

**AGREEMENT AND DECLARATION OF TRUST  
PROVIDING FOR THE ESTABLISHMENT OF THE  
NORTHERN CALIFORNIA SOFT DRINK INDUSTRY  
AND TEAMSTERS HEALTH AND WELFARE TRUST FUND  
Restated As Of January, 1993**

This Agreement made and entered into in the month of January, 1993 amends and restates the provisions of the Declaration of Trust, as amended, made and entered into October 1975, by and between Employers in the Soft Drink Industry in Northern California (hereinafter collectively called the "Employers") who have signed or shall hereafter sign collective bargaining agreements with one or more local unions affiliated with the International Brotherhood of Teamsters (hereinafter collectively called "the Union").

**W I T N E S S E T H:**

THAT WHEREAS, the Employers and the Union have, pursuant to a collective bargaining agreement, agreed to establish the NORTHERN CALIFORNIA SOFT DRINK INDUSTRY AND TEAMSTERS HEALTH AND WELFARE TRUST FUND, into which the Employers are to make payments for the purpose of providing medical, hospital, vision, dental, major medical, death and prescription drug benefits for their Employees and eligible dependents; and

WHEREAS, this Trust is being created and a plan implemented, each of which shall at all times conform to the applicable requirements of the Labor-Management Relations Act of 1947, as amended and the Labor-Management Reporting and Disclosure Act of 1959, as amended and the Employee Retirement Income Security Act of 1974, as amended and qualified pursuant to the applicable

provisions of the Internal Revenue Code of 1986 as amended:

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

## ARTICLE I

### ESTABLISHMENT OF FUND AND DEFINITIONS

**Section 1.** The parties hereby create and establish the NORTHERN CALIFORNIA SOFT DRINK INDUSTRY AND TEAMSTERS HEALTH AND WELFARE TRUST FUND. The Trustees agree that the Trust shall be received, held and administered for the exclusive purpose of providing benefits to eligible Employees and their eligible dependents, and defraying reasonable and necessary expenses of administration of the Plan.

**Section 2.** The following definitions shall apply in this Declaration of Trust:

(a) **COLLECTIVE BARGAINING AGREEMENT.** The term "Collective Bargaining Agreement" shall mean any written contract in the Soft Drink Industry in Northern California by and between any Employer as defined in Section 2(b) of this Article, and any Union as defined in Section 2(a) of this Article together with any extension, amendment or renewal of such contract providing for contributions to be made to this Trust which has been accepted by the Board of Trustees.

(b) **EMPLOYEE.** The term "Employee" shall mean any person employed in the Soft Drink Industry in the Northern California Area

under a collective bargaining agreement with a Union as defined in Section 2(a) of this Article, or, with the specific approval of the Board of Trustees, any person who is covered by a subscriber or adoption agreement and on whose behalf the Employer is making the contributions into the Trust.

(c) **EMPLOYER.** The term "Employer" shall mean any association, individual, partnership or corporation employing persons who fall within the definition of Employee as set forth in Section 2(c) of this Article, and which is a party to a collective bargaining agreement. Subscriber Agreement and/or Adoption Agreement providing for contributions to be made to this Trust Fund and on behalf of employees and who, by so contributing to the Trust Fund, agrees to be bound by the terms of this Agreement and Declaration of Trust, as amended.

(d) **EMPLOYER CONTRIBUTIONS.** The term "Employer Contributions" shall mean payments made or to be made to the Trust by an Employer pursuant to this Trust Agreement.

(e) **SUBSCRIBER AGREEMENT.** The term "Subscriber Agreement" means a written agreement by which an Employer affirms its obligations to make contributions to the Fund and agrees to be bound by the terms and conditions of this Trust Agreement.

(f) **TRUST.** The term "Trust" shall mean the NORTHERN CALIFORNIA SOFT DRINK INDUSTRY AND TEAMSTERS HEALTH AND WELFARE TRUST FUND, which is created and established pursuant to the terms of this Trust Agreement.

(g) **TRUST AGREEMENT.** The term "Trust Agreement" shall mean

this Agreement under which this Trust is created and maintained and shall include any properly executed amendments thereto.

(h) **TRUSTEE.** The term "Trustee" shall mean any person designated as a Trustee pursuant to Article II hereof and their successors. Such Trustees as are designated by the Union pursuant to Article II shall be referred to as "Union Trustees" and such Trustees as are designated by the Food Employers Council, Inc., pursuant to Article II shall be referred to as "Employer Trustees."

(i) **UNION.** The term "Union" shall mean local unions affiliated with the International Brotherhood of Teamsters, and such other local unions accepted for participation by the Board of Trustees from time to time, who have agreed or will hereafter agree in writing to be bound by the terms of this Trust Agreement.

(j) **WELFARE BENEFITS OR BENEFITS PLAN.** The term "Welfare Benefits or Benefits Plan" shall mean benefit payments as may be provided under any insurance plan, or plan of self-insurance developed and established by the Trustees consistent with federal law and this Trust Agreement.

## **ARTICLE II**

### **BOARD OF TRUSTEES**

**Section 1. BOARD OF TRUSTEES.** The administration of this Trust shall be vested in a Board of Trustees consisting of six (6) persons, three (3) of whom shall be Employer Trustees and three (3) of whom shall be Union Trustees. The Employers hereby designate and appoint Food Employers Council, Inc., as their agent to act

upon any matter relating to the appointment of Employer Trustees, and such appointment shall be evidenced by a written instrument signed by an appropriate officer of the Food Employers Council, Inc. The six signatory Unions shall appoint the Union Trustees and their successors, and such appointments shall be evidenced by written documents. The current Employer Trustees appointed by the Food Employers Council, Inc. shall be:

David R. Cox

Paul Dumas

Joy Hoshino

The current Union Trustees appointed by the Union shall be:

Dennis Hart

Ralph J. Torrisi

Darold L. Wright

**Section 2. GENERAL RULES.** The Board of Trustees and the individual Trustees who are its members shall be fiduciaries. Any other person shall be a fiduciary only to the extent he or she has discretionary authority or discretionary control respecting management of the Trust or Plan; or exercises any authority of control respecting management or disposition of Trust assets; or has any discretionary authority or discretionary responsibility in the administration of the Plan; or renders investment advice for a fee or other compensation, direct or indirect, or has any persons who may serve in more than one fiduciary capacity with respect to

the Plan and Trust.

It is not intended that the Employer, an Employee Organization, or any attorney, accountant, broker, actuary, office personnel, professional administrator or consultant (other than an Investment Manager) shall itself be a "fiduciary" simply as a result of performing services for the Trust pursuant to an agreement with the Board of Trustees. Therefore, such persons shall not perform acts of the type set forth above which would make them fiduciaries except as specifically authorized by the Board of Trustees.

**Section 3. ACCEPTANCE OF TRUST DUTIES.** The Trustees, as the named fiduciaries of the Trust, shall have authority, acting jointly, to control and manage the operation and administration of the Trust Fund and the Plan. Each of the current Trustees expressly accepts designation as a fiduciary and as Trustees by written acceptance and execution of this Trust Agreement and assumes the duties, responsibilities and obligations of the Trustees as created and established by this Agreement and as required by law. Any Trustee named hereafter shall do likewise by signing this Agreement or upon written acceptance filed with the other Trustees.

**Section 4. TERM OF OFFICE OF TRUSTEES.** Each Trustee shall continue to serve during the existence of this Trust until his death, incapacity, resignation or removal as provided herein.

**Section 5. RESIGNATION OF TRUSTEES.** A Trustee may resign and become and remain fully discharged from all further duty or responsibility hereunder (except that this shall not relieve the Trustee as to any liability already existing prior to the effective date of such resignation) by giving thirty (30) days' notice in writing sent by registered mail to the remaining Trustees, which notice shall state the date such resignation shall take effect, and such resignation shall take effect on said date 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.

**Section 6. REMOVAL OF TRUSTEES.** Any Employer Trustee may be removed at any time by the Employers and, in this connection, the Employers do hereby designate and appoint the Food Employers Council, Inc., as their agent to act upon any matter relating to the removal of any Employer Trustee. Any Union Trustee may be removed at any time by the Union.

**Section 7. SUCCESSOR TRUSTEES.** In the event of the resignation, removal, death or incapacitation of any Trustee, his successor shall, within a period of thirty (30) days thereafter, be appointed by the Union, if he is a Union Trustee, and by the Employers through their designated agent, the Food Employers Council, Inc., if he is an Employer Trustee. The party or parties designating any successor Trustee to fill any vacancy shall forthwith notify the

Board of Trustees of the name and address of such new Trustee. No vacancy or vacancies in the offices of the Trustees shall impair the power of the remaining Trustees acting in the manner herein provided to administer the affairs of this Trust. Any successor Trustee appointed as hereinbefore provided shall immediately, upon his appointment and his acceptance of the trusteeship in writing, become vested with all the property, rights, powers and duties of a Trustee hereunder and with like effect as of originally named as a Trustee.

**Section 8. COMPENSATION OF TRUSTEES.** The Trustees shall serve without compensation from the Trust Fund. However, the Trustees may be reimbursed for reasonable expenses actually and properly incurred in accordance with the performance of their duties hereunder.

**Section 9. COSTS OF SUIT.** The costs and expenses of the Trustees in any action, suit or proceeding relating to the Trust brought against the Trustees or by the Trustees or any of them, shall be paid from the Trust Fund. If however, a Trustee or Trustees are found guilty by the final determination of a court of competent jurisdiction acting in breach of the duties and responsibilities set forth in Article III herein then he shall be obligated to reimburse the Trust for any sums expended on his behalf pursuant to the preceding sentence.



**Section 10. CHAIRMAN, AND CO-CHAIRMAN OF BOARD OF TRUSTEES.** The Board shall select one of their number to act as Chairman of the Board and one to act as Co-Chairman, to serve terms of one year or for such period as the Trustees may determine. When the Chairman is selected from among the Employer Trustees, the Co-Chairman shall be selected from among the Union Trustees, and vice versa. The Trustees shall appoint a Secretary who need not be a Trustee.

**Section 11. VOTING.** A quorum shall consist of four (4) Trustees who are physically present, two of whom must be Employer Trustees and two of whom must be Union Trustees. Unless a quorum is present, no business shall be transacted. In the determination of all matters coming before the Board of Trustees for consideration, the Trustees representing the Employers shall collectively have one vote and the Trustees representing the Union shall collectively have one vote.

**Section 12. TRUSTEE DEADLOCKS.** In the event that the Trustees are unable to agree upon any matter in connection with the administration of this Trust, they shall select a neutral person as an impartial umpire, who is willing to act in the determination of such dispute. In the event of a failure of the Trustees to agree upon an impartial umpire who is willing to act in the determination of such dispute, any one or more of the said Trustees may petition the United States District Court, Northern District of California, for the appointment of an impartial umpire to decide such dispute,

in accordance with the provisions of Section 302 of the Labor-Management Relations Act of 1947. Any costs and attorneys' fees in connection with the foregoing shall be paid out of the Trust Fund, including any reasonable compensation to such umpire. Differences arising as to the interpretation or application of the provisions of this Trust Agreement, and relating to benefits provided for hereunder, shall not be subject to the grievance or arbitration procedures established in any collective bargaining agreement.

**Section 13. MEETINGS.** The Board shall hold quarterly meetings, and the Co-Chairmen shall give written notice of each such meeting to all other Trustees at least ten (10) days prior to the date of such meeting. Either the Chairman or the Co-Chairman or any three (3) members of the Board of Trustees may call a special meeting of the Board of Trustees by giving written notice to all other Trustees of the time and place of such meeting at least ten (10) days before the date set for the meeting. Any notice of special meetings shall be sufficient if sent by registered or certified mail or by wire addressed to the Trustee at his address as shown in records of the Board. The Board may take any action at a special meeting that it may take at a regular meeting. Any meeting at which all Trustees are present, or concerning which all Trustees waive notice in writing, shall be a valid meeting without the giving of any notice. The Board of Trustees and the Trust shall have their principal office in the State of California at such place as the Board may from time to time designate.

**Section 14. RETURN OF RECORDS.** Any Trustee who resigns or is removed shall forthwith turn over to the remaining Trustees at the office of the Trust any and all records, books, documents, monies and other property in his possession owned by the Trustees or incident to the fulfillment of this Trust and the administration of the Trust Fund.

### **ARTICLE III**

#### **POWERS AND DUTIES OF TRUSTEES**

**Section 1. GENERAL AUTHORITY.** Subject to its powers of allocation and delegation set forth elsewhere hereunder, the Board of Trustees shall have exclusive authority to control and merge the operation and administration of the Trust and its assets.

**Section 2. SPECIFIC POWERS OF THE BOARD.** In addition to those conferred elsewhere in this Agreement or by law the Trustees shall have the following powers and duties; which shall be exercised with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims:

(a) To make any determination of fact necessary or proper to the administration of this Trust Fund. Further, the Trustees shall have the power to construe and interpret the provisions of this Agreement and all plans adopted pursuant thereto, including, but not limited to, any provisions relating to eligibility of

Employees, Retired Employees or their dependents to receive benefits. Such determinations shall be final and binding upon all parties, including Employees, Retired Employees, their dependents and beneficiaries. However, in no event shall the Trustees have power to increase or decrease or add or take away benefits beyond the limits agreed to by the collective bargaining parties.

(b) To appoint one or more Investment Managers who shall have the power to manage, acquire or dispose of all or such portion or portions of the Trust assets as the Trustees shall determine. Such appointments shall not be effective until accepted by the Investment Manager in writing delivered to the Trustees which acknowledges that such Investment Manager is a fiduciary with respect to the Trust Fund. No person or organization shall be so appointed other than one who is registered as an investment advisor under the Investment Advisors Act of 1940, as amended or is an insurance company qualified to perform the services of an Investment Manager under the laws of more than one state, or is a bank as defined in said Act.

In the event the Trustees do not exercise their discretion to appoint an investment manager, to cause to be invested and reinvested the assets of the Trust Fund in such manner as in their judgment may seem beneficial and appropriate, for the protection and preservation of the Trust fund, except that no investments shall be made in the securities, obligations or property of any employer as defined herein. Investments shall be diversified in order to minimize the risk of large losses and

preserve capital, unless under the circumstances it is clearly not prudent to do so, and shall be made only in the manner and to the extent permitted by law.

(c) To cause to be maintained such bank account or bank accounts as may be necessary in the carrying out of the Trust and the administration of the Trust Fund, and to designate the persons who are authorized to sign checks and withdrawal orders on any such accounts.

(d) To cause to be sold, exchanged, leased, conveyed or disposed of, any property at any time forming a part of the Trust Fund upon such terms as they may deem proper and to cause to be executed and delivered, any and all instruments of conveyance and transfer in connection therewith.

(e) To cause to be paid or to provide for the payment of all real and personal property taxes and other taxes or assessments of any kind and all kinds levied or assessed under existing or future laws upon or in report to the Trust fund or any property forming a part thereof.

(f) To retain or employ a person or organization to act as trust administrator to whom the Trustees may delegate, to the extent the Trustees deem necessary or appropriate and in accordance with applicable law, their authority and responsibility to administer the affairs of the Trust Fund and the Plan.

(g) To be represented by co-counsel, one of whom shall be selected by the Employer Trustees and the other by the Union Trustees. Insofar as actuarial consultants are concerned, the

Trust may likewise be represented by co-consultants, one of whom is selected by the Employer Trustees and the other by the Union Trustees.

(h) To make and enforce rules and regulations for the administration of the Trust, for eligibility of beneficiaries, for the collection of contributions, for payment of benefits, and for the transaction of business, all of which shall be consistent with the collective bargaining agreements.

(i) To sue or be sued on behalf of the Trust. In the event that any action or proceeding against any Employer is necessary to enforce the payment of any contributions hereunder, the Trustees shall be entitled to recover in their own names or otherwise, from such Employer, all costs incurred in connection therewith, together with all reasonable attorney fees necessary incurred.

(j) To cause to be paid or to provide for the payment of all reasonable and necessary expenses, costs and fees incurred in connection with the creation of the benefit plan to be adopted, and the establishment and maintenance of this Trust, except that no part of the Trust shall be used for the personal expenses or compensation of the Trustees.

(k) To maintain and cause to be maintained accurate books of account and records of all transactions relating to this Trust, to cause such books and records and accounts to be audited annually, or more often if the Trustees so determine, by a certified public accountant. The results of any such audits and such books and records shall be available for inspection, at reasonable times and

upon proper notice, at such place or places as may be designated by the Trustees.

(l) To enter into and to cause to be entered into, any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration of the Trust and to do all acts as they in their discretion may deem necessary or advisable.

(m) To provide errors and omissions and fiduciary liability insurance at the expense of the Trust insuring the Trustees and the Trust itself against the acts or omissions of the fiduciaries for the protection of the Trust, provided that such insurance, to the extent required by law, shall permit recourse by the insurance carrier against the Trustees. Nothing herein shall be deemed to preclude a Trustee, Employer or Union from purchasing such insurance for the individual protection of a Trustee or from purchasing a waiver of such right of recourse by the insurance carrier of any insurance policy purchased by the Trust Fund, with respect to such Trustee.

(n) To prepare and cause to be prepared such reports, descriptions, summaries and other information as are required by law or as the Trustees deem necessary and to file and furnish such reports, descriptions, summaries and information to participants and their beneficiaries, Unions, Employers and to government agencies as required by law.

(o) To provide and procure, at the expense of the Trust, fidelity bonds for each of the Trustees and for all other persons

whom they may authorize to handle, deal with or draw upon the monies of the Trust for any purpose whatsoever. Said bonds shall be maintained in such reasonable amounts and shall be obtained from such companies as the Trustees shall determine. The Trustees shall, from time to time, review the amounts of such bonds and require such adjustments therein in their amounts as may be appropriate. Such bonds shall at all times conform to the requirements of federal law.

(p) To procure a policy or policies of group insurance for the provision of Welfare Benefits, or to provide such benefits from the assets of the Fund, for the Employees and their dependents, and to do any and all acts and things necessary or advisable to effectuate the Plan for the benefit of the Employees and their dependents.

(q) To accept, compromise, arbitrate or otherwise settle any obligation, liability or claim involving this Trust, contributions or other sums payable hereto, and to enforce or contest any other obligation, liability or claim by appropriate legal proceedings if, in its sole discretion, it is in the interest of the Trust to do so, or to assign any such claim and allow the assignee to institute legal proceedings in its own name to enforce collection.

**Section 3. PROTECTION OF TRUSTEES.** The Trustees shall be protected in acting upon any papers or documents reasonably appearing to them to be genuine and to be made, executed or delivered the same and shall be protected in relying upon the



opinion of legal counsel in connection with any matter pertaining to the administration or execution of this Trust, subject to the applicable exercise of judgment as set forth in the Employee Retirement Income Security Act of 1974, as amended.

**Section 4. LIABILITY OF TRUSTEES.** Trustees individually or collectively, shall not be personally liable for any error of judgment or for any loss arising out of any act or omission in the administration of the Trust Fund, nor shall they be personally liable for any liability or debt of the Trust Fund contracted or incurred by them, nor for the non-fulfillment of any contract, nor shall they be personally liable for the improper application of any part of the Trust Fund, nor for any other liability arising in connection with the administration or the existence of the Trust Fund; provided, however, nothing herein shall exempt the Trustees for any liability, obligation or debt arising out of their individual or collective acts or omissions done or suffered in breach of the duties and responsibilities imposed under this Agreement or under the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended.

#### **ARTICLE IV**

##### **AMENDMENTS AND TERMINATION OF TRUST AND LIMITATIONS ON TRUST FUND**

**Section 1. AUTHORITY TO AMEND.** Subject to the provisions providing for termination of this Trust, it shall be irrevocable, and under no circumstances shall any monies paid into the Trust

fund, or any part of the Trust Fund, be recoverable by or payable to any Employer, except to the extent permitted by federal law, nor shall any of the same be used for or diverted to, purposes other than for the exclusive benefit of Employees and dependents. Subject to the limitations herein set forth, the Trustees shall have the power to amend this Trust Agreement in writing with notice in writing to the Union and to all participating Employers, provided however, that no amendment shall alter the exclusive purpose of the Trust to provide welfare benefits to Employees and their dependents. Any Employer, as defined in Article I, Section 2(C) bound by the terms of this Trust Agreement, hereby grants to the Food Employers Council, Inc. the authority to amend any and all provisions of this Declaration of Trust, requiring the consent of the Employers, as defined in Article I, Section 2(C). The Trustees shall also have the power to amend or cancel any amendments. Such amendments shall be set forth in writing and notice and a copy of the same shall be furnished the Unions and the Employers provided, however, that no amendment shall be adopted which:

(a) Alters the basic principles of this Trust or of the Benefit Plan;

(b) Conflicts with any applicable law or government regulation;

(c) Causes the use or diversion of any part of the Trust Fund for purposes other than those authorized herein;

(d) Retroactively deprives anyone of a vested right or benefit;

- (e) Increases the burdens or obligations of any Employer; or
- (f) Increases or adds benefits beyond the limit agreed to by the collective bargaining parties.

**Section 2. LIMITATIONS ON RIGHTS IN THE TRUST.** No Employees or dependents shall have any right, title or interest in and to the funds held by the Trust, except such rights as are provided under the benefit plan or plans maintained by the Trust. No money, property, equity or interest of any nature whatsoever in the Trust Fund or in any benefits or monies payable therefrom shall be subject in any manner by an Employee or dependent to anticipation, garnishment, alienation, sale, transfer, assignment, pledge, encumbrance, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void.

**Section 3. LIMITATION ON LIABILITY OF UNIONS AND EMPLOYERS.** Neither the Employers, the Unions nor any Employee shall be liable for any debts, liabilities or obligations of the Trust, or of the Trustees. Nothing contained herein shall be construed as making any Union or any Employer liable for the payments required to be made by any other Employer and the liability of each Employer shall be limited solely to the payment of the amount required by the Collective Bargaining Agreement.

**Section 4. MERGER OF THE TRUST.** This Trust may be merged, consolidated or otherwise combined with any other welfare benefit

trust fund.

**Section 5. DURATION OF THE TRUST.** This Trust shall remain in effect so long as there are Employers who are obligated under any Collective Bargaining Agreements, to make contributions to the Trust Fund. The Trust shall not be terminated without terminating the plan or plans of benefits maintained by the Trust, but said plan or plans may be wholly or partially terminated without terminating the Trust. Upon any termination of this Trust, any monies remaining in the Trust fund, after the payment of all expenses and obligations of the Trust, shall be paid or used for the continuance of one or more benefits provided under this Trust, and in a manner consistent with the provisions of the Employee Retirement Income Security Act of 1974, as amended.

## **ARTICLE V**

### **MISCELLANEOUS**

**Section 1. METHOD OF BECOMING A PARTY TO THIS TRUST.** Any Union or Employer who has not signed an original of this Trust Agreement may sign a consent thereto on such form as the Trustees may provide Subscriber Agreement with the same effect as though such Union or Employer had signed an original of this Trust Agreement. Any Union or Employer and its employees seeking to participate in this Trust shall first obtain the approval of the Board of Trustees to such participation.

**Section 2. SITUS AND CONSTRUCTION.** Subject to any laws of the United States which may be applicable, this Trust is created and accepted in the State of California, and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of that State and applicable federal laws.

**Section 3. INFORMATION TO BE FURNISHED BY EMPLOYERS.** Each Employer shall furnish the Trustees such information as the Trustees may require in connection with the administration of the Trust. The Trustees shall have the right themselves, or through any authorized representative, to audit the books and records of any Employer to determine that all liabilities of such Employer to the Trust have been received for all persons for whom such Employer is required to make contributions. The Employer will comply with a request by the Trustees to make available on company premises during normal working hours records and information necessary for the Trustees or their authorized representative to perform such an audit.

In the event an Employer's books are audited as above set forth, the Trustees shall have the right to charge said Employer the reasonable costs of said audit, if the audit reveals a delinquency.

**Section 4. DEALINGS WITH TRUSTEES.** No person, partnership, corporation or 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 or expedience of any act of the Trustees. Every instrument executed by the Trustees (whether executed by all of them or in any manner as specified in this Agreement) shall be conclusive in favor of any person, partnership, corporation or association relying thereon that at the time of delivery of said instrument this Trust Agreement was in full force and effect, that said instrument was executed and delivered in accordance with the terms of this Trust Agreement and that the Trustees were duly authorized and empowered to execute and deliver such instrument.

**Section 5. SEPARABILITY.** If any provision of this Agreement is held to be illegal or invalid for any reason, or to render contributions by the Employers into this Trust non-deductible for tax purposes or taxable to the Employees, or to render the income received by such Trust non-exempt from taxation, the necessary steps to remedy such illegality, invalidity, non-deductibility or taxability shall be taken immediately but in no event shall the obligation of the Employers set forth in the Collective Bargaining Agreement be increased because of such remedial action. Any provision of this Trust Agreement which might be invalid or illegal and which does not affect the general purpose of this Trust shall not affect the remaining portions of the Agreement, unless it

prevents accomplishment of the objective and purposes of the Collective Bargaining Agreement.

**Section 6. NOTICE AND DELIVERY OF DOCUMENTS.** Notice given to a Trustee, Union, Employer, Employee, or any other person shall, unless otherwise specified herein, be sufficient if in writing and delivered to or sent by is this necessary postpaid first class mail or by prepaid telegram to the last address as filed with the Trustees. Except as otherwise provided herein, the delivery of any statement or document required hereunder to be made to a Trustee, Union, Employer, or Employee shall be sufficient if delivered in person or if sent by postpaid first class mail to his or its last address as filed with Trustees.

## **ARTICLE VI**

### **CLAIMS REVIEW AND APPEALS PROCEDURE**

(a) Claims for benefits under the Plan which have been denied in whole or in part shall be processed in accordance with the provisions of this Section. Any failure to adhere to these provisions on the part of any claimant, after due notice of the denial or partial denial of a claim for benefits as hereinafter provided, may be deemed a sufficient ground for the termination of review of the denial of the claim for benefits.

(b) In the event of a denial of any claim in whole or in part for benefits under the Plan, the Administrator shall notify the claimant or his representative in writing within ninety (90) days

of receipt of the claim, setting forth the specific reasons for the denial of the claim; and a specific reference to the provisions of the Declaration of Trust, the Plan or other document which are the bases for the denial of the claim in a manner calculated to be understood by the claimant. If additional materials or information are necessary for the claimant to perfect his claim, the Administrator shall further so notify the claimant, specifying what materials or information are necessary and explaining why they are necessary. Said written notice shall explain the Plan's review procedure and shall further state that the claimant or his representative may file an appeal to the Trustees from the denial of the claim by submitting within sixty (60) days from the mailing of the written notice of denial of the claim a written statement setting forth the following matters:

1) A statement that the claimant wishes review of the determination denying his claim;

2) A statement setting forth each and all grounds upon which the claimant's request for review of the denial of the claim is based;

3) A summary of all facts known to the claimant upon which the request for review of the denial of the claim is based;

4) A statement of the names and addresses of all persons who have knowledge of any fact upon which the request for review of the denial of the claim is based;

5) A description of or copies of documents and writings of any kind or nature which are relevant to the request for review of



the denial of the claim;

6) A statement of the names and addresses of all persons who will represent the claimant for the purpose of the review of the denial of his claim;

7) A statement by the claimant, under penalty of perjury, that the information contained in the request for review is true to the best of the claimant's knowledge.

A written statement requesting review of a denial of a claim shall be deemed to have been timely submitted to the Administrator if the date of postmark is within sixty (60) days of the date of mailing of the written notice of the denial of the claim by the Administrator. No request for appeal which is not timely filed need be considered by the Trustees.

(c) All requests for review of a denial in whole or in part of a claim for benefits which comply with Subparagraph (b) hereinabove shall be considered by the Trustee Appeals Committee which shall make a determination concerning said requests, either granting or denying the claim for benefits. The Trustee Appeals Committee shall notify the claimant or his representative of its decision within thirty (30) days of the date thereof. In the event the Trustee Appeals Committee is deadlocked or otherwise unable to reach a determination on the request for review, they shall submit the question to the Board of Trustees.

(d) The Administrator shall provide a written report to the Trustee Appeals Committee in connection with each request for review submitted. The report shall summarize the facts underlying

the claim and state the reasons for the denial of the claim. In making its determination, the Trustee Appeals Committee shall consider the written statement of the claimant and the Administrator's report. The claimant shall not be entitled to a hearing before the Trustee Appeals Committee unless there is a material conflict between the facts stated in the written statement of the claimant and the Administrator's report, in which case claimant and his legal representative, if any, may be permitted to appear before the Trustee Appeals Committee and may present evidence under oath supporting the claim. The claimant or his representative shall be subject to the right of the Trustee Appeals Committee to impose reasonable time limits on such presentations.

(e) The Trustee Appeals Committee shall make a full and fair review of each appeal and any written material or oral statements or presentations submitted by the claimant or the Administrator in connection therewith and may require the Administrator or the claimant to submit such additional facts, documents, or other evidence as the Trustee Appeals Committee, in its sole discretion, deems necessary or advisable in making such a review. On the basis of its review, the Trustee Appeals Committee shall make an independent determination of the claim for benefits under the Plan. The written decision of the Trustee Appeals Committee on any claim for benefits shall be made no later than one hundred and twenty (120) days following receipt of the request for review and shall be final and binding upon all parties. The claimant shall be notified in writing and provided a copy of the written decision of the

Trustee Appeals Committee immediately following the rendering of the decision.

IN WITNESS WHEREOF, the Trustees have signed this Agreement:

**EMPLOYER TRUSTEES:**

<u><i>David Cox</i></u>	<u>1-26-93</u>
DAVID COX	DATE
<u><i>Paul Dumas</i></u>	<u>2/5/93</u>
PAUL DUMAS	DATE
<u><i>Joy Hoshino</i></u>	<u>1/27/93</u>
JOY HOSHINO	DATE

**UNION TRUSTEES:**

<u><i>Dennis Hart</i></u>	<u>2-24-93</u>
DENNIS HART	DATE
<u><i>Ralph J. Torrissi</i></u>	<u>2/16/93</u>
RALPH J. TORRISI	DATE
<u><i>Darold J. Wright</i></u>	<u>2-16-93</u>
DAROLD J. WRIGHT	DATE

AMENDMENT NUMBER ONE  
TO THE  
AGREEMENT AND DECLARATION OF TRUST  
PROVIDING FOR THE ESTABLISHMENT OF THE  
NORTHERN CALIFORNIA SOFT DRINK INDUSTRY AND TEAMSTERS HEALTH  
AND WELFARE TRUST FUND

BE IT RESOLVED that, pursuant to authority granted under the provisions of Article IV, Section 1 of the Agreement and Declaration of Trust Providing for the Establishment of the Northern California Soft Drink Industry and Teamsters Health and Welfare Trust Fund (restated as of January 1993), the Trustees hereby amend said Agreement as set forth below effective as of August 3, 2009.

1. Article II, Section 11 is amended to read as follows:

**“Section 11. VOTING.** A quorum shall consist of four (4) Trustees who are present (as defined in Section 13 of this Article below), two of whom must be Employer Trustees and two of whom must be Union Trustees. Unless a quorum is present, no business shall be transacted. In the determination of all matters coming before the Board of Trustees for consideration, the Trustees representing the Employer shall collectively have one vote and the Trustees representing the Union shall collectively have one vote.”

2. Article II, Section 13 is amended to read as follows:

**“Section 13. MEETINGS.** The Board shall hold quarterly meetings, and the Co-Chairmen shall give written notice of each such meeting to all other Trustees at least ten (10) days prior to the date of such meeting. Each Trustee shall be physically present at a minimum of two(2) meetings annually, and shall make all reasonable efforts to be physically present at any meeting in which funding issues or benefit changes are included on the meeting agenda (such attendance shall count toward the two (2) meeting physical presence requirement.) Any one or more Trustees may attend meetings of the Board by means of telephone, videoconferencing or similar communications equipment, which allows all persons participating in the meeting to simultaneously hear each other. Participation by such means shall constitute being present for purposes of determining a quorum and for all other purposes, except for purposes of satisfying the requirement that each Trustee must be physically present at two (2) meetings annually. Either the Chairman or the Co-Chairman or any three (3) members of the Board of Trustees may call a special meeting of the Board of Trustees by giving written notice to all other Trustees of the time and place of such meeting at

least ten (10) days before the date set for the meeting. Any notice of special meetings shall be sufficient if sent by registered or certified mail or by wire addressed to the Trustee at his address as shown in records of the Board. The Board may take any action at a special meeting that it may take at a regular meeting. Any meeting at which all Trustees are present, or concerning which all Trustees waive notice in writing, shall be a valid meeting without the giving of any notice. The Board of Trustees and the Trust shall have their principal office in the State of California at such place as the Board may from time to time designate."

The undersigned hereby certify that the above Amendment Number One was duly adopted by the Board of Trustees on November 16, 2009.

EMPLOYER TRUSTEES

James R. Apostolos  
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UNION TRUSTEES

[Signature]  
Jan Manibus  
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AMENDMENT TO THE  
AGREEMENT AND DECLARATION OF TRUST  
PROVIDING FOR THE ESTABLISHMENT OF THE  
NORTHERN CALIFORNIA SOFT DRINK INDUSTRY AND TEAMSTERS HEALTH AND  
WELFARE TRUST FUND  
As Restated January 1993

BE IT RESOLVED that, pursuant to authority granted under the provisions of Article IV, Section 1 of the Agreement and Declaration of Trust Providing for the Establishment of the Northern California Soft Drink Industry and Teamsters Health and Welfare Trust Fund, the Trustees hereby amend said Agreement as set forth below effective as of August 1, 2014.

1. Article I, Section 2, subsection (h) is amended by substituting "Appointing Employers" for "Food Employers Council, Inc."
2. Article I, Section 2, is amended by adding a new subsection (k) as follows:

(k) **APPOINTING EMPLOYER.** The term "Appointing Employer" means any of the following Employers which have agreed in writing to be bound by the terms of this Trust Agreement:

- i. Coca-Cola Refreshments USA, Inc.
- ii. Dr Pepper Snapple Group
- iii. Safeway, Inc.

3. Article II, Section 1, is amended by deleting said section in its entirety and substituting the following therefor:

**Section 1. Board of Trustees.** The administration of this Trust shall be vested in a Board of Trustees consisting of up to eight (8) persons, four (4) of whom shall be Employer Trustees and up to four (4) of whom shall be Union Trustees.

Coca-Cola Refreshments USA, Inc. shall have full power and authority to appoint two (2) Employer Trustees, who shall be employees of said Appointing Employer or an affiliated group. Each other Appointing Employer shall have such full power and authority to appoint one (1) Employer Trustee, who shall be an employee of such Appointing Employer or an affiliated group. Such appointment shall be evidenced by a written instrument signed by an authorized representative of the Appointing Employer.

The signatory Unions shall appoint the Union Trustees, and such appointments shall be evidenced by written instruments signed by an authorized representative of the Union.

4. Article II is amended by adding a new Section 2, and by renumbering the current Section 2 and all subsequent sections accordingly. The new Section 2 shall read as follows:

**Section 2. Alternate Trustee.** The Employer Trustees, at their discretion, may appoint one (1) Alternate Trustee, who shall act as an Employer Trustee in the absence of any

Employer Trustees. The Union Trustees, at their discretion, may appoint one (1) Alternate Trustee, who shall act as a Union Trustee in the absence of any Union Trustees.

Unless expressly restricted in writing by the appointing entity and delivered to the office of the Trust, an Alternate Trustee shall be presumed to have the authority to act upon any matter arising at a meeting at which such Alternate Trustee is in attendance and a Trustee from the same side (Employer or Union) is absent.

An Alternate Trustee may attend and be heard at any meeting at which all Trustees from the side that appointed them are also present, but in such case the Alternate Trustee shall not be counted for quorum purposes and shall not cast a vote.

In the event of the death, incapacity, resignation or removal of a Trustee, an Alternate Trustee designated from the same side (Employer or Union) shall serve and act in the place and stead of such Trustee until such time as a successor to such Trustee is appointed and accepts.

An Employer Alternate Trustee may be appointed or removed by a written instrument signed by the Employer Trustees and a Union Alternate Trustee may be appointed or removed by a written instrument signed by the Union Trustees. An Alternate Trustee may resign in the same manner as a Trustee.

5. Article II, Section 7, as renumbered, is amended by deleting said section in its entirety and substituting the following therefor:

**Section 7. REMOVAL OF TRUSTEES.** Any Employer Trustee may be removed at any time by the Appointing Employer that appointed the Trustee. Any Union Trustee may be removed at any time by the Union.

6. Article II, Section 8, as renumbered, is amended by deleting the first sentence of said section in its entirety and substituting the following sentence therefor:

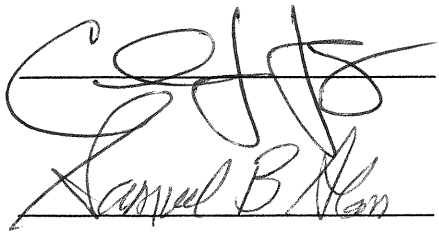
**Section 8. SUCCESSOR TRUSTEES.** In the event of the resignation, removal, death, disqualification, or incapacitation of any Trustee, the party who appointed such Trustee shall appoint a successor within thirty (30) days after such resignation, removal, death, disqualification or incapacitation.

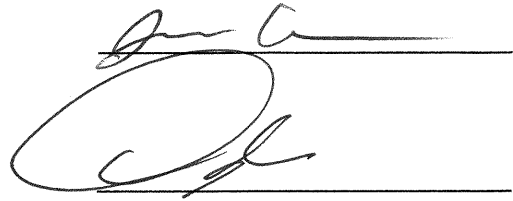
7. Article IV, Section 1, is amended by substituting "Employer Trustees" for "Food Employers Council, Inc."

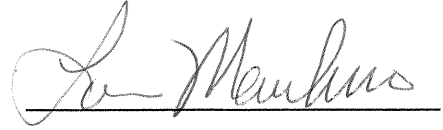
Executed this 22nd day of October, 2014

**EMPLOYER TRUSTEES**

**UNION TRUSTEES**

  
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**ON BEHALF OF THE FOOD EMPLOYERS COUNCIL, INC.**

  
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Robert Vallon