

AGREEMENT, made as of the 25th day of May, 1975,
Restating Agreement and Declaration of Trust made as of
December 20, 1954 and as subsequently amended between
LOCAL 805, INTERNATIONAL BROTHERHOOD OF TEAMSTERS (hereinafter
called the "Union") and WHOLESAL TOBACCO DISTRIBUTORS OF
NEW YORK, INC. (hereinafter called the "Association") and
others designated as Union Trustees and as Employer Trustees,
respectively.

W I T N E S S E T H :

WHEREAS, the undersigned, constituting the
Trustees of the LOCAL 805 PENSION FUND, desire to restate
the above-mentioned Agreement and Declaration of Trust made
as of December 20, 1954, and as subsequently amended; and

WHEREAS, Article II, Paragraph 17 of said
Agreement and Declaration of Trust, as amended, provides that
said Agreement and Declaration of Trust may be amended at any
time by an instrument in writing executed by the Executive
Board of the Union and the Board of Directors of the
Association.

NOW, THEREFORE, in consideration of the premises,
it is hereby agreed as follows:

Effective as of the date hereof, the aforementioned
Agreement and Declaration of Trust, made as of December 20,
1954, and as subsequently amended is hereby restated, modified
and amended so that the Restated Agreement and Declaration of
Trust shall now read as follows:

EXB

RESTATED AGREEMENT AND DECLARATION OF TRUST,
dated as of May 25, 1975, by and between LOCAL 805,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, with its principal
office at 10 Columbus Circle, New York, New York 10019
(hereinafter referred to as the "Union"); WHOLESALE
TOBACCO DISTRIBUTORS OF NEW YORK, INC., with its
principal office at 211 East 43rd Street, New York, New
York (hereinafter referred to as the "Association"); and
MURRAY BARATZ, DANIEL ORNSTEIN, JOHN GLANZMAN and PHILIP
LOBENBERG (Alternate), who with their successors designated
in the manner hereinafter provided, are hereinafter referred
to as "Union Trustees", and MILTON BLOOMROSEN, LEONARD
SCHWARTZ and RONALD ROSENBERG, who with their successors
designated in the manner hereinafter provided, are
hereinafter referred to as "Association Trustees", such
Union and Association Trustees who have affixed their
respective signatures hereto thereby accepting the Trust
obligations herein contained.

W I T N E S S E T H :

WHEREAS, the Union has executed a Collective
Bargaining Agreement with the Association, and may from time
to time hereafter execute further Collective Bargaining
Agreements or supplements or amendments to Collective Bar-
gaining Agreements with the Association, and has executed
or may from time to time hereafter execute Collective
Bargaining Agreements or supplements or amendments thereto,

with certain other employers, all of which Collective Bargaining Agreements provide and will provide, among other things, for contributions to be made by employers to a fund, to be known as the LOCAL 805 PENSION FUND, hereinafter referred to as the "Fund.

NOW, THEREFORE, in consideration of the premises and the covenants herein contained, it is mutually understood and agreed as follows:

ARTICLE I

DEFINITIONS

Section 1 - EMPLOYER OR EMPLOYERS. The term "Employer" or "Employers" as used herein shall mean an Employer who has duly executed a Collective Bargaining Agreement providing for periodic payments into the Fund, or has agreed to be bound by such existing Collective Bargaining Agreement. The term "Employer" shall also include the Union, the Fund and any and all affiliated employee benefit funds.

Section 2 - UNION. The term "Union" as used herein shall mean LOCAL 805, INTERNATIONAL BROTHERHOOD OF TEAMSTERS.

Section 3 - ASSOCIATION. The term "Association" as used herein shall mean WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK, INC.

Section 4 - EMPLOYEE OR EMPLOYEES. The term "Employee" or "Employees" as used herein shall mean:

(a) All of the Employees employed by an Employer or all or any class or classes thereof, such class or classes to be based upon conditions of employment, and any other rules of eligibility as may be established by the Trustees.

(b) The term "Employee" or "Employees", as used herein, shall include the full time employees of the Union, the Fund and any and all affiliated employee benefit funds.

Section 5 - FUND. The term "Fund", as used herein, shall mean the Local 805 Pension Fund.

Section 6 - TRUSTEES. The term "Trustees" as used herein, shall mean the Trustees named in this Agreement, together with their successors, designated as hereinafter provided.

Section 7 - AGREEMENT AND DECLARATION OF TRUST and/or TRUST. The term "Agreement and Declaration of Trust and/or Trust", as used herein, shall mean this Agreement, together with any amendments hereto.

Section 8 - POLICY OR POLICIES. The term "Policy" or "Policies", as used herein, shall mean the Insurance Policies, including any endorsements or amendments thereto purchased by the Trustees pursuant to this Agreement and Declaration of Trust.

Section 9 - ERISA. The term "ERISA" as used herein, shall mean the Employee Retirement Income Security Act of 1974, and as it may be subsequently amended.

ARTICLE II

THE FUND

Section 1 - There is hereby created a Pension Fund, to be known as the Local 805 Pension Fund, to be administered by a Board of Trustees.

Section 2 - The Trustees, in their names as Trustees, shall have the power to demand, collect, receive and hold Employer Contributions and may take such steps, including the institution and prosecution of or the intervention in any proceeding at law, in equity or in bankruptcy as may be necessary or desirable to effectuate the collection of such Employer Contributions.

Section 3 - The Trustees are hereby authorized to allocate fiduciary responsibilities among the Trustees and to designate persons other than the Trustees to carry out fiduciary responsibilities as provided in this Agreement and Declaration of Trust. The power to allocate fiduciary responsibility shall not apply to the allocation of the responsibility to manage and/or control the assets of the Fund, other than the power to appoint an investment manager or managers.

Section 4 - The Trustees shall have exclusive authority and discretion to manage and control the assets of the Fund, except to the extent that such authority to manage, acquire, or dispose of the assets of the Fund is delegated to one or more investment managers, in accordance with the following paragraph.

In their discretion, the Trustees shall also have the authority to appoint an investment manager or managers to manage, acquire, or dispose of any assets of the Fund. An "Investment Manager" is any fiduciary who has been appointed by the Trustees to manage, acquire, or dispose of any

assets of the Fund, who is (i) registered as an investment adviser under the Investment Advisers Act of 1940, (ii) is a bank as defined in the Investment Advisers Act of 1940, (iii) or is an insurance company qualified to manage, acquire or dispose of any assets of the Fund under the laws of more than one state, and who has acknowledged, in writing, that it is a fiduciary with respect to the Fund.

Section 5 - The Trustees shall use and apply the Trust Estate 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 this Trust, including the employment of such administrative, actuarial, legal, accounting, investment counsel and clerical assistance, the purchase or lease of such premises as may be necessary for the operations of the affairs of the Fund, 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 for pension and retirement annuities as the Trustees may determine, insuring any employees and their families of contributing employers, subject to such conditions as length of service in the industry, length of payment by the employer of employer contributions, and such other provisions, limitations and conditions as the Trustees, in their discretion, may from time to time determine. Employees of the Union, employees of the Fund and employees of any and all other affiliated employee benefit funds; whether or not such Funds' employees are members of the Union, shall likewise be eligible for benefits hereunder, subject to such limitations and conditions as the Trustees, in their discretion, may from

time to time determine. The foregoing benefits may be contracted for with commercial insurance companies or may be provided for without insurance by the Fund.

(c) To establish and accumulate such reserve funds as the Trustees, in their discretion, deem necessary or desirable for the proper execution of the Trust herein created.

Section 6 - Neither the Association nor any Employer member thereof, nor any employer not a member of the Association, nor any employee of any such employer, nor the Union, nor any member of the Union, nor any persons claiming by, through or under any of them, shall have any right, title or interest in or to the Trust Estate or any part thereof, except the right of a person or his beneficiary who is covered by a policy of insurance for pensions and/or retirement annuities, or is entitled to pension benefits, to such insurance or direct benefits in the amount and subject to the terms and conditions specified in such policy, or as may be specified and determined by the Trustees. No person shall have the option to receive, instead of the insurance benefits or the direct benefits, any part of the employer contributions. No employee shall have the right to assign or alienate the insurance benefits or any other benefits to which he may be entitled by reason of the Trust herein created. The assets of the Fund shall never inure to the benefit of the Association or any Employer, except in the following circumstances.

(a) Reversion to an Employer upon termination of the Fund, in accordance with the applicable provisions of ERISA.

(b) In the case of a contribution which is made by an Employer by a mistake of fact, such contribution may be returned by the Trustees to such Employer within one year after the payment of the contribution.

ARTICLE III

THE TRUSTEES

Section 1 - (a) The Trustees shall consist of six (6) persons, three (3) of whom shall be named by the Union and three (3) of whom shall be named by the Association.

Each Trustee shall continue to serve at the pleasure of the party who designated him. Each Association or the Union may terminate the designation of any Trustee designated by them, by filing with the remaining Trustees a true copy of a resolution adopted by each Association or the Union, as the case may be, authorizing such action and terminating said designation. Any vacancy occurring by reason of death, resignation or otherwise, may be filled by the party who designated the Trustee whose office becomes vacant, in the manner above set forth. It is the intention of the parties that the total number of Trustees designated by the Union shall, at all times, be equal to the total number of Trustees designated by the Association. Regardless of whether the number of Trustees shall be increased or decreased, or whether there be resignations or replacements of any Trustees, the equal division of Trustees indicated herein shall at all times remain constant so that the respective parties to this Agreement shall, in the event of an increase or decrease in the number of Trustees by virtue of any conditions arising following the execution of this Agreement, take appropriate steps immediately to increase or

decrease the number of Trustees as the situation may require. During such time, as any vacancy exists, the minority group Trustees shall be allowed the vote or votes of the vacant trusteeships, so that the voting rights of the minority group, Association or Union Trustees, shall equal the majority.

The Association may appoint Alternate Trustees and the Union may appoint Alternate Trustees. Such Alternate Trustees shall have the right to act in the full capacity of a Trustee with all the rights and obligations of a Trustee but only when a permanent Trustee(s) is absent from duly constituted meetings.

(b) A majority of the Trustees shall constitute a quorum for the transaction of business. When there are less than all of the Association designated Trustees or less than all of the Union designated Trustees, the Trustee or Trustees from such group or groups having less than all of their Trustees present, can on their own motion, table any matter under consideration to the next regular or special meeting of the Trustees, in which event the written notice for such next regular or special meeting shall contain the text of the tabled matter, with a statement that such tabled agenda will be resolved by vote at such next regular or special meeting.

Any Trustee who cannot attend such next regular or special meeting, may designate his decision or proxy by registered mail addressed to the Chairman of the Board of Trustees.

All decisions of the Trustees shall be by majority vote of the quorum and must include the concurring vote of at least two (2) Trustees from each group of Trustees. Whenever a deadlock shall exist as to a proposal, nomination, motion or resolution, or whenever a quorum is lacking and at least two (2) Trustees from either group shall notify the remaining Trustees, in writing, in either of the

foregoing cases, that there is a deadlock either by reason of lack of qualified Trustees or failure to agree on the items set forth hereinabove, and it shall appear that the deadlock cannot be broken, the disputed matter shall be referred to Harry Silverman for binding determination and he shall be compensated in such manner as shall be agreed upon by the Trustees. If Harry Silverman shall fail to accept the assignment or be unable to act for any reason, the Trustees shall immediately agree upon an umpire to decide the matters in question. Should the parties be unable to agree upon an impartial umpire, then, on the petition of any of the Trustees, the District Court of the United States within whose jurisdiction the principal office of the Fund is located shall be empowered to make such appointment and the decision or award of such umpire shall be final and binding upon the parties.

(c) The vote of a Trustee may be cast by him in person at a meeting, or may be evidenced by written proxy signed by the Trustee and after written notice to all of the Trustees of the question to be decided. Either the Chairman or Secretary or any two Trustees may call a meeting of the Trustees at any time by giving at least 72 hours written notice of the time and place thereof to each Trustee, except that any meeting so called shall be adjourned for a reasonable period upon the request of any Trustee upon a showing of justifiable cause therefor to the Trustees. Meetings of the Trustees may also be held at any time without notice, if all of the Trustees consent thereto. Furthermore, the Trustees may take any action without holding a meeting, provided that all of the Trustees shall concur, in writing, upon the proposition.

Section 2. - During the month of June in each year, the Trustees shall select from among the Trustees, a Chairman

and a Secretary and two (2) Co-Treasurers, each to serve for a term of one year commencing the 1st day of the month immediately following their selection or until his or their successors have been duly selected. The Chairman shall be selected from either the Association or Union group of Trustees and the Secretary shall be selected from the other group of Trustees; it being the intention of the parties that the Chairman and the Secretary shall always be chosen from one of such groups, one Co-Treasurer shall always be chosen from the Association group and one from the Union group. At no time shall the Chairman and Secretary or the two Co-Treasurers be chosen from the same group of Trustees.

Section 3 - It shall be the duty of the Chairman to preside at all meetings of the Trustees. He shall conduct such meetings in accordance with the Trust Agreement and shall decide all questions of order subject to an appeal to the meeting. In the absence of the Chairman, the Secretary shall conduct the meeting.

Section 4 - The Trustees may designate a salaried Fund Manager Employee and/or Contract Administrative Agent to perform the operational functions of the Fund at the direction of and in accordance with procedures established by the Trustees. The Fund Manager and/or Agent so chosen need not, but may, be a Trustee. Any Fund Manager and/or Agent so designated shall perform only such duties and have only such authority as may be delegated to him by the Trustees. The designation of such Fund Manager and/or Agent shall not relieve the Trustees of their responsibility to manage or control the assets of the Fund.

Section 5 - The Trustees may receive reasonable compensation for the performance of their duties as Trustees, and may be reimbursed for all expenses properly and actually incurred in the performance of such duties, provided same is permitted under ERISA.

The costs and expenses of any suit or proceeding brought by or against the Trustees, individually or in their capacities as Trustees, (including counsel fees) shall be paid from the Trust Estate so long as such suit or proceeding arises from the administration of the Trust or in their capacities as Trustees and such payment is permissible under ERISA or other applicable law.

Section 6- The Trustees shall keep true and accurate books of account and records of all their transactions as Trustees which shall be audited annually or more often, as determined by the Trustees, by an independent qualified public accountant, copies of which audits shall be furnished to each of the Trustees, to the Association and to the Union.

Section 7 - Except as hereinafter provided, all checks, drafts, vouchers, or other withdrawals of funds from the accounts or account of the Trust Estate shall be signed by one Association Trustee and one Union Trustee. The Trustees may designate, in writing, two or more Trustees to sign said withdrawals provided that any two such designated Trustees who actually sign checks are not both members of the Association or Union Group. The Trustees may by resolution authorize the Fund Manager and/or Agent or other employee of the Fund to be the sole signatory on checks drawn on an office account.

Section 8 - The Trustees are hereby authorized to do any acts, which the Trustees may deem necessary or advisable

to accomplish the general objectives of maintaining the Fund, solely in the interests of the participants and beneficiaries for the exclusive purpose of (i) providing benefits to participants and beneficiaries; and (ii) defraying the reasonable expenses of administering the Fund. 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 of the Fund 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 the Fund, insofar as such documents and instruments are consistent with applicable law.

If an Investment Manager has been appointed, in accordance with Article II, Section 4 hereof, no Trustee shall be liable for the acts or omissions of such Investment Manager or Managers or be under an obligation to invest or otherwise manage any asset of the Fund which is subject to the management of such Investment Manager.

Section 9 - Trustees shall also have authority to purchase with Fund assets, insurance for all fiduciaries acting as such on behalf of the Fund and/or for the Fund itself, to cover liability or losses occurring by reason of the act or omission of a fiduciary in accordance with Section 410 of ERISA.

Section 10 - (a) The Trustees are hereby authorized to formulate and promulgate any and all necessary rules and regulations to facilitate the proper functioning of this Trust, provided that same are not inconsistent with the terms hereof.

(b) Any Trustee may resign, by instrument in writing, executed for that purpose and delivered to the remaining Trustees.

(c) The Trustees may compromise, settle, arbitrate and release claims or demands in favor of, or against the Fund, on such terms and conditions as the Trustees may deem advisable.

(d) No vacancy or vacancies in the office of Trustees shall impair the power of remaining Trustees, acting in the manner hereinabove provided, to administer the affairs of this Trust and, should any such vacancies not be filled in the manner herein elsewhere provided, the number of Trustees necessary to constitute a quorum shall be reduced by the number of such vacancies.

Section 11 - In the administration of this Trust, the Trustees shall have the following powers, all of which shall be exercised in a fiduciary capacity:

A. To sell, exchange, encumber or lease all, or any part of the Trust Fund upon such terms, cash or credit, or both, as they may deem advisable.

B. To invest the Trust Fund in real property or interests therein, stocks, bonds, debentures or other securities of corporations and similar entities and shares or interests in investment trusts and investment companies.

C. The Trustees shall have the power to give proxies, deposit securities with, and transfer title to, committees representing security holders participating in voting trusts, reorganizations and other arrangements and transactions requiring participation by and among security holders for their common benefit.

(d) The Trustees may freely act under all or any of the powers under this Agreement and Declaration of Trust after forming their judgment, based upon all circumstances of any particular situation as to the wisest and best course to pursue in the interest of this Trust and the beneficiaries hereunder, without the necessity of obtaining the consent or permission of any person interested therein or the consent or approval of any court provided, however, that they shall exercise such powers at all times in a fiduciary capacity, in the interest of the beneficiaries hereunder.

(e) To deduct, retain, expend and pay out of any money belonging to the Fund, any and all necessary and proper expenses in connection with the operation and conduct of the Agreement and Declaration of Trust and to pay all taxes, insurance premiums and other legal assessments, debts, claims or charges which, at any time, may be due and owing by, or which may exist against, the Fund.

(f) To incur and pay the ordinary and necessary expenses of administration, including (but not by way of limitation) reasonable attorneys' fees, accountants' fees, actuarial fees, investment management fees and the like. —

(g) To borrow money for any purpose of the Agreement and Declaration of Trust, or incidental to the administration thereof, upon their promissory note, as Trustees, and with respect to the purchase of any property as part of the consideration given therefor, to assume a liability of the transferor or to acquire such property subject to a liability.

(h) The powers herein granted to the Trustees shall be deemed to be supplementary and not exclusive of the general powers of Trustees, pursuant to law, and shall include all powers necessary to carry the same into effect.

Section 12 - No party dealing with the Trustees in relation to this Trust shall be obliged to see to the application of any money or property of the Fund, or to see that the terms of this Trust have been complied with, or be obliged to inquire into the necessity or expediency of any act of the Trustees and every instrument executed by the Trustees shall be conclusive in favor of every person relying thereon:

(a) That at the time of the delivery of said instrument the Trust hereby created was in full force and effect;

(b) That said instrument was executed in accordance with the terms and conditions contained in this Trust; and

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

Section 13 - Subject to the provisions of ERISA, the receipt given by the Trustees for any monies or other properties received by them shall effectually discharge the person or persons paying or transferring the same and such person or persons shall not be bound to see to the application or be answerable for the loss or misapplication thereof.

Section 14 - The Trustees shall have the power to require any employer and an employer, when so required, shall furnish to the Trustees such information and reports as they may require in the performance of their duties under this Agreement and Declaration of Trust. The Trustees or any

authorized agent or representative of the Trustees shall have the right, at all reasonable times during business hours, to enter upon the premises of employers to examine and copy such of the books, records, papers and reports of said employers as may be necessary to permit the Trustees to determine whether said employers are making full payment to the Trustees of the amounts required by the aforementioned Collective Bargaining Agreement. In addition to any remedies which the Union may have by virtue of any provisions in any Collective Bargaining Agreement with the employer to enforce the payment of the employer contributions to the Fund, the Trustees shall have the power to require any employer who does not make proper and timely contributions as required by its Collective Bargaining Agreement to pay in addition to such contributions:

- (a) Interest per annum on the amount due at the best interest rate charged by the Chase Manhattan Bank to substantial and responsible commercial borrowers as of the date of the employer's default in contributions to the Fund provided however that such interest shall not be less than 6% per annum.
- (b) Any expenses incurred in the auditing of such employer's books and records.
- (c) Where court action has been instituted, attorney's fees.

Section 15 - Where an employer protests a determination by the Trustees that such additional monies are due, he may request, in writing, that the Trustees hear him or his designated representative, in which event he shall be notified of the date and place of hearing. The decision of the Trustees shall be final and binding.

ARTICLE IV RECIPROCAL AGREEMENTS

Section 1 - The Trustees are authorized to negotiate, enter into and effect with the Trustees or governing body of any other Fund similar in nature and purpose to this Fund, any and all types of Agreements which the Trustees may deem desirable to fully effectuate the purpose of this Fund, including, but not limited to reciprocity agreements whereby employer contributions received and credited for hours worked by a member who is normally employed within the jurisdiction of such other Fund and is a member of or potential member of such other Fund, but who is temporarily employed within the jurisdiction of this Fund, or vice versa, may be transmitted from one Fund to the other to give such employee the maximum opportunity to become and remain eligible for benefits of his home fund, with such terms, conditions and covenants as to the Trustees may seem reasonable and proper in their sole discretion.

ARTICLE V. ADDITIONAL PARTIES

Section 1 - Additional employers may be admitted to participation in this Fund upon approval by the Trustees. The participation of such additional employer shall be subject to such terms and conditions as the Trustees may prescribe.

Section 2 - The Trustees are authorized to merge, combine and consolidate with other Funds upon any terms and conditions mutually agreed upon by the Trustees of this Fund and such other Fund, subject to the provisions of ERISA, provided such merger is consented to and approved by the Union and the Association.

ARTICLE VI. AMENDMENTS

Section 1 - The provisions of this Agreement may be amended at any time by an instrument, in writing, executed by the Trustees and consented to and approved by the Association

and the Union, provided that no amendment shall (1) divert or provide for the use of the Trust Fund then in the hands of the Trustees, other than for the purposes of this Trust, to those persons who are covered hereby or to their beneficiaries as hereinabove set forth.

Section 2 - Anything in Section 1 above to the contrary notwithstanding, the Trustees shall have the authority to amend this Agreement and Declaration of Trust in order to conform with the requirements of ERISA.

ARTICLE VII. FIDELITY BONDS

The Trustees shall, by resolution duly adopted, provide for fidelity bonds with such companies which are acceptable surety on federal bonds under authority granted by the Secretary of the Treasury under Sections 6 through 13 of Title 6 United States Code. The amount of such bond shall be fixed at the beginning of each fiscal year of the Fund and the amount thereof shall not be less than 10% of the Funds handled and in no case less than \$1,000.00. Such bond shall provide protection to the Fund against loss by reason of acts of fraud or dishonesty on the part of Fund officials, directly or through connivance with others.

ARTICLE VIII. TERMINATION OF TRUST

In the event of the termination of the Trust Fund, the Trustees shall thereupon allocate and distribute the assets of the Fund in accordance with the applicable provisions of ERISA.

ARTICLE IX. CONSTRUCTION OF TRUST

All questions pertaining to the validity of or construction of this Agreement and of the acts or transactions of the parties shall be determined in accordance with the provisions of ERISA.

ARTICLE X. MISCELLANEOUS

Section 1 - The Trustees shall be entitled to continue and/or exercise all the title, powers, discretions, rights and duties conferred or imposed upon the Trustees by law or by this Trust after the termination of this Trust in whole or in part or until the final distribution of the assets thereof.

Section 2 - This Trust is made in counterparts any of which shall be deemed the sole original if the others be not produced.

Section 3 - In the event that any of the provisions herein contained shall be invalid or unenforceable such declaration or adjudication shall not in any manner affect or impair the validity or the enforceability of the other and remaining provisions of this Trust and such other and remaining provisions shall remain in full force and effect as though such invalid or unenforceable provisions or clauses had not been herein included or made a part hereof.

Section 4 - Friedlander, Gaines, Cohen, Rosenthal & Rosenberg, Esqs. is designated as the Agent of the Trust upon whom process against the Trust may be served. The address where any process against the Trust may be served is c/o Friedlander, Gaines, Cohen, Rosenthal & Rosenberg, Esqs., 1140 Avenue of the Americas, New York, New York 10036.

The Trustees, by an instrument in writing executed for that purpose and ~~delivered to the Agent of the Trust referred to in this Section 4,~~ may designate a Successor Agent of the Trust upon whom process against the Trust may be served.

IN WITNESS WHEREOF, the Trustees, Association and the Union have executed this Restated Agreement and Declaration of Trust and have evidenced their ratification and consent to be bound by the Trust created herein, the day and year first above written.

UNION TRUSTEES:

Murray Baratz
Murray Baratz

Daniel Ornstein
Daniel Ornstein

John Glanzman
John Glanzman

Philip Lobenberg
Philip Lobenberg (Alternate)

ASSOCIATION TRUSTEES:

Milton Bloomrosen
Milton Bloomrosen

Leonard Schwartz
Leonard Schwartz

Ronald Rosenberg
Ronald Rosenberg

Consented to and approved this 25th day of May, 1975.

LOCAL 805, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

WHOLESALE TOBACCO DISTRIBUTORS
OF NEW YORK, INC.

By Alfred Jordan Pres.

By Milton Bloomrosen - Pres.

AGREEMENT made as of the 12th day of May, 1981 amending the Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975 between LOCAL 805 INTERNATIONAL BROTHERHOOD OF TEAMSTERS (hereinafter called the "Union") and WHOLESAL E TOBACCO DISTRIBUTORS OF NEW YORK, INC. (hereinafter called the "Association") and others designated as Union Trustees and as Association Trustees, respectively.

W I T N E S S E T H :

WHEREAS, the undersigned constituting the Trustees of the Local 805 Pension Fund desire to amend the above-mentioned Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975; and

WHEREAS, Article VI of said Restated Agreement and Declaration of Trust provides that said Restated Agreement and Declaration of Trust may be amended at any time by an instrument in writing executed by the Trustees and consented to and approved by the Union and Association,

NOW, THEREFORE, in consideration of the premises, it is hereby agreed as follows:

Effective as of the date hereof, the Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975 is hereby amended as follows:

1. Article II, Section 6(b) is hereby amended to read as follows:

Section 6(b). In the case of a contribution which

is made by an Employer by a mistake of fact or law, such contribution may be returned by the Trustees to such Employer within six (6) months after the Trustees determine that the contribution was made by such a mistake.

2. Article III, Section 14(c) is hereby amended to read as follows:

Section 14(c). Where court action has been instituted, attorneys' fees and costs.

3. The following subparagraphs are hereby added to Article III, Section 14:

Section 14(d). In addition to the foregoing, an amount equal to the greater of (i) interest on the unpaid contributions at the best interest rate charged by the Chase Manhattan Bank to substantial and responsible commercial borrowers as of the date of the Employer's default in contributions to the Fund or (ii) liquidated damages in an amount of twenty (20%) percent of the unpaid contributions.

In all other respects, the aforementioned Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975 is hereby ratified, confirmed and continued in full force and effect.

IN WITNESS WHEREOF, the Trustees, the Association and the Union have executed this Amendment as of the day and year first above written.

UNION TRUSTEES

ASSOCIATION TRUSTEES

Murray Baratz

UNION TRUSTEES

ASSOCIATION TRUSTEES

John Glanzman

John Lagana, Jr.

Philip H. Lobenberg

Harold Levine

Consented to and approved as of the 12th day
of May, 1981.

LOCAL 805 INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

WHOLESALE TOBACCO DISTRIBUTORS
OF NEW YORK, INC.

By: _____
Abe Gordon, President

By: _____

AGREEMENT made as of the 21st day of March, 1990 amending the Restated Agreement and Declaration of Trust dated as of the 25th day of May, 1975 between LOCAL 805 INTERNATIONAL BROTHERHOOD OF TEAMSTERS (hereinafter called the "Union") and WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK, INC. (hereinafter called the "Association"), and others designated as Union Trustees and as Association Trustees, respectively.

W I T N E S S E T H:

WHEREAS, the undersigned, constituting the Trustees of Local 805 Welfare Fund, desire to amend the above-mentioned Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975 and as subsequently amended, and

WHEREAS, Article VI of said Restated Agreement and Declaration of Trust, provides that said Restated Agreement and Declaration of Trust may be amended at any time by an instrument in writing executed by three-fourths of the Trustees and consented to and approved by the Union and the Association.

NOW, THEREFORE, in consideration of the premises, it is hereby agreed as follows:

Effective as of the date hereof, the Restated Agreement and Declaration of Trust, made as of the 25th day of May, 1975, is hereby amended as follows:

1. Article II, Section 5, is hereby amended by the addition of the following subsection:

(d) The Trustees shall have the power and the duty to take all action and to make all decisions necessary or

proper to carry out the Plan. The determination of the Trustees as to any questions involving the general administration and interpretation of the Plan shall be final, conclusive and binding. Any discretionary actions to be taken under the Plan by the Trustees with respect to the classification of Employees, Participants, contributions, or benefits shall be uniform in their nature and applicable to all persons similarly situated. Without limiting the generality of the foregoing, the Trustees shall have the following powers.

- a. To require any person to furnish such information as they may request for the purpose of the proper administration of the Plan as a condition to receiving any benefits under the Plan.
- b. To make and enforce such rules and regulations and prescribe the use of such forms as they shall deem necessary for the efficient administration of the Plan.
- c. To interpret or construe the Plan, and to resolve ambiguities, inconsistencies and omissions, which findings shall be binding, final and conclusive.
- d. To decide on questions concerning the Plan and the eligibility of an employee to participate in the Plan, in accordance with the provisions of the Plan.

- e. To determine the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan; and to provide a full and fair review to any participant whose claim for benefits has been denied in whole or in part.

In all other respects the aforementioned Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975, is hereby ratified, confirmed and continued in full force and effect.

IN WITNESS WHEREOF, the Trustees, the Association and the Union have executed this Amendment as of the day and year first above written.

UNION TRUSTEES

EMPLOYER TRUSTEES

Brian Hochow

Leonard Schwartz

George Stofsky

Lewis B. Helfstein

Jack Tarshis

Harold Levine

Consented to and approved as of the 21st day of March, 1990:

LOCAL 805 INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

WHOLESALE TOBACCO DISTRIBUTORS
OF NEW YORK, INC.

By: _____
Jack Tarshis
President

By: _____

AGREEMENT made as of the 26th day of October , 1982 amending the Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975 between LOCAL 805 INTERNATIONAL BROTHERHOOD OF TEAMSTERS (hereinafter called the "UNION") and WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK, INC. (hereinafter called the "ASSOCIATION") and others designated as Union Trustees and as Association Trustees respectively.

W I T N E S S E T H :

WHEREAS, the undersigned constituting the Trustees of the Local 805 Pension Fund desire to amend the above-mentioned Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975 and as subsequently amended, and

WHEREAS, Article VI of said Restated Agreement and Declaration of Trust provides that said Restated Agreement and Declaration of Trust may be amended at any time by an instrument in writing, executed by the Trustees and consented to and approved by the Union and Association.

NOW THEREFORE, in consideration of the premises it is hereby agreed as follows:

Effective as of the date hereof the Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975 and as subsequently amended is hereby amended as follows:

1. Article III, Section 7 is hereby amended to read as follows:

Section 7: Except as hereinafter provided, all checks, drafts, vouchers or other withdrawals of funds from the accounts or account of the Trust Estate shall be signed by the Fund Manager and one Trustee. The Trustees may by Resolution authorize the Fund Manager and/or Agent or other Employee of the Fund to be the sole signatory on checks drawn on an office account.

In all other respects the aforementioned Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975 is hereby ratified, confirmed and continued in full force and effect.

IN WITNESS WHEREOF, the Trustees, the Association and the Union have executed this amendment as of the day and year first above-written.

UNION TRUSTEES

Murray Baratz
MURRAY BARATZ

John Glanzman
JOHN GLANZMAN

PHILIP LOBENBERG

William Powell
WILLIAM POWELL

ASSOCIATION TRUSTEES

Harold Levine
HAROLD LEVINE

Leonard Schwartz
LEONARD SCHWARTZ

JOHN LAGANA, JR.

L. B. Helfstein
LEWIS HELFSTEIN

Consented to and approved as of the 26th day of October, 1982.

LOCAL 805 INTERNATIONAL BROTHERHOOD OF TEAMSTERS

BY: Abe Gordon
Abe Gordon, President
WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK, INC.

BY: John Lagana, Jr. Pres.

PARTICIPATION AGREEMENT

This agreement ("Participation Agreement") entered into as of the 1st day of January, 1997, between the Local 805 I. B. of T. ("Union") and the Board of Trustees ("Trustees") of the Local 805 Pension & Retirement Fund ("Fund") shall govern the participation of all of the non-bargaining unit employees ("Employees") of the Union in the Fund.

1. (a) Effective as of January 1, 1997, ("Effective Date"), the Union shall make contributions to the Fund for each of its Employees on a monthly basis in accordance with the Contribution Schedule set forth in Appendix A of this Participation Agreement for coverage in the Fund which rate shall be at least equal to the rate set forth in the collective bargaining agreements between the Union and other contributing employers. The Union further agrees that such contribution amount may be subject to change during the term of the Participation Agreement by the Trustees effective upon thirty (30) days' advance written notice to the Union. The Union retains the right to terminate its participation upon thirty (30) days' written notice.

2. The Employer hereby confirms its adoption and agreement to be bound, and to abide by all of the terms and conditions of the Local 805 Pension Plan ("Plan"), the Agreement and Declaration of Trust ("Trust Agreement") of the Local 805 Pension and Retirement Fund establishing the Pension Fund, other Local 805 Pension Plan/Local 805 Pension and Retirement Fund documents, and all rules and regulations thereof, as they presently

exist or as they may be hereinafter amended or modified, and interpretations of any of the foregoing made by the Trustees and to be bound by the acts of the Union and Employer Trustees or their respective successors in administering the Trust Fund in accordance with the Plan and Fund documents and rules. The Trust Agreement, Plan, Fund documents, and all rules and regulations thereof are incorporated herein by reference.

3. Contributions must be received by the Trustees on or before the tenth (10th) business day of the month following the end of the month in which covered services were performed by the Employee. Contributions shall be made by check, bank draft or money order payable to Fund. Each contribution payment must be accompanied by the appropriate remittance form specifying, for each Employee for whom Fund contributions are payable, the Employee's name and social security number, the date(s) of the services for which Fund contributions are being paid, the amount of wages on which Fund contributions are being paid, and the dollar amount of Fund contributions paid. The Trustees shall have the authority to have their field auditors or an independent accountant audit the payroll, personnel, wage, contribution payment records of the Employer, and other appropriate records of the Employer as the Trustees deem to be necessary to determine whether the Union has met all of its obligations under this Participation Agreement, and to enable the Fund to maintain its tax-exempt status under the Internal Revenue Code of 1986 ("Code") and the Plan to maintain its tax-qualified status under the Code. Failure to submit monthly

reports, if so requested by the Trustees, may subject the Union to an audit, a nonwaivable penalty, and/or a suit in federal court to compel these documents and the Union shall further be liable for attorneys' fees, costs and other expenses incurred by the Trustees in securing these reports as well as for any other remedy provided by applicable law or regulation. Furthermore, if the audit reveals that the Union has provided the Fund with inaccurate information or the Union has made insufficient contributions to the Fund, the Employer may be required to pay all fees and expenses, including auditors' fees and expenses and/or accountants' fees and expenses incurred in preparing the audit, and also all legal fees and costs incurred in collecting said audit costs if judicial enforcement of this paragraph is necessary.

4. The failure of the Union to make all of the required contributions to the Fund on the date required by the Trustees shall constitute a delinquency in violation of the Union's obligations hereunder. Non-payment of contributions by any other contributing employer to the Fund when such contributions are due shall not relieve the Employer or any other contributing employer of its obligation to contribute. The Trustees may take whatever steps they deem necessary, including legal action, to collect such delinquent contributions in accordance with the terms of the Trust Agreement, Plan and other Plan/Fund documents.

5. It is expressly agreed and understood by the Union that the Trustees shall have the sole and absolute discretion to condition, limit, terminate, or preclude participation by the Union

and/or any of its Employees in the Fund, as the Trustees may deem necessary to preserve (a) the tax-qualified status of the Plan; (b) the actuarial soundness, financial stability, and tax-exempt status of the Fund; and (c) as otherwise required by the documents and/or rules governing the Fund at any time.

6. The Trustees shall make reasonable efforts to assure that the Fund and Plan comply with the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and conform to the applicable requirements of the relevant provisions of the Code so as to promote the continued deductibility for income tax purposes of the contributions made by employers contributing to the Fund.

7. The Union and the Trustees agree that if any provision of this Participation Agreement is determined to be unlawful or otherwise void, the remaining provisions hereof shall remain in full force and effect subject to the provisions of paragraph 5 hereinabove.

8. All notices shall be sent to the Trustees and the Union at the address shown on the signature page of this Participation Agreement and shall be deemed duly given when either delivered in person or sent by first class mail.

9. Upon termination of this Participation Agreement, as provided herein, the participation of all Employees in the Fund shall cease on the later to occur of: (a) the first day of the month following the month in which the event causing such termination of participation occurs or (b) the date determined by

the Trustees in accordance with the terms of the Trust Agreement, Plan, or other applicable rules and regulations of the Fund.

10. This Participation Agreement sets forth the entire agreement between the parties hereto, is intended to be the complete and exclusive statement of the terms hereof, and except as provided in paragraph 1 with respect to a change in the Union's contribution rate, this Participation Agreement may not be modified or amended except pursuant to a signed written agreement between the parties.

11. The Union hereby warrants that it will make contributions to the Fund only on behalf of individuals whom it has determined are its Employees. The Union acknowledges that the Fund cannot assume any responsibility for this determination and that, if it is subsequently determined that the Union has made contributions to the Fund on behalf of an individual who was not an Employee of the Union, that individual may not be eligible to receive any benefits from the Fund based upon such contributions and the Union shall be entitled to a refund of such contributions to the extent permitted by Section 403(c) of ERISA offset, however, by any amount expended by the Fund on premiums or benefits paid on behalf of such individual.

12. Unless otherwise provided by applicable law, this Participation Agreement shall automatically terminate upon the earliest to occur of the following: (a) the date the Participation Agreement is terminated by the Trustees; (b) the date the Union

PARTICIPATION AGREEMENT

APPENDIX A

The Union shall make a contribution to the \$216.67
Fund as follows:

186016

terminates the Participation Agreement, or (c) the date the Fund is terminated.

LOCAL 805 PENSION AND
RETIREMENT FUND

By: [Signature]
Employer Trustee

By: [Signature]
Union Trustee

Dated: June 23, 1998

LOCAL 805 I. B. OF T.

By: [Signature]
Jack Tarshis, President

Dated: June 13, 1998

AGREEMENT made as of the 2nd day of February, 2010 amending the Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975 between LOCAL 805 INTERNATIONAL BROTHERHOOD OF TEAMSTERS (hereinafter called the "Union") and WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK, INC. (hereinafter called the "Association") and others designated as Union Trustees and as Association Trustees, respectively.

WITNESSETH:

WHEREAS, the undersigned, constituting the Trustees of the Local 805 Pension Fund, desire to amend the above-mentioned Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975, as amended from time to time (the "Trust Agreement"); and

WHEREAS, Article VI of said Trust Agreement provides that said Trust Agreement may be amended at any time by an instrument in writing executed by the Trustees and consented to and approved by the Union and Association;

NOW, THEREFORE, in consideration of the premises, it is hereby agreed as follows:

Effective as of the date hereof, the Trust Agreement is hereby amended as follows:

1. Article III is hereby amended by adding the following sentence to the end of Section 1(c), to read as follows:

Meetings of the Trustees may be held at any time, with proper advance notice (as prescribed by this Section 1(c)), by conference telephone.

IN WITNESS WHEREOF, the Trustees, the Association and the Union have executed this Amendment as of the day and year first above written.

UNION TRUSTEES

Will J. Del

Alexander E. [Signature]

William M. O'Byrne

ASSOCIATION TRUSTEES

John Lagana, Jr.

Arthur H. [Signature]

[Signature]

Exhibit A

**RESTATED AGREEMENT AND DECLARATION
OF TRUST OF THE LOCAL 805 PENSION FUND**

AMENDMENTS

Amendment #1

Article I, Section 6 has been amended in its entirety to read as follows:

Section 6 – TRUSTEES. The term "Trustees," as used herein, shall mean the Board of Trustees of the Fund (Employer Trustees and the Union Trustees collectively) and any successor Trustees designated and appointed as provided in this Agreement and Declaration of Trust.

Amendment #2

The following provisions have been added to the end of Article I:

Section 10 – NON-ASSOCIATION EMPLOYER or NON-ASSOCIATION EMPLOYERS. The term "Non-Association Employer" or "Non-Association Employers," as used herein, shall mean any Employer who is not a member of the Association and who is a contributing member of the Local 805 Pension Fund.

Section 11.—ASSOCIATION TRUSTEES. The term "Association Trustees" as used herein shall mean the Trustees appointed by the Association pursuant to Article III, Section 1(a) of this Agreement.

Section 12. – NON-ASSOCIATION TRUSTEES. The term "Non-Association Trustees" as used herein shall mean the Trustees appointed by the Non-Association Employers pursuant to Article III, Section 1(a) of this Agreement.

Section 13 – EMPLOYER TRUSTEES. The term "Employer Trustees," as used herein shall mean the Association Trustees and the Non-Association Trustees each appointed pursuant to Article III, Section 1(a) of this Agreement.

Section 14 – UNION TRUSTEES. The term "Union Trustees," as used herein shall mean the Trustees appointed by the Union pursuant to Article III, Section 1(a) of this Agreement.

Section 15 – References herein shall not be construed as gender specific.

Amendment #3

Article III, Sections 1(a) and 1(b) have been amended in their entirety to read as follows:

Section 1 – (a) The Trustees shall consist of five (5) Union Trustees and five (5) Employer Trustees.

(i) The Union shall appoint five (5) Union Trustees, which shall include at least one (1) individual who is a retiree receiving pension benefits from the Pension Plan of the Pension Fund. The Association shall appoint three (3) Employer Trustees. The Non-Association Employers shall appoint two (2) Employer Trustees. Only senior executives (vice-president, director or higher), officers, directors or owners of the Non-Association Employers may serve as Non-Association Employer Trustees. Except as set forth herein, any Non-Association Employer may nominate candidates to serve as Non-Association Employer Trustees, and each Non-Association Employer shall be entitled to one vote to elect each Non-Association Employer Trustee. Prior to May 31, 2008, any Non-Association Employer who, as of June 30, 2005, performs services in a business that is in any way involved in the distribution of tobacco products, shall be ineligible to have their senior executives, officers, directors or owners, or any of their employees, representatives or agents, serve as Employer Trustees or as Alternate Employer Trustees.

(ii) Each Trustee shall continue to serve at the pleasure of the party or parties who designated him. The designation of any Trustee may be terminated at any time by the party or parties who designated him, by filing with the remaining Trustees a true copy of a resolution adopted by the Association, the Union or the majority of Non-Association Employers, as the case may be, authorizing such action and terminating said designation. A

Trustee may resign by written notice addressed to the remaining Trustees at least thirty (30) days prior to the effective date of such resignation. Any vacancy occurring by reason of death, resignation or otherwise, may be filled by the party who designated the Trustee whose office becomes vacant, in the manner above set forth. It is the intention of the parties that the total number of Employer Trustees and Union Trustees, at all times, be equal. It is also the intention of the parties that the number of Association Trustees always be greater than the number of Non-Association Trustees, and that there always be at least one Union Trustee who is a retiree who receives pension benefits from the pension plan of the Pension Fund. In the event of an increase or decrease in the number of Trustees by virtue of any conditions arising following the execution of this Agreement, the respective parties to this Agreement shall take appropriate steps immediately to increase or decrease the number of Trustees as the situation may require. During such time as any vacancy exists among the Association Trustees or Non-Association Trustees, the remaining Association Trustees or Non-Association Trustees shall be allowed the vote or votes of the vacant trusteeships in order to preserve the proportion of Association Trustees and Non-Association Trustees set forth in this Agreement.

(iii) The Union, the Association and the Non-Association Employers may each appoint Alternate Trustees who shall have the right to act in the full capacity of a Trustee with all the rights and obligations of a Trustee but only when a permanent Trustee appointed by the body which appointed the particular Alternate Trustee is absent from duly constituted meetings, provided, however, that subject to Article III, Section 1(a), only senior executives (vice-president, director or higher), officers, directors or owners of the Non-Association Employers may serve as Alternate Non-Association Employer Trustees, and if the absent Union Trustee is a retiree, then the Alternate Union Trustee must also be a retiree.

(b) A majority of all the Employer Trustees, provided such majority consists of at least two (2) Association Trustees, and a majority of all the Union Trustees shall constitute a quorum for the transaction of business. When there are less than all of the Employer Trustees or all of the Union Trustees, the Trustee or Trustees from such group or groups having less than all of their Trustees present can, on their own motion, table any matter under consideration to the next regular or special meeting of the Trustees, in which event the written notice for such next regular or special meeting shall contain the text of the tabled matter, with a statement that such tabled agenda will be addressed at such next regular or special meeting. Any Trustee who cannot attend such next regular or special meeting may designate his decision or proxy by registered mail addressed to the Chairman of the Board of Trustees or to the Secretary.

(i) The Employer Trustees, as a body, shall have one (1) vote, and the Union Trustees, as a body, shall have one (1) vote. The Employer Trustees shall cast their vote in the manner determined by a majority of the Employer Trustees voting in person or by proxy. The Union Trustees shall cast their vote in the manner determined by a majority of the Union Trustees voting in person or by proxy. No action shall be taken by the Trustees except by vote of two to zero.

(ii) Either the Union Trustees, as a body (*i.e.*, the majority of the Union Trustees), or the Employer Trustees, as a body (*i.e.*, the majority of the Employer Trustees), may submit a deadlocked dispute for binding arbitration before an impasse arbitrator. For the first eighteen (18) months following the Effective Date, Martin Scheinman shall be the impasse arbitrator. At the end of that eighteen (18) month period, the Trustees shall determine whether to retain Martin Scheinman as the impasse arbitrator, or to select a new impasse arbitrator. If the then-currently designated impasse arbitrator shall fail to accept the assignment

or be unable to act for any reason, the Trustees shall promptly agree upon an arbitrator to decide the matters in question. If the Trustees are unable to agree upon an arbitrator, either the Employer Trustees or the Union Trustees may demand arbitration under the Impartial Umpire Rules for Arbitration of Impasse between Trustees of Joint Employee Benefit Trust Funds of the American Arbitration Association at its New York City Regional Office. The decision or award of the arbitrator shall be final and binding upon the parties, subject to the provisions of the Federal Arbitration Act. The fees and expenses of the arbitrator, legal counsels, and, if applicable, the American Arbitration Association shall be borne by the Fund.

Amendment No. 4

Article III, Section 1(c), Section 2, has been amended in its entirety to read as follows:

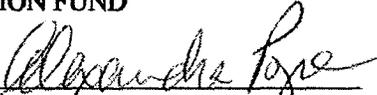
Section 2. Beginning in January 1, 2006, and for each subsequent year, a Chairman and a Secretary and two (2) Co-Treasurers will each serve for one (1) year terms commencing the 1st day of the month January. The Chairman who is to serve during even numbered years will be selected by the Union Trustees. The Chairman who is to serve during odd numbered years will be selected by the Employer Trustees. The Secretary who is to serve during even numbered years will be selected by the Employer Trustees. The Secretary who is to serve during odd numbered years will be selected by the Union Trustees. One (1) Co-Treasurer will always be selected by the Union Trustees and one (1) Co-Treasurer shall always be selected by the Employer Trustees.

Amendment No. 5

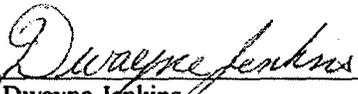
Article VI, Section 1, has been amended in its entirety to read as follows:

The provisions of this Agreement may be amended at any time by an instrument, in writing, executed by both the Employer Trustees and the Union Trustees, provided that no amendment shall divert or provide for the use of the Trust Fund then in the hands of the Trustees, other than for the purposes of this Trust, to those persons who are covered hereby or to their beneficiaries as hereinabove set forth.

**UNION TRUSTEES OF LOCAL 805
PENSION FUND**

By: 
Alexandra Pope

By: 
Andrew Basile

By: 
Dwayne Jenkins

**EMPLOYER TRUSTEES OF LOCAL 805
PENSION FUND**

By: _____
Leonard Schwartz

By: _____
Arthur Katz

By: _____
John Lagana

Amendment No. 5

Article VI, Section 1, has been amended in its entirety to read as follows:

The provisions of this Agreement may be amended at any time by an instrument, in writing, executed by both the Employer Trustees and the Union Trustees, provided that no amendment shall divert or provide for the use of the Trust Fund then in the hands of the Trustees, other than for the purposes of this Trust, to those persons who are covered hereby or to their beneficiaries as hereinabove set forth.

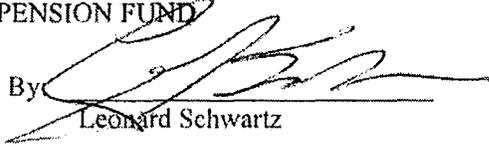
UNION TRUSTEES OF LOCAL 805
PENSION FUND

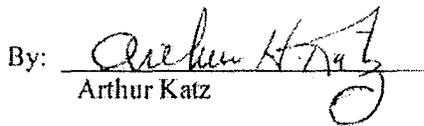
By: _____
Alexandra Pope

By: _____
Andrew Basile

By: _____
Dwayne Jenkins

EMPLOYER TRUSTEES OF LOCAL 805
PENSION FUND

By: 
Leonard Schwartz

By: 
Arthur Katz

By: _____
John Lagana

Amendment No. 5

Article VI, Section 1, has been amended in its entirety to read as follows:

The provisions of this Agreement may be amended at any time by an instrument, in writing, executed by both the Employer Trustees and the Union Trustees, provided that no amendment shall divert or provide for the use of the Trust Fund then in the hands of the Trustees, other than for the purposes of this Trust, to those persons who are covered hereby or to their beneficiaries as hereinabove set forth.

UNION TRUSTEES OF LOCAL 805
PENSION FUND

EMPLOYER TRUSTEES OF LOCAL 805
PENSION FUND

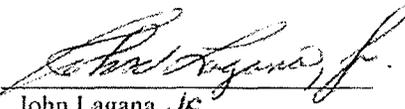
By: _____
Alexandra Pope

By: _____
Leonard Schwartz

By: _____
Andrew Basile

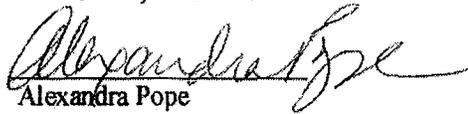
By: _____
Arthur Katz

By: _____
Dwayne Jenkins

By: 
John Lagana Jr

Consented to and approved by:

**LOCAL 805, INTERNATIONAL BROTHERHOOD
OF TEAMSTER, AFL-CIO**

By: 
Alexandra Pope
President

**WHOLESALE TOBACCO DISTRIBUTORS OF
NEW YORK, INC.**

By: _____
Name:
Title:

Consented to and approved by:

LOCAL 805, INTERNATIONAL BROTHERHOOD
OF TEAMSTER, AFL-CIO

By: _____
Alexandra Pope
President

WHOLESALE TOBACCO DISTRIBUTORS OF
NEW YORK, INC.

By: Arthur Katz
Name: Arthur Katz
Title: Executive Director

AGREEMENT made as of the 2nd day of October, 2012 amending the Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975 between LOCAL 805 INTERNATIONAL BROTHERHOOD OF TEAMSTERS (hereinafter called the "Union") and WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK, INC. (hereinafter called the "Association") and others designated as Union Trustees and as Association Trustees, respectively.

WHEREAS, the undersigned, constituting the Trustees of the Local 805 Pension Fund, desire to amend the above-mentioned Restated Agreement and Declaration of Trust made as of the 25th day of May, 1975, as amended from time to time (the "Trust Agreement"); and

WHEREAS, Article VI of said Trust Agreement provides that said Trust Agreement may be amended at any time by an instrument in writing executed by the Trustees;

NOW, THEREFORE, in consideration of the premises, it is hereby agreed as follows:

Effective as of the date hereof, the Trust Agreement is hereby amended as follows:

1. The following provision is hereby added to the end of Section 11(B) of Article III of the Trust Agreement:

"The term "securities" and "investment trusts" as used herein shall include shares, units or other interests in Collective Trust(s). The term "Collective Trust" shall mean any group, pooled, common, commingled or collective trust fund maintained by a bank, insurance company, trust company or broker-dealer, in which assets of employee benefit plans subject to ERISA and the Internal Revenue Code of 1986, as amended (the "Code") may be invested. The trustees of such Collective Trust shall become trustees of the allocable share of the Trust Fund assets transferred and deposited with such Collective Trust and shall have sole and exclusive authority and discretion to manage and control (including the power to invest and reinvest) such Collective Trust assets. The Trustees shall not be liable for any act or omission of any trustee of a Collective Trust or be under any obligation to invest or otherwise manage any assets of the Trust Fund that have been transferred thereto. The provisions of the agreement establishing such Collective Trust shall be deemed to be incorporated by reference into this Trust Agreement (to the extent that the provisions thereof are not inconsistent with the terms of this Trust Agreement or violative of ERISA, the Code or other applicable law).

2. The following provision is hereby added to the end of Section 4 of Article II of the Trust Agreement:

"In addition, in its sole discretion, the Trustees may, from time to time, appoint an Investment Managers (including any manager of a collective investment vehicle the assets of which constitute "plan assets" under ERISA) to serve as a "named fiduciary" (within the meaning of Section 402 of ERISA) with respect to the assets of the Fund such Investment Manager has been appointed to manage, for the limited purpose of designating and appointing other investment managers or sub-managers (including any manager of a collective investment vehicle the assets of which constitute "plan assets" under ERISA) to serve as an "investment manager" within the meaning of Section 3(38) of ERISA and "fiduciary" within the meaning of Section 3(21) of ERISA with respect to all or any portion of such allocable share of the Fund assets."

3. In all other respects, the Trust Agreement shall remain unchanged by this Amendment.

IN WITNESS WHEREOF, the undersigned hereby adopt this Amendment effective as of October 2, 2012.

UNION TRUSTEES OF LOCAL 805
PENSION FUND

By: Alexander Pige

By: William M. O'Boyle

By: _____

EMPLOYER TRUSTEES OF LOCAL 805
PENSION FUND

By: Arthur Katz

By: [Signature]

By: [Signature]