating the provisions of the Agreement, and the Plan or Plans;

(c) Construe the provisions of this Agreement and the terms used therein and any construction adopted by the Trustees in good faith shall be final and binding upon the Unions, Employers, Employees, their dependents and beneficiaries;

(d) In addition to such other powers as are set forth herein or conferred by law:

(1) To enter into any and all contracts and agreements for carrying out the terms of this Agreement and for the administration of the Trust Fund and to do all acts as they in their discretion may deem necessary or advisable and such contracts, agreements and acts shall be binding and conclusive on the Unions, Employers, Employees and beneficiaries; and,

(2) To do all acts whether or not expressly authorized herein which the Trustees may deem necessary or proper for the protection of the Trust Fund held hereunder, and their judgment shall be final;

(e) Promulgate rules and requirements for the admission of additional Unions and Employers in this Trust Fund and in the Plan or Plans adopted thereunder, and for the acceptance of the provisions of their Collective Bargaining Agreements relating to the Trust, and such other rules and requirements as may in their discretion be deemed proper and necessary for the sound and efficient administration of the Trust Fund provided that such rules and requirements are not inconsistent with this Agreement;

(f) Keep true and accurate books of accounts and records of all their transactions which shall be open to the inspection of any Trustee at all times and which shall be audited at least annually by a certified public accountant selected by the Trustees. Such audits shall be available at all times for inspection by interested persons at the principal office of the Trust Fund;

(g) Administer the Trust Fund in conformity with this Agreement, as from time to time amended, and in conformity with the applicable laws. The Trustees may delegate any of their ministerial powers or duties to any agents or employees of the Trust;

(h) Shall have the power to appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of the Trust. The Trustees or any individual to whom the Trustees delegate fiduciary responsibilities under this Trust Agreement may employ one or more persons to render advice with regard to any fiduciary responsibilities. Any Trustee or other fiduciary with respect to the Fund may serve in more than one fiduciary capacity with respect to the Fund;

(i) Shall have the power to authorize the Administrator of the Trust Fund to accept legal process on behalf of the Fund; and,

(j) Shall have the power to maintain any and all actions or legal proceedings necessary or advisable for the protection of the Trust Fund and/or the procurement of Employee benefits contemplated thereby.

ARTICLE VII

Liability of Trustees, Employers and Unions

7.1 The Trustees shall be free to act upon any paper or document believed to be genuine and purporting to be made, executed, or delivered by the party in whose name it purports to be, and

shall be indemnified and held harmless by the Trust Fund, for any liability arising from such actions, in accordance with applicable law.

7.2 The Trustees, and each of them, shall have no liability for any act or omission to act of any kind done, made or suffered by the Trustees, or any of them, in the course and scope of their duties as herein described, except any liability resulting from breaches by said Trustees of the fiduciary duties owed by them in accordance with applicable law. The Trust Fund shall exonerate, reimburse, indemnify and save harmless each Trustee individually, and the Trustees collectively, to the extent permitted by applicable law, against any and all expenses and liabilities arising out of their Trusteeship or which may be authorized by the Trustees, and the Trustees, individually and collectively, shall be further indemnified and reimbursement from the Trust Fund, to the extent permitted by applicable law, for the cost and expense, including attorneys' fees, of defending any suit or proceeding brought against the Trustees, individually or collectively, or the Fund. In this connection, the Trustees shall be privileged to select and employ legal counsel to defend them, or represent them in the proceeding. If a Trustee is found guilty by the final determination of a court of competent jurisdiction of breaching the fiduciary duties owed by him in accordance with applicable law, and further, to have acted in bad faith in breaching said fiduciary duties, he shall be obligated to reimburse the Trust for any sums expended on its behalf pursuant to the preceding sentence. The Trustees shall not be liable for any act or omission of any agent or employee of the Trustees selected with reasonable care, except as provided by applicable law. The Trustees shall not be liable to the Union, the Employer or any Employee or any other person for any action done, made or suffered by them, or omitted by them in good faith, except as otherwise provided by applicable law.

7.3 Neither the Trustees nor any individual or successor Trustee shall be personally responsible for any liability or debt of the Fund contracted by them as Trustees, or for the nonfulfillment of contracts, subject to the provisions herein which prescribe the standard of care applicable to Trustee action. Nothing in this Trust Agreement or in any plan or contract entered into hereunder, shall be construed to broaden the personal liability of any Trustee or any other person in the position of a fiduciary under this Fund beyond the scope of liability applicable to fiduciaries as provided in ERISA, as amended.

7.4 The Trustees may consult legal counsel concerning any question which may arise with reference to their duties or powers, or with reference to any other matter pertaining to this Agreement, or to the Trust Fund hereby established. The opinion of such legal counsel shall be considered full and complete authorization and protection with respect to any action taken or omitted by the Trustees in good faith in accordance with the opinion of such

counsel, subject to the applicable standard of care in the exercise of judgment as set forth in ERISA, as amended.

7.5 None of the Employers shall be liable to Employees or beneficiaries for the failure of the Trustees to secure the benefits contemplated herein or in the Plan or for any default or neglect of the Trustees.

ARTICLE VIII

Rights of Parties in the Fund

8.1 Nothing in this Agreement shall be construed as making a Union or an Employer liable for the payment required to be made by any other Employer and each Employer's liability shall be limited solely to the payment of the amount designated by the Collective Bargaining Agreement. Neither the Unions, Employers, nor Trustees shall be liable for any benefits as contemplated by this Trust Agreement. Neither the Employers, the Unions, nor any other person shall be liable for any debts, liabilities or obligations of the Trust or of the Trustees. Neither a Union, nor Employer, nor any Employee nor any beneficiary of any benefit program hereunder, nor any other person shall have any individual right, title or interest to any of the money of the Trust Fund other than as specifically provided in this Trust Agreement or under the terms of the Plan. Except as provided in Section 5.7 above, no Employer shall have the right to the return of any money paid by it into the Trust Fund, and no Employee shall have any right, privilege or option to receive any cash or other consideration from the Trust Fund in lieu of the benefits provided hereunder.

8.2 The Trust Fund shall provide and pay benefits under programs adopted pursuant to the Collective Bargaining Agreements, Subscriber Agreements and this Trust Agreement, but the liability of the Trust Fund shall in no event extend beyond the funds which are available to it from contributions made to the Trust Fund in accordance with the Collective Bargaining Agreements and Subscriber Agreements and such income as is derived therefrom.

8.3 The Trust Fund has been established for the sole and exclusive purpose of providing benefits for Employees or their beneficiaries in accordance with the provisions of the Plan. No persons, whether Employees, beneficiaries, or otherwise, will have any interest in the Trust Fund except as expressly provided in the Plan or this Trust Agreement. At no time will any assets of the Trust Fund be used for, or diverted to, purposes other than the exclusive benefit of Employees, beneficiaries, or other persons who may be entitled to receive benefits under the Plan, nor will any assets of the Trust Fund revert to or become the property of an Employer except as provided in Section 5.7 above.

8.4 No money, property, equity or interest of any nature whatsoever in the Trust Fund, in a group insurance policy, or in any benefits or monies payable therefrom, shall be subject in any manner by any employee or beneficiary or person claiming through any of them, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, lien or charge and any attempt to cause the same to be subject thereto shall be null and void.

ARTICLE IX

Additional Parties

9.1 Employers party to a Collective Bargaining Agreement may become a party to this Trust Agreement and to the Trust Fund established hereby upon execution of the Subscriber Agreement attached hereto and upon approval by the Board of Trustees. Other Employers may become a party to this Trust Agreement by execution of a Subscriber Agreement approved by the Board of Trustees.

9.2 No insurance company will be considered party to the Plan or the Trust Fund for any purpose, or in any way responsible for its performance, validity or sufficiency. An insurance company will be obligated only to the extent set forth in any contracts issued by it and will not be required to take or permit any action contrary to the provisions of such contracts.

9.3 No person, partnership, corporation, or other association dealing with the Trustees shall be obligated to see to the application of any funds or property of the Trust Fund, unless such obligation is set forth in a written agreement, or to see that the terms of this Trust Agreement have been complied with, or be obligated to inquire into the necessity for or expediency of any act of the Trustees. If any instrument is executed by the Trustees (whether by all of them or in any manner specified in this Trust Agreement) it shall establish from the fact of such execution alone, in favor of any person, partnership, corporation, or other association relying thereon, that at any time of delivery of such instrument this Trust Agreement was in full force and effect, that such instrument was executed and delivered in accordance with the terms of this Agreement, and that the Trustees were duly authorized and empowered to execute and delivery such instrument.

ARTICLE X

Miscellaneous Provisions

10.1 Employers' Obligations to Furnish Information

Each Employer shall promptly furnish to the Trustees on

demand any and all records of his Employees, concerning the classification of such Employees, their names, Social Security number, amount of wages paid and hours worked and any other payroll records and information that the Trustees may require in connection with the administration of the Trust Fund and for no other purpose. Each Employer shall also submit in writing to the Trustees at such regular periodic intervals and in such form as the Trustees may establish such of the above data as may be requested by the Trustees. The Trustees or their authorized representatives may examine the payroll books and records of each Employer whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust Fund.

10.2 Notices

Notice given to a Trustee, Union, Employer, or any other person shall, unless otherwise specified herein, be sufficient if in writing and delivered to or sent by postpaid first-class mail or prepaid telegram to the last address as filed with the Trustees. Except as herein otherwise provided, the delivery of any statement or document required hereunder to be made to a Trustee, Union or Employer, shall be sufficient if delivered in person or if sent by postpaid first-class mail to his or its last address as filed with the Trustees.

10.3 Trustees' Discretion

The Trustees shall have discretion to determine all questions of interpretation and construction of this Agreement, and of any Plan or Plans adopted pursuant thereto, including but not limited to any provisions relating to eligibility of Employees to receive benefits. Such determination shall be final and binding upon all parties, including Employees, retired Employees, their dependents and beneficiaries.

ARTICLE XI

Modifications

11.1 This Agreement may be modified in any respect from time to time by the Trustees except that no modification shall alter the exclusive purpose of the Trust Fund to provide a plan of welfare benefits for the Employees in accordance with applicable law.

ARTICLE XII

Governing Law

12.1 The interpretation of this Agreement and the administration of the Trust Fund created hereby shall be governed by the laws

of the State of California, to the extent not preempted by federal law.

ARTICLE XIII

Duration

13.1 The parties contemplate that new Collective Bargaining Agreements shall be entered into continuing the Trust hereby created, and intend that this Trust herein shall continue in effect indefinitely. However, in the event that this Fund is terminated, any and all money remaining in the Fund after the payment of insurance premiums, direct benefit payments and other expenses of the Fund and Plan shall be used for the procurement of other welfare benefits for the Employees then participating in the Fund. In no event shall any of the money remaining revert to or be recovered by any Employee, Union or Employer.

13.2 This Trust Fund shall in any event terminate upon the death of the last surviving Employee who was eligible to receive benefits hereunder at the time of creation of this Fund; provided that if, without the benefit of this provision, this Fund does not violate the rule against perpetuities, it shall continue in perpetuity unless otherwise terminated.

The undersigned hereby accept this Trust and agree to adopt the terms of this Agreement.

Executed this 11th day of February, 1993.

UNION TRUSTEES

Jack R. Decker, Sec'y
Richard Dominguez
Dennis Hart

EMPLOYER TRUSTEES

Frank DeLlano
Arthur P. Packer

AGREEMENT AND DECLARATION OF TRUST
OF THE
BAY AREA DELIVERY DRIVERS SECURITY FUND

Amendment No. 1

Pursuant to the authority granted them in Article XI of the Agreement and Declaration of Trust for the Bay Area Delivery Drivers Security Fund, the Trustees hereby amend said Agreement as follows:

Article V, Section 5.3 shall be deleted and the following inserted in its place:

5.3 Simple interest at seven percent (7%) per annum shall be added to any and all delinquent amounts of contributions and liquidated damages owed to the Trust Fund from the date of the delinquency to the date of payment or collection. In the case of delinquent contributions discovered through the Trust Fund's payroll audit of an Employer, simple interest at seven percent (7%) per annum shall be assessed from the date the delinquent contributions originally became due to the date of payment or collection, but only if the Employer fails to pay the contributions within thirty (30) days of the Fund's post-audit billing.

7th The parties hereto have executed this instrument as of the day of May, 1993 in Dublin, California.

EMPLOYER TRUSTEES

UNION TRUSTEES

Frank J. McLaughlin
James J. Ferry
Arthur P. Miller

Jack L. Beattie
Robert J. Rodriguez

AGREEMENT AND DECLARATION OF TRUST
OF THE
BAY AREA DELIVERY DRIVERS SECURITY FUND

Amendment No. 2

Pursuant to the authority granted them in Article XI of the Agreement and Declaration of Trust for the Bay Area Delivery Drivers Security Fund, the Trustees hereby amend said Agreement as follows.

Effective ~~September 15, 1994~~ ^{January 1, 1995}, the following shall be added to the Agreement as Article V, Section 5.8:

5.8 A. Notwithstanding any other provision of this Agreement, and in addition to the powers enumerated in Articles IV, V and VI of this Agreement, the Board of Trustees shall have the authority to assess contributing employers who terminate participation in the Trust Fund a termination of participation premium. The termination premium shall be determined as follows:

1. The total liabilities of the Trust Fund, including incurred but unreported claims, will be calculated using generally accepted accounting principles as of the last day of the work month preceding the employer's date of termination.
2. If total liabilities exceed total assets, the Fund deficit shall be divided by the number of Fund participants to determine the per capita deficit.
3. The terminating employer's termination premium shall be equal to the Fund's per capita deficit on the date of termination multiplied by the average number of employees reported to the Fund by the employer during the twelve (12) month period preceding its termination.

B. An employer shall be liable for a "partial withdrawal" termination premium upon withdrawal of its employees at one or more plants while other of its employees continue to participate in the Trust Fund. The partial withdrawal termination premium shall be calculated in accordance with A(1)-(3) above, except that in determining the amount of such premium the Fund's per capita deficit will be multiplied by the average number of employees reported to the Fund by the employer during the twelve (12) month period preceding the partial withdrawal for the specific plant or plants being withdrawn.

C. An employer shall be liable for termination premium if it terminates participation in the Trust Fund for any reason. The termination premium will become due and payable by the employer upon demand by the Fund. An employer failing to pay its termination premium within thirty (30) days of written notice from

the Trust Fund will be assessed liquidated damages and interest in accordance with Article V of the Trust Agreement.

D. This amendment may be executed in counterparts.

Executed this 1 day of December, 1994 in Dublin, California.

EMPLOYER TRUSTEES

UNION TRUSTEES

Frank Della
Alan Madary
Arthur P. Rabin

Justin Smith
Steve Hart
Paul Jackson