

**ROAD CARRIERS – LOCAL 707 PENSION FUND  
SUSPENSION APPLICATION**

**EXHIBIT 12**

ROAD CARRIERS LOCAL 707  
WELFARE AND PENSION TRUST FUNDS

RESTATEMENT OF AGREEMENT AND DECLARATION  
OF TRUST

WHEREAS there has heretofore been entered into an AGREEMENT AND DECLARATION OF TRUST, made and entered into between Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local Union 707, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called the "Union," and the companies whose signatures are affixed hereto or to a counterpart hereof, hereinafter called the "Employers," and

UNION TRUSTEES

Nicholas J. Picarello  
Kevin McCaffrey  
Vincent Cangelosi

EMPLOYER TRUSTEES

Richard Muller  
Peter Hassler  
Frank Santanella

who with their successors designated in the manner herein provided are hereinafter called the "Trustees."

WHEREAS the Union and the Employers have entered into written Collective Bargaining Agreements requiring payments by the Employers for the purpose of providing pension and welfare programs for the Employees covered by said agreements, and

WHEREAS to effectuate the said purposes it is desired to maintain a trust for welfare benefits and to maintain a separate trust for pension benefits, pursuant to the requirements of the Labor-Management Relations Act of 1947, as amended, and the Employees Retirement Income Security Act of 1974, as amended, and

WHEREAS such trust funds have been heretofore established and it is desired to continue such trust funds pursuant to this Trust Agreement which has been amended and restated as set forth in accordance with the decisions of the Trustees, and

WHEREAS the Trust Agreement has previously been restated in order to incorporate the amendments passed in compliance with and pursuant to the Multiemployer Pension Plan Amendments Act of 1980, and

WHEREAS the Trust Agreement has been amended in order to comply with the Tax Reform Act of 1986, and other legislation, and

WHEREAS the Trust Agreement has been amended in order to comply with the Tax Reform Act of 1986, and other legislation, and

WHEREAS additional amendments have been made requiring a new Restatement thereof,

NOW, THEREFORE, THIS AGREEMENT AND DECLARATION OF TRUST WITNESSETH:

That in consideration of the premises and in order to create said trusts to be known as the "ROAD CARRIERS LOCAL 707 WELFARE TRUST FUND" and the "ROAD CARRIERS LOCAL 707 PENSION TRUST FUND," it is mutually understood and agreed as follows:

## ARTICLE I

### DEFINITIONS

Section 1. EMPLOYER. The term "Employer" shall mean each employer who is a signatory to this Agreement, and who has duly executed a Collective Bargaining Agreement with the Union providing for the payment of Employer Contributions to the Welfare Fund or to the Pension Fund, or who may hereafter execute such Collective Bargaining Agreement and become a signatory to this Trust Agreement, providing such Employer satisfies the requirements for participation as established by the Trustees. The term "Employer" shall also include the Union providing the Union makes contributions for its employees on the same basis as other Employers, but the Union shall not otherwise participate as an Employer herein. It shall also include the Pension and Welfare Funds provided contributions are made on behalf of employees of the Funds.

Section 2. UNION. The term "Union" shall mean Local 707 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Section 3. EMPLOYEES. The term "Employees" shall mean all of the employees of an Employer who are covered by the Collective Bargaining Agreement in effect between the Employer and the Union and shall include retired Employees. It shall also include employees of the Union for whom contributions are made in accordance with Section 1 of this Article. It shall also include the employees of the Pension and Welfare Funds for whom contributions are made in accordance with Section 1 of this Article.

Section 4. TRUSTEES. The term "Trustees" shall mean the Trustees designated in this Trust Agreement together with their successors designated in the manner provided herein.

Section 5. TRUST AGREEMENT. The term "Trust Agreement" or "Agreement and Declaration of Trust" shall mean this instrument including any amendments hereto and modifications hereof.

Section 6. EMPLOYER CONTRIBUTIONS. The term "Employer Contributions" shall mean payments by Employers to either of the Trust Funds created by Articles II and III hereof pursuant to Collective Bargaining Agreements.

Section 7. PENSION FUND. The term "Pension Fund" shall mean the trust fund created by Article III hereof.

Section 8. WELFARE FUND. The term "Welfare Fund" shall mean the trust fund created by Article II hereof.

Section 9. TRUST. The term "Trust," "Trusts," "Trust Fund" and "Trust Funds" shall mean the trusts created by Articles II and III hereto, or either of them.

Section 10. COLLECTIVE BARGAINING AGREEMENT. The term "Collective Bargaining Agreement" shall mean any written collective bargaining agreement between the Union and an Employer which requires contributions by the Employer to the Pension Fund and Welfare Fund or either of said Trust Funds. It shall also mean a written agreement by the Union with either of the Trust Funds to contribute for its employees in accordance with Section I.

Section 11. INVESTMENT MANAGER. The term "Investment Manager" shall mean any fiduciary who has been designated by the Trustees to manage, ~~acquire, or dispose of any assets of the Funds, who is registered as an investment~~ adviser under the Investment Advisers Act of 1940, or is a bank as defined in that Act or an insurance company qualified to perform services under the laws of more than one state and who has acknowledged in writing that it is a fiduciary with respect to the Funds.

Section 12. PENSION PLAN. The term "Pension Plan" shall mean the rules and regulations adopted by the Trustees with respect to pension benefits and eligibility provided under the Pension Fund.

Section 13. WELFARE PLAN. The term "Welfare Plan" shall mean the rules and regulations adopted by the Trustees with respect to welfare benefits and eligibility provided under the Welfare Fund.

Section 14. ERISA. The term "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

**ARTICLE II**  
**WELFARE FUND**

Section 1. The Union and the Employer hereby create and establish with the Trustees hereinafter designated a Trust, to be known as the "Road Carriers Local 707 Welfare Trust Fund," which shall comprise of assets derived from all Employer contributions received and to be received for the purposes of this Trust pursuant to Collective Bargaining Agreements, and any income derived therefrom, and all insurance policies including dividends, refunds or other sums payable to the Trustees on account of such policies, and all investments made by the Trustees, and all income and dividends, and any and all other property payable to or held by the Trustees for the uses and purposes of this Trust.

Section 2. The Trustees agree to receive all such Employer Contributions, and other properties and assets and to hold the same in trust hereunder for the uses and purposes of the Trust created hereunder.

Section 3.

(a)The Road Carriers Local 707 Welfare Trust Fund is created for the purpose of providing and maintaining through self-insurance wherever permissible under the law and agreed upon by the Trustees, and through insurance policies issued by duly licensed insurance carriers, and by agreements with other lawful providers of benefits, insurance benefits required to be paid and made under Chapter 600 of the laws of the State of New York (approved and effective April 13, 1949 and the similar law of the State of New Jersey, if applicable); and such other benefits in the judgment of the Trustees, as may be determined by them to be advisable and practicable, such as group life, group accident and health, group hospitalization, medical and surgical benefits, and other or similar benefits, for Employees and for the spouses of such Employees and their children, it being understood that the provisions for sickness benefits hereunder, and such other benefits hereinabove mentioned as the Trustees may determine, shall be in lieu of any obligation imposed upon Employers or Employees for insurance and contributions required by the above-mentioned laws.

(b)The Trustees may agree with regard to any such policy of insurance with the insurance carrier thereof, and with regard to any agreement with any other lawful provider of benefits, upon waiting periods, definition of full-time employment, and such other provisions concerning eligibility of Employees, their spouses and children, as the Trustees may deem appropriate.

Section 4. The Trustees shall use and apply the property and assets of the Fund created hereunder for the following purposes:

(a) To pay or provide for the payment of all reasonable and necessary expenses of collecting the Employer Contributions and administering the affairs of the Fund, including but without limitation all expenses which may be incurred in connection with the establishment of the Fund, the employment of such administrative, legal, accounting, actuarial and other expert and clerical assistance, the leasing of such premises and the purchase or lease of such materials, supplies and equipment as the Trustees, in their discretion, find necessary or appropriate in the performance of their duties.

(b) To pay or provide for the payment of premiums on the policy or policies of insurance when such premiums shall become due.

(c) To make any payments as required by agreements with other providers of benefits.

(d) To pay benefits directly in the event of self-insured benefits.

(e) To establish and accumulate as part of the Fund, if in their discretion the Trustees consider it advisable, an adequate reserve to carry out the purposes of this Trust.

### ARTICLE III

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#### PENSION FUND

Section 1. The Union and the Employer hereby create and establish with the Trustees hereinafter designated a Trust, to be known as the "Road Carriers Local 707 Pension Trust Fund" which shall comprise of all assets derived from Employer contributions received and to be received for the purposes of this Trust pursuant to Collective Bargaining Agreements, and all investments made by the Trustees and all income and dividends derived therefrom, and any and all other property payable to or held by the Trustees for the uses and purposes of this Trust.

Section 2. The Trustees agree to receive all such Employer Contributions and other properties and assets and to hold the same in trust hereunder for the uses and purposes of the Trust created hereunder.

Section 3. The Road Carriers Local 707 Pension Trust Fund is created and established for the purposes of providing and maintaining pension and retirement benefits for Employees. The Trustees shall agree upon and formulate the provisions, regulations and conditions of the pension program herein contemplated, including

those relating to eligibility of Employees, retirement age, and any or all other matters relating thereto which the Trustees may deem appropriate for the determination of retirement benefits and the administration of the pension program. A copy of such Pension Plan shall be adopted and filed by the Trustees as part of the records and minutes of the Trustees. The Trustees may amend such Plan from time to time, provided that such amendments comply with the purposes above stated. A copy of each such amendment shall be adopted and filed by the Trustees as part of the records and minutes of the Trustees. The Pension Plan to be formulated by the Trustees shall be such as to qualify under the Internal Revenue Code, as amended, so that contributions of Employers to the Pension Fund will be deductible by such Employers for tax purposes under said Code, and approval of such Plan by the United States Treasury Department shall be obtained. The administration of such Plan and its terms and provisions, as amended from time to time, shall be such that it shall at all times be qualified under the Internal Revenue Code.

Section 4. The Trustees shall use and apply the property and assets of the Trust Fund created hereunder for the following purposes:

(a) To pay or provide for the payment of all reasonable and necessary expenses of collecting the Contributions and administering the affairs of the Fund, including but without limitation all expenses which may be incurred in connection with the establishment and maintenance of the Fund, the employment of such administrative, legal, accounting, actuarial and other expert and clerical assistance, the purchase or lease of such premises and the purchase or lease of such materials, supplies and equipment as the Trustees, in their discretion, find necessary or appropriate in the performance of their duties.

(b) To pay or provide for the payment of retirement or other benefits to eligible Employees and to such of their beneficiaries, if any, as the Trustees may determine, in accordance with the terms, provisions and conditions of the Pension Plan to be formulated and agreed upon hereunder.

(c) To establish and accumulate, if in their discretion the Trustees consider it advisable, adequate reserves to carry out the purposes of this Trust.

#### ARTICLE IV

#### TRUSTEES

Section 1. The Trustees under this Agreement and Declaration of Trust, who shall be Trustees of the Trusts created and established by Articles II and III hereof, shall be six in number, three of whom shall be Union Trustees and three of whom shall be Employer Trustees. The said Trustees shall be the named fiduciaries under

and one Employer Trustee shall be designated as Co-chairmen of the Board of Trustees.

Section 2. The Union Trustees shall be Nicholas J. Picarello, Kevin McCaffrey and Vincent Cangelosi.

Section 3. The Employer Trustees shall be Richard P. Muller, Peter Hassler and Frank Santanella.

Section 4. The Trustees named in the foregoing Sections 2 and 3 hereby accept the Trusts created and established by this Agreement and Declaration of Trust and consent to act as Trustees thereof and declare that they will administer the said Trusts as separate trusts. The signature of the Trustee to any counterpart or copy of this Agreement and Declaration of Trust shall be conclusive evidence of his acceptance as aforesaid.

Section 5. Each Trustee above named and each successor Trustee shall continue to serve as such until his death, incapacity, resignation or removal as herein provided.

Section 6.

(a) In the event that any Employer Trustee or successor Employer Trustee shall die, become incapable of acting, resign, fail to act, or be removed, then within five (5) business days thereafter a successor Employer Trustee shall be designated and appointed by the acting Employer Trustees; and upon the filing with the Board of Trustees, certifying the name of the successor Employer Trustee who has been so designated and the execution of a copy of this Trust Agreement by said successor Employer Trustee, then such designation shall be effective and binding in all respects.

(b) In case any Union Trustee shall die, become incapable of acting, resign or be removed, a successor Union Trustee shall be immediately designated by the Executive Board of the Union. Upon the filing with the remaining Trustees of a certificate in writing signed by the President or Secretary-Treasurer of the Union, and the signing of a copy of this Trust Agreement by said designated successor, such designation shall be effective and binding in all respects. Any Union Trustee or successor Union Trustee, may be removed at any time by the Union by filing with the remaining Trustees a certificate in writing to such effect executed by the President or Secretary-Treasurer of the Union.

(c) In the event of a vacancy or vacancies, until the designation of a successor Trustee or Trustees, as hereinabove provided, the remaining

Trustees shall have full power to act and shall act. A Trustee may resign and become and remain fully discharged from all further duty or responsibility hereunder upon giving thirty (30) days' notice in writing to the remaining Trustees, or such shorter notice as the remaining Trustees may accept as sufficient. The notice shall state a date on which such resignation shall take effect; and such resignation shall take effect on the date specified in the notice unless a successor Trustee shall have been appointed at an earlier date, in which event such resignation shall take effect immediately upon the appointment of such successor Trustee. Any Trustee may be removed from office at any time by the parties or entity which appointed such Trustee. Any Employer Trustee may be removed for just cause by an arbitrator on the complaint of any one or more Employer Trustees. The decision of the arbitrator shall be final and binding. The cost of arbitration shall be borne by the parties to the arbitration on an equal basis. The arbitrator shall be selected by the parties in accordance with the rules of the American Arbitration Association. The parties are defined as the Employer Trustee whose removal is sought and the Employer Trustees seeking removal.

Section 7. Any successor Employer Trustee or any successor Union Trustee shall immediately upon his designation as a successor Trustee and his signature on a copy of this Trust Agreement, become vested with all the property, rights, powers and duties of a Trustee hereunder with like effect as if originally named as a Trustee, and all necessary persons shall be so notified.

## ARTICLE V

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### ADMINISTRATION OF THE TRUSTS

Section 1. The Trustees may exercise all rights or privileges granted to the policy holder by provisions of each insurance policy or allowed by the insurance carrier of such policy and may agree with such insurance carrier to any alteration, modification or amendment of such policy and may take any action respecting such policy or the insurance provided thereunder which they, in their discretion, may deem necessary or advisable, and such insurance carrier shall not be required to inquire into the authority of the Trustees with regard to any dealings in connection with such policy.

Section 2. The Trustees shall have the power to construe the provisions of this Agreement and Declaration of Trust and the terms used herein, any plan of benefits promulgated for the Welfare Fund, and the provisions of the Pension Plan. Any construction adopted by the Trustees in good faith shall be binding upon the Union; the Employees, their dependents and beneficiaries; and the Employers. The Trustees

shall be the sole judges of the standard of proof required in any pension or welfare matter, and the application and interpretation of the Welfare or Pension Plan, and decisions of the Trustees made in good faith shall be final and binding on all parties.

Section 3. The Trustees are hereby empowered in addition to such other powers as are set forth herein or conferred by law:

(a) To invest and reinvest such part of either Trust Fund as in their sole judgment is advisable and is not required for current expenditures in such securities (of any classification) as they may select in their sole discretion whether or not the same be authorized by law for the investment of trust funds generally.

(b) To buy, sell, exchange, lease, convey, or dispose of any property, whether real or personal, at any time forming a part of either Trust Fund upon such terms as they may deem proper and to execute and deliver any and all instruments of conveyance and transfer in connection therewith.

(c) To vote in person or by proxy upon securities held by the Trustees and to exercise by attorney any other rights of whatsoever nature pertaining to securities or any other property at any time held by them hereunder.

(d) To exercise options, conversion privileges, or rights to subscribe for additional securities and to make payments therefor.

(e) To consent to or participate in dissolutions, reorganizations, consolidations, mergers, sales, leases, mortgages, transfers or other changes affecting securities held by them and in connection therewith, and to pay assessments, subscriptions or other charges.

(f) To enter into any and all contracts and agreements for carrying out the terms of this Agreement and Declaration of Trust and for the administration of either of the Trust Funds and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the employees and beneficiaries involved.

(g) To comprise, settle, arbitrate and release claims or demands in favor of or against the Trusts or either of them, on such terms and conditions as the Trustees may deem advisable.

(h) To keep property and securities registered in the name of the Trustees or in the name of a nominee or nominees or in unregistered or bearer form.

(i) To keep property or securities in the custody of a bank or trust company.

(j) To establish and accumulate as part of the Trust Funds or either of them a reserve or reserves, adequate, in the opinion of the Trustees, to carry out the purposes of either or both of such Trusts.

(k) To allocate between the Welfare Fund and the Pension Fund expenses not solely applicable to either of such Funds, on the basis of such ratio as the Trustees shall, from time to time in their discretion, deem proper.

(l) To borrow money in such amounts and upon such terms and conditions as shall be deemed advisable by the Trustees or proper to carry out the purposes of the Trusts and to pledge any securities or other property for the repayment of any such loans.

(m) To hold part or all of the funds of the Trusts uninvested.

(n) To pay out the funds of the Trusts all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Funds or any money, property or securities forming a part thereof.

(o) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

Section 4. Trustees who receive full pay from an Employer or any Association of Employers, or from the Union shall not receive any compensation from the Trust Funds for their services but may receive reimbursement for expenses properly and actually incurred. A Trustee who does not receive full-time pay from an Employer or any Association of Employers, or from the Union, may receive reasonable compensation from the Trust Funds for services rendered by the said Trustee provided the Trustee's Employer does not compensate said Trustee to the Trust Funds for time spent on Trust Fund business or services rendered to the Trust Funds.

Section 5. The Trustees shall promulgate such requirements for the participation of new Employers in this Agreement and Declaration of Trust and such other rules and regulations as may, in their discretion, be deemed proper and necessary for the sound and efficient administration of the Trusts, provided that such requirements, rules and regulations are not inconsistent with this Agreement and Declaration of Trust.

Section 6. Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Pension Trust Fund or the Welfare Trust Fund contracted by them as such Trustees, or for the non-fulfillment of contracts, but the same shall be paid out of the Trust Fund chargeable therefor and the Trust Funds are hereby charged with a first lien in favor of such Trustees for his or their security and indemnification for any amounts paid out by such Trustee for an such liability and for his and their security and indemnification against any liability of any kind which the Trustees or any of them may incur hereunder; provided however, that nothing herein shall exempt any Trustee from liability arising out of his own misconduct, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof.

Section 7. The Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

Section 8. The Trustees shall not be liable for the proper application of any part of the Pension Fund and Welfare Fund or for any other liabilities arising in connection with the administration or existence of the Trust Funds except as herein provided.

Section 9. The Trustees may from time to time consult with the Trusts' legal counsel and shall be entitled to rely upon such advice of counsel to the Trusts as respects legal questions. The Trustees may from time to time consult with the Trusts' actuarial and insurance consultants and shall be entitled to rely upon their advice as respects actuarial and insurance questions. The Trustees may from time to time consult with the Trusts' certified public accountants and the Funds' auditor and shall be entitled to rely upon their advice as to accounting and auditing questions.

Section 10. The Trustees are hereby empowered to do all acts whether or not expressly authorized herein, which the Trustees may deem necessary to accomplish the general objectives of maintaining the Pension Plan and the Welfare Plan solely in the interest of the participants and beneficiaries for the exclusive purpose of (a) providing benefits to participants and beneficiaries; and (b) defraying reasonable expenses of administering each plan. Such actions shall be taken with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Such actions shall include the diversification of the investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, and all such actions shall be in accordance with the documents and instruments governing each Plan insofar as such documents and instruments are consistent with applicable law.

Section 11. The Trustees may delegate to a subcommittee of the Trustees consisting of an equal number of Employer and Union Trustees or to a person or persons other than Trustees authority to review and make determinations with respect to eligibility for benefits or to carry out other specified fiduciary duties.

Section 12. The Trustees may appoint an Investment Manager or Managers to manage, acquire, or dispose of any assets of the Fund. Such an Investment Manager may or may not be designated a "Corporate Trustee" or "Corporate Agent."

Section 13. If an Investment Manager or Managers has been appointed in accordance with the terms of this Agreement and Declaration of Trust, no Trustee shall be liable for the acts or omissions of such Investment Manager or Managers or under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such Investment Manager.

Section 14. The Trustees may authorize the purchase of insurance for themselves collectively and individually and for any other fiduciary employed by the Trustees to cover liability or losses occurring by reason of the act or omission of a fiduciary, subject to the limitations of the Employee Retirement Income Security Act of 1974, as amended.

Section 15. The Trustees shall keep true and accurate books of account and records of all their transactions, which shall be open to the inspection of each of the Trustees at all times and which shall be audited annually or more often by a certified public accountant selected by the Trustees. Such audits shall be available at all times for inspection by the Union and the Employers at the principal office of the Trust. The Trustees shall keep written minutes of all meetings.

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Section 16.

(a) Questions concerning any action to be taken by the Trustees pursuant to this Agreement and Declaration of Trust shall be decided in the following manner: The entire group of Employer Trustees shall have one vote and the entire group of Union Trustees shall have one vote. The one vote of the Union Trustees shall be cast in accordance with the decision of the majority of said Union Trustees. The one vote of the Employer Trustees shall be cast in accordance with the decision of the majority of said Employer Trustees.

(b) There must be present at any meeting at which any action is taken at least one Union Trustee and at least one Employer Trustee. Any and all action taken at such a meeting in the manner above provided shall have the same effect and force as if taken by all of the Trustees. Either Co-Chairmen may call an emergency meeting of the Board of Trustees.

(c) In all matters where the Trustees are deadlocked, the decision shall be rendered by an arbitrator selected pursuant to the rules of the American

Arbitration Association. The arbitrators selected by the AAA shall be empowered to act only in the event of a deadlock between the Trustees and only for the purpose of deciding the matter or question in dispute which constitutes the subject of the deadlock.

(d) A deadlock shall be deemed to exist between the Trustees whenever a proposed action at any regular or special meeting of the Trustees fails to obtain the concurring vote of at least two Employer Trustees and two Union Trustees. A deadlock shall also be deemed to exist whenever the lack of a necessary quorum of Trustees continues for two successive meetings of the Trustees, or when at two successive meetings the minimum number of affirmative votes needed of the Employer Trustees or of the Union Trustees to validate any action of the Trustees cannot be obtained.

(e) In the event of a deadlock as hereinbefore set forth, the decision of the arbitrator with respect to the matter or question in dispute constituting the subject of the deadlock 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 Pension Fund or Welfare Fund, as the case may be, or allocated between such Funds in such proportion as the Trustees may determine in the event that such costs and expenses are not solely applicable to either of such Trust Funds. The said arbitrator shall be required to render his decision within the time limits fixed by the Trustees.

Section 17. The Trustees may authorize an Employer Trustee and a Union Trustee or any joint group equally composed of Employer and Union Trustees ~~jointly to execute any notice or other instrument in writing, and all persons, partnerships, corporations or associations may rely thereupon that such notice or instrument has been duly authorized and is binding on the Trust and the Trustees.~~

Section 18.

(a) All monies received by the Trustees hereunder shall be deposited by them in such bank or banks as the Trustees may designate for that purpose and all withdrawals or monies from such account or accounts shall be made only by checks signed by the Trustees authorized in writing by the Trustees to sign such checks. Except as hereinafter provided, no check shall be valid unless signed by two persons of whom one shall be a Union Trustee and one an Employer Trustee.

(b) The Employer Trustees shall designate in writing the names of the particular Employer Trustees who may sign checks in the above manner, and the Union Trustees shall likewise designate in writing the names of the particular Union Trustees who may sign checks in the above manner.

(c) The Trustees may, in their discretion, designate and authorize an employee of the Trust to sign checks upon such separate and specific bank account or bank accounts as the Trustees may designate and establish for such purpose.

Section 19. The Trustees and employees who are empowered and authorized to sign checks as aforesaid shall each be bonded by a duly authorized surety company in such amounts as may be determined from time to time by the Trustees. Each employee employed by the Trustees who may be engaged in handling monies of the Trust Fund shall also be bonded by a duly authorized surety company in the same manner. The cost of the premiums on such bonds shall be paid out of the Trust Funds.

Section 20. The Trustees shall administer the Welfare Fund and the Pension Fund as separate Trusts in conformity to this Agreement and Declaration of Trust, as from time to time restated and amended and in conformity to the requirements of the Labor-Management Relations Act of 1947, as amended, the Employee Retirement Income Security Act of 1974, as amended, the Internal Revenue Code, as amended, and all other applicable laws.

Section 21. The Trustees shall provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the Pension Plan and the Welfare Plan and with the requirements of the Employee Retirement Income Security Act of 1974, as amended.

## ARTICLE VI

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### COLLECTION OF CONTRIBUTIONS

#### Section I.

(a) Each and every Employer shall pay to the Trustees the Employers' Contributions to the Welfare Trust Fund and to the Pension Trust Fund as set forth in Articles II and III of this Agreement.

(b) Payment of all Employers' Contributions shall be made by the Employer promptly on the 10th day of each month, covering all payroll periods during the preceding calendar month.

(c) Detailed written reports shall be submitted to the Trustees by the Employers together with each payment, the said reports to be in such form as may be requested from time to time by the Trustees. The Trustees or their authorized representative may at any time audit the books and records of any Employer regarding any Employee of that Employer as defined in this Trust

Agreement, or any other employee of that Employer, or any related employer, as determined by the Trustees in their sole discretion. The audit will take place at the offices of the Employer at which the records are maintained in the ordinary course of business, unless the Trustees give their written consent to a different location. The Employer may be required to pay for the cost of the audit in any case where an audit is required because the Employer has failed to provide the Trustees with pertinent information or in any case where the auditor discovers that an additional amount is due.

(d) In the event the Employer fails to submit the required reports or fails to provide books and records for audit within twenty (20) days after written demand, the Trustees, or their agents, in addition to other remedies they may have, may compute the sum due for any month by adding 10% to the number of hours for the last month for which hours were reported by the Employer (hereinafter referred to as the base month). In the event there was an audit disclosing unreported hours for the base month, the amount of said unreported hours plus 10% thereof shall be added to arrive at the total hours. The total number of hours for the unreported period as determined aforesaid shall be multiplied by the current contribution rate, and the amount of contributions so computed shall be binding on the Employer and shall be deemed the amount due from the Employer for the purposes of any legal proceeding, subject to the right of the Trustees to collect additional amounts disclosed by an audit.

Section 2. The Trustees shall have the power to demand, collect and receive contributions and shall hold such monies separately as part of the Welfare Fund and the Pension Fund, respectively, for the purposes specified in the Agreement and Declaration of Trust.

Section 3. The failure of an Employer to pay the contributions required hereunder promptly when due shall be a violation of the Collective Bargaining Agreement between the said Employer and the Union as well as a violation of the Employer's obligation hereunder. Nonpayment by an Employer of any monies due shall not relieve any other Employer from his obligation to make payments. In addition to any other remedies to which the parties may be entitled, an Employer in default for five working days may be required in the discretion of the Trustees to pay interest at the rate of 10% or the maximum lawful rate applicable to the debtor which ever is lesser, on the monies due to the Trustees from the date when the payment was due to the date when payment is made, together with all expenses of collection incurred by the Trustees, including attorney's fees, auditor's fees, and all incidental disbursements, as follows:

(a) Attorney's Fees: for the time spent by the attorneys for the Funds in collection of delinquent contributions, the Employer shall reimburse the Funds for the reasonable attorneys' fees charged to the Funds in connection with the collection. These fees include charges for all time spent prior to litigation,

during litigation or arbitration, and in enforcement or collection of judgments, plus all related costs.

(b) Auditor's Fees: for the time spent by the Funds' Auditor in auditing the Employer, the Employer shall pay to the Funds reasonable auditors' fees, plus the traveling expense incurred. Auditors' fees shall include a charge for all time expended in auditing the Employer, and shall be calculated utilizing an hourly rate which the Trustees have established as reasonable. The Statement of the Funds' Auditor making the audit as to time expended shall be final and binding on the Employer for all purposes.

Section 4. In addition to any other enforcement remedies which may exist under the Collective Bargaining Agreements and under this Agreement and Declaration of Trust, the Trustees are authorized and empowered to initiate whatever proceedings may be proper and necessary in their discretion for enforcement of Employer's obligations, including but not limited to proceedings at law, and in equity and arbitration, and any remedies which would be generally available to the parties for enforcement of the aforesaid Collective Bargaining Agreements.

Section 5. In any court action for delinquent contributions or for withdrawal liability pursuant to Article VIII, Section 10, in which judgment is awarded to the Trustees and/or the Fund, the Employer shall be required to pay (a) the unpaid contributions or withdrawal liability; (b) interest on the unpaid contributions or withdrawal liability pursuant to the applicable section of this Agreement; (c) the greater of (i) liquidated damages in the amount of 20% of the amount of unpaid contributions or withdrawal liability or; (ii) an amount equal to the interest owed on the unpaid contributions or withdrawal liability; and (d) reasonable attorneys' fees and costs of the action.

## ARTICLE VII

### TERMINATION OF INDIVIDUAL EMPLOYERS

Section 1. An Employer shall cease to be an Employer under this Agreement and Declaration of Trust whenever:

(a) Any Employer Contribution or other payment required to be made by such Employer to or for the account of the Trust Funds or either of them shall not be paid when due; or

(b) Such Employer no longer qualifies as an Employer as defined in Section 1 of Article I hereof.

Section 2. When, as provided in Section 1 of this Article VII, an Employer ceases to be an Employer hereunder,

(a) The Employees of such Employer and their spouses and children shall after 30 days from said date cease to be insured or entitled to any unaccrued benefits, except as to benefits previously earned, and the Trustees shall immediately give such notice thereof as may be required to any insurance carriers providing such insurance or benefits; provided, however that accrued claims of Employees shall in no way be affected.

(b) The Employees of such Employer shall after 30 days from said date cease to accrue benefits under the Pension Plan or Pension Fund.

(c) Such Employer shall have no further rights or powers under this Agreement and Declaration of Trust, except as hereinafter in this Article VII provided.

Section 3. An Employer who ceases to be an Employer hereunder for the reason stated in Section 1 (a) of this Article VII, upon payment to the Trustees of all amounts then due from him, including any interest accrued thereon, and any expenses incurred in connection with his default, may be reinstated hereunder by the Trustees, and in such event the Employees of such Employer shall again be entitled to the benefits of this Agreement and Declaration of Trust, subject to such conditions as may be provided therefor in the Welfare Plan and in the Pension Plan, respectively.

Section 4. An Employer who ceases to be an Employer hereunder for the reason stated in Section 1 (a) of this Article VII shall continue to remain fully liable for Employer Contributions or other payments due hereunder pursuant to a Collective Bargaining Agreement, and an Employer who ceases to be an Employer for the reason stated in Section 1 (b) of this Article VII shall remain liable for any accrued Employer Contributions or other payments which, under the circumstances, may be due to the Trustees under the Collective Bargaining Agreement and this Agreement and Declaration of Trust.

Section 5. The Trustees reserve the right to review the provisions of all collective bargaining agreements regarding contribution obligations; collective bargaining with respect to any new agreement, or written modification of any existing agreement; and reserve the right to refuse to accept contributions from that Employer and participation by Employees of that Employer. Any such refusal must be in writing, and issued within sixty (60) days of the receipt by the Trustees of that written agreement.

## ARTICLE VIII

### EMPLOYER WITHDRAWAL LIABILITY

#### Section 1.

(a) An Employer that withdraws from the Pension Plan after September 25, 1980<sup>1</sup> in either a Complete or Partial Withdrawal shall owe and pay Withdrawal Liability to the Pension Fund, as determined under this Article and the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("ERISA").

(b) For purposes of this Article, all corporations, trades or businesses that are under the common control, as defined in regulations of the Pension Benefit Guaranty Corporation ("PBG"), are considered a single employer and the entity resulting from a change in corporate structure or a change to an unincorporated entity is considered the original employer.

#### Section 2.

(a) Except as provided in this section, a Complete Withdrawal of an Employer occurs if the Employer:

(1) Permanently ceases to have an obligation to contribute under the Pension Funds' Plan, or

(2) Permanently ceases all covered operations under the Pension Fund's Plan.

(b) Complete Withdrawal does not occur solely because the Employer temporarily suspends contributions to the Pension Fund during a labor dispute involving its Employees.

(c) A Complete Withdrawal does not occur solely because of a change in the corporate structure of the Employer or because of a change to an unincorporated structure, provided that the change does not interrupt the Employer's contributions or obligation to contribute hereunder.

(d) (1) A Withdrawal of an Employer ("the seller") shall not occur solely because, as a result of a bona fide or arms length sale of assets to an unrelated

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<sup>1</sup> The dates set forth in this Article VIII are in compliance with Section 538 of the Deficit Reduction Act and apply only to employers that withdrew after July 18, 1984. Withdrawal liability for employers who withdrew before July 18, 1984 was calculated using the dates originally established by the Multiemployer Pension Plan Amendments Act as set forth in the previous Trust Agreement.

party ("the buyer"), the seller ceases covered operations under the Pension Fund or ceases to have an obligation to contribute to the Pension Fund if:

(A) The buyer assumes the obligation to contribute to the Pension Fund for such operations on behalf of substantially the same number of contribution base units for which the seller was required to contribute;

(B) The buyer provides to the Trustees for a period of five Plan Years commencing with the Plan Year beginning after the sale of assets, a bond, amount held in escrow or other credit arrangement satisfactory to the Trustees in an amount equal to the greater of:

(i) the average annual contributions required to be made to the Pension Fund by the seller with respect to the operations for the three Plan Years preceding the Plan Year in which the sale occurs, or

(ii) the annual Pension Fund contributions required to be made by the seller with respect to the operations for the last Plan Year in which the sale occurred, which bond or escrow shall be paid to the Pension Fund if the buyer withdraws from the Pension Fund, or fails to make a contribution to the Pension Fund when due at any time during the first five Plan Years beginning after the sale; and

(C) The contract for sale provides that if the buyer withdraws with respect to the operations during the first five Plan Years specified above, the seller is secondarily liable for any Withdrawal Liability it would have owed to the Fund (but for this section) if the buyer's liability is not paid.

(d) (2) If the buyer withdraws within such five Plan Years and fails to make any Withdrawal Liability payment when due, then the seller shall pay to the Fund an amount equal to the payment that would have been due from the seller but for this section.

(d) (3) If the seller liquidates or distributes all or substantially all of its assets before the end of the five Plan Year period specified above, then the seller shall provide to the Pension Fund a bond, amount in escrow or other credit arrangement satisfactory to the Trustees in an amount equal to the present value of the seller's Withdrawal Liability but for this subsection.

(e) (1) Notwithstanding subsection (a), in the case of a trucking, moving or warehousing employer, as defined herein, a Complete Withdrawal occurs only if there is a cessation described in subsection (a) and either

(A) The Employer continues to perform or ceases and resumes within 60 months of that cessation work within the geographic area covered by the

Pension Fund at the time the Employer's obligation to contribute to the Pension Fund ceased, or

(B) (i) The Employer fails to furnish to the Pension Fund a bond, an amount held in escrow or other security arrangement satisfactory to the Trustees in an amount equal to 50% of the Employer's Withdrawal Liability as determined by the Trustees under Section 3 hereunder.

(ii) Notwithstanding the Employer's provisions of a security arrangement as described in subsection (B) (i), a complete withdrawal will occur if the PBGC determines within sixty months of the date of the Employer's cessation, that the Pension Fund has suffered substantial harm to its contribution base.

(e) (2) For purposes of this Article, an Employer is a trucking, moving or warehousing employer if (A) it is primarily engaged in the long and short haul trucking industry, the household moving industry or the public warehousing industry, and (B) its obligation to contribute to the Pension Fund is based primarily on work performed in the aforementioned industries.

(f) The date of an Employer's Complete Withdrawal<sup>1</sup> is the earlier of the date the Employer ceased to have an obligation to contribute to the Fund, or the date its covered operations ceased.

### Section 3.

(a) The amount of an Employer's liability for a Complete Withdrawal shall be its initial liability, reduced in accordance with subsection (d), determined as of the end of the Plan Year preceding the date of the Employer's Complete Withdrawal.

(b) The initial liability amount<sup>2</sup> is the product of:

(1) the Pension Fund's unfunded vested liability as of the end of the Plan Year preceding the Plan Year in which the Employer withdraws, less the value as of the end of such year of all outstanding claims for Withdrawal Liability which can reasonably be expected to be collected from employers withdrawing before such year; multiplied by

(2) a fraction -

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<sup>2</sup>The method of calculating employer withdrawal liability described in this section applies to employer withdrawals that take place after May 31, 1990. Withdrawal liability for employers that withdrew before June 1, 1990 was calculated using the method described in this section before its amendment effective June 1, 1990.

(a) the numerator of which is the total amount required, to be contributed by the Employer under the Pension Plan for the last 5 Plan Years ending just before the withdrawal, and

(b) the denominator of which is the total amount contributed under the Pension Plan by all employers for the last 5 Plan Years ending just before the withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those Plan Years, and decreased by any amount contributed to the Pension Plan during those Plan Years by employers who withdrew from the Pension Plan under this Article during those Plan Years.

(c)(1) The Pension Fund's liability for vested benefits as of particular date is the actuarial value of vested benefits under this Pension Plan as of that date and shall be determined on the basis of methods and assumptions approved by the Trustees for purposes of this Article, upon the recommendation of the Trustees' enrolled actuary.

(c)(2) For purposes of this Article, vested benefits are benefits for which Pension Plan participants have satisfied the Plan's conditions for entitlement (other than the submission of applications, retirement, or completion of waiting period), whether or not the benefits may be subsequently reduced or suspended by Plan amendment, an occurrence of any condition or operation of law and whether or not the benefits are considered "vested" or "nonforfeitable" for any other purpose under the Plan.

(c)(3) The Pension Fund's unfunded vested liability shall be the amount, not less than zero, determined by subtracting the value of the Fund's assets (valued on the basis of rules adopted from time to time for this purpose by the Trustees on the recommendation of the Pension Fund's enrolled actuary) from the Fund's liability for vested benefits.

(d)(1) From the initial liability amount, there shall be deducted the lesser of:

(A) \$50,000., and

(B)  $\frac{3}{4}$  of 1 percent of the Fund's unfunded vested liability as of the end of the Plan Year preceding the Employer's Withdrawal, less the excess of the initial amount over \$100,000.

(d)(2) The amount of the initial liability remaining after application of paragraph (d)(1) shall be reduced in accordance with Section 4225 of ERISA, if and to the extent that the Employer demonstrates that additional limitations under that section apply.

(d)(3) The resultant amount of liability after application of each of the above subsections, shall be the Employer's Withdrawal Liability.

Section 4.

(a) Except as otherwise provided in this section, there is a Partial Withdrawal by an Employer on the last day of a Plan Year if for such Plan Year:

(1) there is a 70 percent contribution decline, or

(2) there is a partial cessation of the Employer's contribution obligation.

(b) For purposes of subsection (a):

(1)(A) There is a 70 percent contribution decline for any Plan Year if during each Plan Year in the "3-year testing period" the hours on the basis of which the Employer is obligated to contribute to the Plan do not exceed 30 percent of such hours for the "high base year."

(1)(B)(i) the Term "3-year testing period" means the period consisting of the Plan Year and the immediately preceding two Plan Years.

(1)(B)(ii) The number of hours referred to in subparagraph (A) for the "high base year" is the average number of such hours for the two Plan Years for which such hours were the highest within the five Plan Years immediately preceding the beginning of the "3-year testing period." The pertinent hours for Plan Years ended before August 31, 1978 shall be deemed to be equal to the Employer's hours for the Plan Year ended August 31, 1980.

(1)(B)(iii) Covered hours of work under a Collective Bargaining Agreement with respect to which the Employer's contribution obligation permanently ceased before September 26, 1980, or at a facility for which the Employer permanently ceased to be obligated to contribute (or permanently ceased all covered operations) before April 29, 1980, shall not be taken into account if, and to the extent that, the Employer demonstrates the number of hours allocable to such agreements or facility.

(2)(A) There is a partial cessation of the Employer's contribution obligation for the Plan Year if, during such year:

(i) the Employer permanently ceases to have an obligation to contribute under one or more, but fewer than all, Collective Bargaining Agreements under which the Employer has been obligated to contribute to the

Pension Fund, but continues to perform work in the jurisdiction of the Collective Bargaining Agreement of the type for which contributions were previously required or transfers such work to another location; or

(ii) the Employer permanently ceases to have an obligation to contribute to the Fund with respect to work performed at one or more, but fewer than all, of its facilities, but continues to perform work at the facility of the type for which the obligation to contribute ceased.

(B) For purposes of subparagraph (A), a cessation of obligations under a Collective Bargaining Agreement shall not be considered to have occurred solely because one Agreement that requires contributions to the Pension Fund has been substituted for another such Agreement.

(C)(i) Subsection (a)(1) above shall not apply to any Plan Year prior to one beginning on September 1, 1982.

(ii) Subsection (a) (2) above shall not apply to any cessation of contribution occurring before September 26, 1980.

(D)(i) The amount of liability for a Partial Withdrawal and the total amount due in a 12-month period with respect to a Partial Withdrawal shall be pro rata shares of the amounts determined as if the Employer had withdrawn completely, in a manner consistent with the applicable provisions of Sections 4206 and 4212 of ERISA.

(ii) Notwithstanding anything contained in paragraph (a) above, an Employer to whom Section 1 (a) of this Article applies shall have no liability for a Partial Withdrawal except under the conditions and to the extent prescribed by regulations to be issued by the PBGC.

#### Section 5.

(a) The Employer's Withdrawal Liability shall be payable in installments. The total amount due in each 12-month period beginning on the date of the first installment shall be the product of -

(1) the highest rate at which the Employer was obligated to contribute to the Pension Fund in the period of 10 consecutive Plan Years ending with the Plan Year in which the Withdrawal occurred, multiplied by

(2) the Employer's average annual contribution base for the 3 consecutive Plan Years, within the 10 consecutive Plan Years ending before the Year in which the withdrawal occurred, during which the Employer's contribution base was the highest, except that installments shall not be payable

in excess of twenty 12-month periods, the number of installments payments due in the final year shall be reduced to assure that the total payments will not exceed the Employer's total amortized Withdrawal Liability. The number of payments shall be based upon the interest rate used in the most recent Actuarial Valuation of the plan.

(b) If, in connection with the Employer's Withdrawal, the Fund transfers benefit liabilities to another fund to which the Employer will contribute, the Employer's Withdrawal Liability shall be reduced in an amount equal to the value of the unfunded vested benefits that are transferred, determined as of the end of the Plan Year preceding the withdrawal on the same basis as the determination of the Fund's unfunded vested liability under this Article.

#### Section 6.

(a)(1) As soon as practicable after an Employer's Complete or Partial Withdrawal, the Trustees shall notify the Employer of the amount of its Withdrawal Liability, and the schedule of payments and demand payment in accordance with the schedule.

(a)(2) Within 90 days of the Employer's receipt of the Trustees' notification and demand, the Employer may ask the Trustees to review any specific matter relating to the determination of the Employer's Withdrawal Liability and the schedule of payment, identify any inaccuracy in the Trustees' determinations of the Employer's Withdrawal Liability, or furnish any additional relevant information.

(a)(3) The Trustees shall review the matters raised by the Employer and shall notify the Employer of their decision and the basis for such decision, including the reasons for any change in the determination. Such determination upon review shall be issued by the Trustees within a reasonable period of time.

(a)(4) The failure of an Employer to request review of the Trustees' determination in accordance with Section 6(a)(2) shall preclude the Employer's request for arbitration, unless the arbitration is jointly initiated by the Trustees and the Employer in accordance with Section 6(b)(3).

(a)(5) Notwithstanding anything contained herein to the contrary, the Trustees may, in their discretion waive the timeliness provisions of this Section and Section 6(b) hereunder.

(b)(1) A dispute between an Employer and the Trustees concerning withdrawal liability shall be resolved through arbitration in accordance with the provisions of this Subsection.

(b)(2) The Employer or the Trustees may initiate arbitration within 60 days following the earlier of

(A) the date of the Trustees' notification to the Employer of their determination upon review under Section 6(a)(3), or

(B) 120 days after the date of the Employer's request for review under Section 6(a)(2).

(b)(3) The Employer and the Trustees may jointly initiate arbitration within 180 days after the date of the Trustees' initial demand to the Employer for payment of its Withdrawal Liability.

(b)(4) An arbitration pursuant to this section shall be conducted under the Multiemployer Pension Plan Arbitration Rules of the American Arbitration Association, or pursuant to such other fair and equitable rules that the Trustees may adopt. The arbitrator shall have the power to award attorneys' fees and costs.

(b)(5) In any such arbitration, the Trustees' determinations of Withdrawal Liability and the schedule of payment shall be presumed correct unless the Employer shows by a preponderance of the evidence that a determination was unreasonable or clearly erroneous. The Trustees' determination of the Fund's unfunded vested liability for a Plan Year shall likewise be presumed correct unless the Employer shows by a preponderance of the evidence that the actuarial assumptions used in the determination were in the aggregate unreasonable (taking into account the experience of the Fund and reasonable expectations) or that the Fund's actuary made a significant error in applying the actuarial assumptions or methods.

(c)(1) An Employer's Withdrawal Liability shall be paid in equal monthly installments. Payment shall be due notwithstanding the pendency of any review, arbitration or other proceedings, beginning the first day of the month that begins at least 10 days after the date of notice of, and demand for payment is sent to the Employer pursuant to Section 6(a)(1), except that the Trustees may, in their discretion, require the initial payment on the first day of the month following the demand even if there are less than 10 days between the demand and the due date, if the circumstances so warrant. Interest shall accrue on any late payment from the date the payment was due until the date paid, at an annual rate equal to the prime rate charged by the National Westminster Bank USA on the first day of the month in which payment was due. For each succeeding twelve-month period that any amount in default remains unpaid; interest shall be charged on the unpaid amount (including accrued interest) at the prime rate in effect on the anniversary date of the date as of which the initial interest rate was determined.

(c)(2) If, following review, arbitration or other proceedings, the amount of the Employer's Withdrawal Liability is determined to be different from the amount set forth in the Trustees' initial notice and demand, adjustment shall be made by reducing or increasing the total number of installment payments due. If the Employer had paid more than the amount finally determined to be its Withdrawal Liability, the Plan shall refund the excess, with interest at the rate set forth in Section 6(c)(1) above.

(d)(1) An Employer is in default on its Withdrawal Liability payments if:

(A) any installment is not paid when due,

(B) the Plan has notified the Employer of its failure to pay the liability on the date it was due, and

(C) The Employer has failed to pay the past-due installment within 60 days after its receipt of the non-payment notice.

(d)(2) In addition to the event described in Paragraph (1) the Trustees may determine that an Employer is in default if a petition is filed in Bankruptcy Court with respect to the Employer, if the Employer sells a significant portion of its assets after it has withdrawn from the Pension Fund, if there is an assignment for the benefit of creditors with respect to the Employer, or upon the occurrence of any event or circumstances indicating that the Employer will be unable to pay its future obligations of Withdrawal Liability.

(d)(3) In the case of default on Withdrawal Liability, the Trustees may require immediate payment of the outstanding balance of the Employer's Liability, plus accrued interest on the total outstanding amount from the due date of the first payment which was not timely made.

(e) An Employer may prepay all or part of its Withdrawal Liability without penalty and subject to such rules and conditions as the Trustees may promulgate.

(f) The Trustees may adopt rules providing other terms and conditions for an Employer to satisfy its Withdrawal Liability consistent with the purposes and standards of ERISA, and not inconsistent with regulations of the PBGC.

(g) The Trustees may require that an Employer post a bond, or provide to the Pension Plan other security, if:

(1) the Employer's payment schedule would extend for longer than 18 months;

(2) the Employer is the subject of a petition under the Bankruptcy Code, or similar proceedings under state or federal laws;

(3) substantially all of the Employer's assets are sold, distributed or transferred out of the jurisdiction of the courts of the United States; or

(4) in the Plan Year, the number of hours on which the Employer's contributions are based do not exceed thirty percent of the average number of hours for the two Plan Years for which such hours were the highest within the five Plan Years immediately preceding the Plan Year at issue.

Section 7.

(a) If, after a Partial Withdrawal, an Employer again incurs liability for a Complete or Partial Withdrawal, the liability incurred as a result of the later Withdrawal(s) shall be adjusted to the extent necessary to avoid duplication of liability.

(b) The liability of an Employer for a Partial Withdrawal under Section 4(a)(1) shall be reduced or eliminated in accordance with Section 4208 of ERISA.

(c) If an Employer that has withdrawn from the Pension Fund later renews the obligation to contribute, the unpaid balance of the Employer's liability incurred on account of the earlier Withdrawal shall be reduced in accordance with rules adopted by the Trustees pursuant to regulations of the PBGC.

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Section 8. Notwithstanding any other provision of this Article, if all or substantially all contributing Employers withdraw from the Plan pursuant to an agreement or arrangement, as determined under ERISA sections 4209 and 4219(c)(1)(D), the Withdrawal Liability of each such Employer shall be adjusted in accordance with those ERISA sections.

Section 9.

(a) Any notice that must be given to an Employer under this Article or under Subtitle E of Title IV of ERISA shall be effective if given to the specific member of a commonly controlled group that has or has had the obligation to contribute under the Plan.

(b) Notice shall also be given to any other member of the controlled group that the Employer identifies and designates to receive notices hereunder, in accordance with a procedure adopted by the Trustees.

Section 10. The Trustees may bring an action in federal court to enforce and collect withdrawal liability.

## ARTICLE IX

### TERMINATION OF THE TRUSTS

#### Section 1.

(a) In the case of the Welfare Fund or the Pension Fund, the Trust may be terminated when there is no longer in force an agreement between the Employers and the Union requiring any Employer contributions to such Trust Fund for the purposes hereinafter provided.

(b) Either Trust may be terminated at any time by the unanimous vote of all Trustees, with the consent of the Employers and the Union.

(c) In the event of termination of the Pension Fund the Trustees shall notify the Pension Benefit Guaranty Corporation as required by the Employee Retirement Income Security Act of 1974, as amended, and shall allocate assets and take all other termination steps in conformity to said law.

Section 2. In the event of termination of the Trusts or either of them, the Trustees shall apply the Fund to pay or to provide for the payment of any and all obligations of the said Trust or Trusts and distribute and apply any remaining surplus in such manner as will, in their opinion, best effectuate the purpose of the said Trust or Trusts; provided, however, that no part of the corpus or income of said Trust or Trusts shall be used for or diverted to purposes other than the exclusive benefit of Employees, retired Employees, or the families or beneficiaries of Employees or retired Employees, or the administrative expenses of said Trust or Trusts or the Welfare Plan or the Pension Plan or both of said Plans (as the case may be) or for other payments in accordance with the provisions of such Plan or Plans.

Section 3. Upon termination of either Trust, the Trustees shall forthwith notify the Union and each Employer, and the insurance carrier or carriers of the policy or policies and all other necessary parties, and shall continue as Trustees for the purpose of winding up the affairs of such Trust, and may take any action with regard to any policy or policies which may be required by the insurance carrier or carriers of such policy or policies and which the Trustees, in their discretion, may deem appropriate.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

#### Section 1.

(a) Each Employer shall promptly furnish to the Trustees on demand any and all records of his Employees concerning the classifications of such Employees, their names, social security numbers, the amount of wages paid and hours worked, and any and all other payroll records and information that the Trustees may require in connection with the administration of the Trusts 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 and information as may be requested by the Trustees.

(b) The Trustees, or their authorized representatives, may examine and audit the pertinent payroll books and records of each Employer whenever such examination or audit is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trusts.

#### Section 2.

(a) No Employee or any person claiming by or through such Employee by reason of having been named a beneficiary in a certificate or otherwise shall have any right, title or interest in or to the Funds or other property of the Trust Funds or any part hereof, except as specifically provided.

(b) No monies, property or equity or interest of any nature whatsoever in the Trust or Trust Funds or insurance policies or benefits or monies payable therefrom shall be subject in any manner, by any employee or person claiming through such employee, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien or charge, and any attempts to cause the same to be subject thereto shall be null and void. Notwithstanding the above, the Trustees shall comply with ERISA, as amended, with respect to a Qualified Domestic Relations Order.

Section 3. No person, partnership, corporation or association dealing with the Trustees shall be obliged to see to the application of any funds or property of the Trust or to see that the terms of the Trust have been complied with or be obliged to inquire into the necessity or expediency of any act of the Trustees and every instrument effected by the Trustees shall be conclusive in favor of any person, partnership, corporation, or association relying thereon that:

(a) At the time of the delivery of said instrument the Trust was in full force and effect;

(b) Said instrument was effected in accordance with the terms and conditions of this Agreement and Declaration of Trust; and

(c) The Trustees were duly authorized and empowered to execute such instrument.

Section 4. Anything contained in this Agreement and Declaration of Trust, or any amendment hereof, or in the Pension Plan or the Welfare Plan or any amendments thereof, to the contrary notwithstanding, no part of the corpus or income of the Trust Funds shall be used for, or diverted to, purposes other than for the exclusive benefit of the Employees, retired Employees, or the wives and children or beneficiaries of Employees or retired Employees, or the expenses (including taxes) of the Trust Funds and the Welfare and Pension Plans.

Section 5. The Trustees shall have and maintain an office in the Metropolitan Area, said area to include the City of New York, as well as Nassau and Suffolk Counties. The Trustees may from time to time change the location of their office within said Metropolitan Area, but no change shall be effective until notice thereof shall be given to the Union and Employers.

Section 6. The address of the Union and of each of the Employers shall be that stated on the signature pages of this Agreement and Declaration of Trust. The Union or any Employer may change its address by written notice to the Trustees stating the new address, and such changed address shall be kept on file by the Trustees open to the inspection of any Trustee, Union or Employer.

Section 7. Notices given to the Trustees, Union or Employers hereunder shall (unless herein otherwise specified) be sufficient if in writing and delivered to, or sent by postpaid first class mail or prepaid telegram to, the addresses thereof at his, their or its address above stated or changed as above provided. Except as herein otherwise provided, distribution or delivery or any statement or document required hereunder to be made to the Trustees, Union or Employers shall be sufficient if delivered in person or if sent by postpaid first class mail.

## ARTICLE XI

### AMENDMENTS

Subject to the provisions of Section 4 of Article X hereof, this Agreement and Declaration of Trust may be amended in any respect from time to time by the Trustees, provided that each amendment shall be duly executed in writing by the Trustees and annexed hereto and a copy thereof shall be distributed to the Union and each Employer. As to any amendment, the Trustees in their sole discretion shall have full power to fix the effective date thereof.

ARTICLE XII

EXECUTION OF AGREEMENTS  
SITUS OF TRUSTS

Section 1. This Agreement and Declaration of Trust may be executed in one or more counterparts. The signature of a party of any counterpart shall be sufficient evidence of his execution thereof.

Section 2. This Agreement and Declaration of Trust shall be deemed to have been executed and delivered in, and with reference to the laws of the State of New York except as to matters covered by the Employee Retirement Income Security Act of 1974, as amended, and it and the Trusts established and created hereunder shall be governed by said laws. The Trustees shall be accountable only in the State of New York.

Section 3. This Restated Agreement and Declaration of Trust is effective as of September 1, 1995 except for provisions which separately state an effective date.

Dated: Hempstead, New York  
January 14, 1999

UNION TRUSTEES

Redacted by the U.S. Department of the Treasury

Nicholas J. Picarello

Redacted by the U.S. Department of the Treasury

Kevin McCaffrey

Redacted by the U.S. Department of the Treasury

Vincent Cangelosi

EMPLOYER TRUSTEES

Redacted by the U.S. Department of the Treasury

Richard Muller

Redacted by the U.S. Department of the Treasury

Peter Hassler

Redacted by the U.S. Department of the Treasury

Frank Santamella

IN WITNESS WHEREOF, the parties hereto have duly executed this Restated and Amended Agreement as of September 1, 1995.

**EMPLOYER TRUSTEES**

Richard P. Muller      c/o Preston Trucking Co.  
4201 Tacony Street, Philadelphia, PA 19137

Peter Hassler      c/o Roadway Express, Inc.  
100 Roadway Drive, Carlisle, PA 17013

Frank Santanella      c/o New Penn Motor Express  
36 Hackensack Ave. , South Kearny, NJ 07032

**UNION TRUSTEES**

Nicholas J. Picarello      c/o Local 707, I.B. of T.  
14 Front Street, Hempstead, NY 11550

Kevin McCaffrey      c/o Local 707, I.B. of T.  
14 Front Street, Hempstead, NY 11550

Vincent Cangelosi      c/o Local 707, I.B. of T.  
14 Front Street, Hempstead, NY 11550

EMPLOYER:

\_\_\_\_\_  
COMPANY

\_\_\_\_\_  
ADDRESS

BY \_\_\_\_\_  
Title

UNION:

BY \_\_\_\_\_  
Title

DATE SIGNED \_\_\_\_\_