

**SOUTHERN NEVADA  
CULINARY AND BARTENDERS PENSION PLAN**

**AMENDED AND RESTATED AS OF DECEMBER 31, 2001**

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## **SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION PLAN**

The Trustees of the Southern Nevada Culinary and Bartenders Pension Trust hereby amend and restate the Southern Nevada Culinary and Bartenders Pension Plan (“Plan”). This document includes Amendments 1 through 9 to the Plan as restated effective June 1, 1993. The Plan is also hereby amended and restated with the intent to bring the Plan into compliance on a timely basis with the requirements of the Uruguay Round Agreements Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, and the Internal Revenue Restructuring and Reform Act of 1998.

## ARTICLE I

### **NAME AND EFFECTIVE DATE**

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- 1.01 **Name.** The name of this Pension Plan is the SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION PLAN.
- 1.02 **Effective Date.** This Amended and Restated Plan shall be effective as of December 31, 2001.

## ARTICLE II

### DEFINITIONS

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Unless the content or subject matter otherwise requires, the following definitions shall govern this Plan:

- 2.01 **Actuarial Equivalent** shall mean that the present value of one benefit option is equal to the present value of another benefit option based on the same mortality table and interest rate.
- (a) For purposes of the fifty percent (50%) Joint and Survivor Annuity benefit available to disability retirees as described in Section 5.04, and the Qualified Joint and Survivor Annuity and the Qualified Joint and Survivor Annuity with Increase Feature available to disability retirees as described in Section 5.05, the actuarial equivalent adjustment factor equals 78.0% minus 0.4% for each year that the spouse is younger than the Employee and plus 0.4% for each year that the spouse is older than the Employee, subject to a maximum factor of 99.0%.
  - (b) For purposes of the fifty percent (50%) Joint and Survivor Annuity benefit described in Section 8.01, the Qualified Joint and Survivor Annuity described in Section 8.04(b), and the Qualified Joint and Survivor Annuity with Increase Feature described in Section 8.05(b), the actuarial equivalent adjustment factor shall be equal to 90.0% minus 0.4% for each year that the spouse is younger than the Employee, and plus 0.4% of each year that the spouse is older than the Employee, subject to a maximum factor of 99.0%.
  - (c) The actuarial present value of a lump sum distribution shall be determined as follows:
    - (1) For distributions made before January 1, 2000:

For purposes of the lump sum option available to Employees retiring under a Regular Pension as described in Section 8.02, the actuarial equivalent adjustment factors are based on mortality rates taken from the average of the male and female rates taken from the 1971 Group Annuity Mortality table with a one-year advance in age and an interest rate of 6.50%.

For purposes of computing any lump sum payable under Sections 7.08, 8.02, or 10.05(c) effective January 1, 1989, the interest rate shall not exceed (i) the Applicable Interest Rate set forth in Section 2.01 (f)(1) if the present value of the benefit is not in excess of \$25,000, or (ii) 120 percent of the Applicable Interest Rate set forth in Section 2.01 (f)(1) if the present value of the benefit exceeds \$25,000 as determined under clause (i) of this paragraph. In no event shall the present value determined under clause (ii) be less than \$25,000.
    - (2) For lump sum payments made under Sections 7.08, 8.02, or 10.05(c) on or after January 1, 2000, and before April 1, 2002, the actuarial present value shall be calculated as the greater of the actuarial present value as determined using the Applicable Interest Rate set forth in Section 2.01 (f)(2), and the mortality table based on the prevailing standard table described in Section 807(d)(5) of the Internal Revenue Code, or as determined under Section 2.01(c)(1), above.

- (3) For lump sum payments made under Sections 7.08, 8.02, or 10.05(c) on or after April 1, 2002, the actuarial present value shall be calculated as the greater of the actuarial present value as determined using the Applicable Interest Rate set forth in Section 2.01 (f)(2), and the mortality table based on the prevailing standard table described in Section 807(d)(5) of the Internal Revenue Code, or as determined using the mortality rates taken from the average of the male and female rates taken from the 1971 Group Annuity Mortality table with a one-year advance in age and an interest rate of 6.50%.
- (d) For purposes of the offset actuarial calculation for post Regular Retirement Benefit accruals described in Section 4.04, effective January 1, 1989, the interest assumption shall be 7.25% per annum. The mortality assumption shall be based on mortality rates taken from the average of the male and female rates taken from the 1971 Group Annuity Mortality table with a one year advance in age.
- (e) For purposes of determining the actuarial equivalent postponed pension benefits described in Section 7.03(a), effective January 1, 1989, the actuarial equivalent adjustment increase factor equals 1.0% for each month the date described in Section 4.01 precedes the Pension Benefit Starting Date for the first sixty (60) months, and 1.5% for each additional month after sixty months.
- (f) “Applicable Interest Rate” shall have the following meanings:
  - (1) Effective January 1, 1989, for distributions made before January 1, 2000, the Applicable Interest Rate shall mean the interest rate or rates which would be used by the Pension Benefit Guaranty Corporation for purposes of determining the present value of that Employee’s benefits under the Plan if the Plan had terminated on the date distribution commences with insufficient assets to provide benefits guaranteed by the Pension Benefit Guaranty Corporation on that date as a trustee single-employer plan. Notwithstanding the foregoing, the Applicable Interest Rate shall be determined as of the first day of the Plan Year in which the distribution occurs.
  - (2) For distributions made on or after January 1, 2000, the Applicable Interest Rate shall mean the annual interest rate on 30-year Treasury securities for the month of November preceding the Plan Year in which the distribution occurs. The applicable interest rate shall remain constant for the Plan Year.
- (g) For purposes of computing the Modified 50% Joint and Survivor Annuity Benefit with Increase Feature available to retirees as described in Section 8.07, the actuarial equivalent adjustment factor shall equal 88.0% minus 0.4% for each year that the spouse is younger than the Employee, and plus 0.4% for each year that the spouse is older than the Employee; provided that in no event shall the adjustment factor exceed a maximum of 97.0%.
- (h) Unless expressly stated herein or as otherwise required by law, the actuarial equivalent adjustment factors for all other purposes are based on mortality rates taken from the average of the male and female rates taken from the 1971 Group Annuity Mortality table with a one-year advance in age and an interest rate of 6.50%.

2.02 **Association** shall mean the Nevada Resort Association, or its successor.

- 2.03 **Board of Trustees or Board** shall mean the Board of Trustees established by the Trust Agreement.
- 2.04 **Collective Bargaining Agreement** shall mean:
- (a) Any written agreement between (i) the Nevada Resort Association, on behalf of its member employers, and the Unions; and (ii) any other collective bargaining agreement between the Unions (or, subject to the approval of the Trustees, the Professional Office Personnel Alliance) and any Employer which requires the Employer covered thereby to make Contributions to this Fund;
  - (b) Any extensions, amendments, modifications or renewals of any of the described agreements (whether by operation of law or otherwise), or any substitute or successor agreements to them which require the making of Employer Contributions to this Fund.
- 2.05 **Contribution** shall mean payments to the Fund by an Employer made pursuant to a Collective Bargaining Agreement or pursuant to any other written agreement consistent with regulations adopted by the Board of Trustees; provided such payments are not in violation of any existing law or regulation.
- 2.06 **Covered Employment** shall mean employment in a job classification covered by a Collective Bargaining Agreement. The term “Covered Employment” shall also mean work performed by an Employee regularly employed by the Union, the Training Fund, the Trust, ULAN, or other affiliated entity approved by the Board of Trustees, and participating in this Trust pursuant to regulations adopted by the Board of Trustees.
- 2.07 **Early Retirement Date** shall mean the date an Employee has attained age 55 and has ten years of Pension Credit. Notwithstanding the foregoing, for Employees who attain age 55 on or after January 1, 1994, and who worked at least one hour in Covered Employment on or after that date, Early Retirement Date shall mean the date the Employee attains age 55 and has eight years of Pension Credit; provided, however, that this definition shall apply only to Employees who have not otherwise received retirement benefits under the Plan as of September 26, 1996. For Employees who perform an Hour of Service in Covered Employment on or after January 1, 1997, Early Retirement Date shall mean the date an Employee has attained age 55 and has five years of Pension Credit; provided, however, that this definition shall apply only to Employees who have not otherwise received retirement benefits under the Plan as of January 1, 1998.
- 2.08 **Employee** shall mean and include:
- (a) All persons covered by a Collective Bargaining Agreement between an Employer and the Unions, or either of them;
  - (b) All persons employed within the State of Nevada by the Unions, the Training Fund, the Trust, or ULAN, including elected or appointed officers of the Unions; and
  - (c) other such persons employed by affiliated entities as are designated and approved by the Board of Trustees.

The term “Employee” shall not include any self-employed person, whether a sole proprietor or a partner.

- 2.09 **Employer** shall mean any employer who is required by a Collective Bargaining Agreement to make Contributions to the Pension Fund. The term “Employer” shall also include the Unions, the Training Fund, the Trust, ULAN, and other affiliated entity approved by the Board of Trustees which make contributions to the Pension Fund on behalf of their Employees under such conditions and manner as are specified in this Plan and in regulations adopted by the Board of Trustees.
- 2.10 **ERISA** shall mean the Employee Retirement Income Security Act of 1974, as amended at the time of reference.
- 2.11 **50% Joint and Survivor Annuity** (for any unmarried Employee) shall mean an immediate annuity for the life of the Employee, with a survivor annuity for the life of a designated beneficiary which is equal to fifty percent (50%) of the amount which is payable during the joint lives of the Employee and the designated beneficiary, and which is the Actuarial Equivalent of a single annuity for the life of the Employee. The designated beneficiary must be a natural living person (and not multiple persons or a class of persons), properly designated in the manner provided in Section 8.06, and otherwise in accordance with the rules of the Plan. This form of benefit is not available to any married Employee, and any election to receive this benefit form by an unmarried Employee shall automatically be deemed revoked if the Employee becomes married at any time prior to his Pension Benefit Starting Date.
- 2.12 **50% Joint and Survivor Annuity With Increase Feature** (for any unmarried Employee) shall mean an immediate annuity for the life of the Employee, with a survivor annuity for the life of a designated beneficiary which is equal to fifty percent (50%) of the amount which is payable during the joint lives of the Employee and the designated beneficiary, and which is the Actuarial Equivalent of a single annuity for the life of the Employee. If the designated beneficiary predeceases the Employee, then the Employee’s monthly payment would be increased automatically in the following month and for the remainder of his lifetime to an amount equivalent to the payments that he would have received under the life annuity form of payment if payments under this option had not been elected. The designated beneficiary must be a natural living person (and not multiple persons or a class of persons), properly designated in the manner provided in Section 8.06, and otherwise in accordance with the rules of the Plan. This form of benefit is not available to any married Employee, and any election to receive this benefit form by an unmarried Employee shall automatically be deemed revoked if the Employee becomes married at any time prior to his Pension Benefit Starting Date.
- 2.13 **Future Service Credit** shall mean periods of employment on or after January 1, 1971, credited in accordance with Article VI of this Plan.
- 2.14 **Fund, Pension Fund or Trust Fund** shall mean the Trust Fund created and established by the Trust Agreement and shall include Contributions from Employers, interest, income or return thereof and any other property of any kind received and held by the Trustees for the use and purposes declared by the Trust.
- 2.15 **Hour of Service** shall mean for the applicable computation period:
- (a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for a participating Employer.

- (b) Each hour for which an Employee is paid, or entitled to payment, (and only if the Employee is paid or entitled to payment), by a participating Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. Notwithstanding the preceding sentence:
- (1) No more than 300 hours of service are required to be credited under this subparagraph (b) to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period);
  - (2) An hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workmen's compensation, or unemployment compensation or disability insurance laws; and
  - (3) "Hours of Service" are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of this subparagraph (b), a payment should be deemed to be made by or due from an Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a Trust Fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether Contributions made or due to the Trust Fund, insurer or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same "Hours of Service" shall not be credited both under (a) or (b), as the case may be.

The determination of Hours of Service for reasons other than the performance of duties, and the crediting of Hours of Service to computation periods shall be in accordance with Department of Labor Regulations under ERISA.

- (d) "Hours of Service" shall include the above-referenced hours as attributable to:
- (1) Any Employer which is a member of a controlled group of companies as defined under Section 414(b) of the Internal Revenue Code, and service with all other members of the controlled group;
  - (2) Any Employer which is under common control as defined in Section 414(c) of the Internal Revenue Code, and service with all other Employers under the same common control; and
  - (3) Any predecessor of an Employer if the predecessor employer was an Employer under the Plan.

2.16 **Modified 50% Joint and Survivor Annuity With Increase Feature** (for any unmarried Employee) shall mean an immediate modified annuity for the life of the Employee, with a survivor annuity for the

life of a designated beneficiary which is equal to fifty percent (50%) of the modified amount which is payable during the joint lives of the Employee and the designated beneficiary. If the designated beneficiary predeceases the Employee, then the Employee's monthly payment would be increased automatically in the following month and for the remainder of his lifetime to an amount equivalent to the payments that he would have received under the life annuity form of payment if payments under this option had not been elected. The total benefit payable under the Modified 50% Joint and Survivor Annuity With Increase Feature shall be the Actuarial Equivalent of a benefit payable in the form of a single life annuity determined in accordance with Section 2.01(g). The designated beneficiary must be a natural living person (and not multiple persons or a class of persons), properly designated in the manner provided in Section 8.06, and otherwise in accordance with the rules of the Plan. This form of benefit is not available to any married Employee, and any election to receive this benefit form by an unmarried Employee shall automatically be deemed revoked if the Employee becomes married at any time prior to his Pension Benefit Starting Date.

- 2.17 **Past Service Credit** shall mean Pension Credit for periods of employment with an Employer prior to 1971, or prior to the date an Employer is required by a Collective Bargaining Agreement to make Contributions to the Pension Fund, to the extent (and only to the extent) credited in accordance with Article VI of this Plan.
- 2.18 **Pension Benefit Starting Date** shall mean, in the case of a benefit payable as an annuity (other than a disability pension), the first day of the first month following the later of: (a) the Employee's eligibility to retire under Section 4.01 or 4.02; (b) the submission of a completed application for benefits under Section 9.01; and (c) thirty days after the Plan has provided the required explanation of the available payout options under Section 8.06, unless such thirty day period is waived by the Employee (and spouse).

For any benefit period not payable as an annuity, the Pension Benefit Starting Date is the first day on which all events have occurred which entitle the Employee to a benefit, including the filing of a completed application.

For a disability pension, the Pension Benefit Starting Date shall mean the first day of the month following the Employee's eligibility to retire on a Regular Pension under Section 4.01.

The Pension Benefit Starting Date for a Participant who recommences benefit payments after a suspension under Article XIII shall be his original Pension Benefit Starting Date with respect to those benefits.

The Pension Benefit Starting Date for a Participant who elects to defer the commencement of benefits under Section 7.03 shall be the first day of the first period for which the Participant elects benefit payments to begin. In the case of a Pension Benefit Starting Date which occurs on or after the Participant's Regular Retirement Date, the Pension Benefit Starting Date shall also apply to additional accruals after such date.

In the case of a Pension Benefit Starting Date which occurs prior to the Participant's Regular Retirement Date, such date shall not apply to any additional accruals after such date.

(Section 2.18 was added by Plan Amendment Number Two effective January 1, 1989.)

- 2.19 **Pension Credit** shall mean the years of service which are accumulated and maintained for Employees in accordance with Article VI of this Plan.
- 2.20 **Pensioner** shall mean an Employee who is retired and who is receiving pension benefits under this Plan.
- 2.21 **Pension Plan or Plan** shall mean this Pension Plan and any modification, amendment, extension or renewal thereof.
- 2.22 **Permanent Break in Service** shall mean a period of years during which an Employee who is not Vested fails to work the required minimum number of hours in Covered Employment or contiguous non-covered employment (as defined in Section 6.05(c)), and which results in the forfeiture of all previously accumulated Pension Credit.
- 2.23 **Plan Year** shall mean a period of twelve (12) consecutive months beginning January 1 each year and ending December 31.
- 2.24 **Qualified Joint and Survivor Annuity** (for married Employees only) shall mean an immediate annuity for the life of the Employee with a survivor annuity for the life of the Employee's spouse which is equal to fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Employee and the spouse and which is the Actuarial Equivalent of a single annuity for the life of the Employee. A former spouse shall be treated as the spouse or surviving spouse of an Employee to the extent provided under a qualified domestic relations order as defined in Section 414(p) of the Code.
- 2.25 **Qualified Joint and Survivor Annuity With Increase Feature** (for married Employees only) shall mean an immediate annuity for the life of the Employee with a survivor annuity for the life of the Employee's spouse which is equal to fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Employee and the spouse and which is the Actuarial Equivalent of a single annuity for the life of the Employee. If the spouse predeceases the Employee, then the Employee's monthly payment would be increased automatically in the following month and for the remainder of his lifetime to an amount equivalent to the payments that he would have received under the life annuity form of payment if payments under this option had not been elected. A former spouse shall be treated as the spouse or surviving spouse of an Employee to the extent provided under a qualified domestic relations order as defined in Section 414(p) of the Code.
- 2.26 **Qualified Pre-retirement Survivor Annuity** shall mean an immediate annuity for the life of the surviving spouse of an Employee, the payments under which shall be calculated as follows:
- (a) If an Employee dies after the earliest date on which, under the Plan, the Employee could elect to receive retirement benefits, the Employee's surviving spouse shall receive the same benefit that would be payable if the Employee had retired with an immediate Qualified Joint and Survivor Annuity with a 50% continuation of payments to the surviving spouse on the day before the Employee's date of death.
  - (b) If an Employee dies on or before attaining the earliest date on which the Employee could elect to receive retirement benefits under the Plan, the Employee's surviving spouse will receive the same benefit that would be payable if the Employee had:

- (1) separated from service on the date of death; provided, however, that this subparagraph (b) (1) shall not apply in the case of an Employee who separated from service before the date of such individual's death;
- (2) survived to the earliest date on which, under the plan, the Employee could elect to receive retirement benefits;
- (3) retired on such date with an immediate Qualified Joint and Survivor Annuity with a 50% continuation of payments to the surviving spouse; and
- (4) died on the day after the earliest date on which, under the Plan, the Employee could elect to receive retirement benefits.

A Qualified Pre-retirement Survivor Annuity shall only be payable with respect to the benefits in which the Employee was vested under Section 6.05 immediately prior to death.

- (c) Solely with respect to the surviving spouse of any Employee who dies on or after January 1, 1994, the Qualified Preretirement Survivor Annuity (i) shall commence on the first day of the month coinciding with or next following the date of death, and shall be payable for the life of the surviving spouse; and (ii) shall not be subject to the early retirement reductions contained in Section 4.05. The surviving spouse may elect in writing to defer the commencement of the survivor annuity to a later date, but in such case, the amount of the annuity shall be actuarially adjusted based on the factors contained in Section 2.01 of this Plan.

2.27 **Regular Retirement Date** shall mean the date an Employee has attained age 62 and has ten years of Pension Credit. Notwithstanding the foregoing, for Employees who attain age 62 on or after January 1, 1994, and who worked at least one (1) hour in Covered Employment on or after that date, Regular Retirement Date shall mean the date the Employee attains age 62 and has eight (8) years of Pension Credit; provided, however, that this definition shall apply only to Employees who have not otherwise received retirement benefits under the Plan as of September 26, 1996. For Employees who perform an Hour of Service in Covered Employment on or after January 1, 1997, Regular Retirement Date shall mean the date an Employee has attained age 62 and has five years of Pension Credit; provided, however, that this definition shall apply only to Employees who have not otherwise received retirement benefits under the Plan as of September 11, 1997.

2.28 **Training Fund** shall mean the Southern Nevada Joint Management and Culinary and Bartenders Training Fund established effective July 1993, as the same may be amended from time to time.

2.29 **Trust** shall mean the Agreement and Declaration of Trust dated December 21, 1971, establishing the Southern Nevada Culinary and Bartenders Pension Trust Fund and any modification, amendment, extension or renewal thereof.

2.30 **Trustee** shall mean any natural person designated as a Trustee pursuant to the Trust Agreement.

2.31 **ULAN** shall mean the United Labor Agency of Nevada, a Nevada, non-profit corporation.

- 2.32 **Unions** shall mean the Culinary Workers Union, Local 226 and Bartenders Union, Local 165, or their successors.
- 2.33 **Vesting or Vested** shall mean the attainment by a Participant of a benefit right which is not subject to loss or forfeiture.

## ARTICLE III

### PARTICIPATION

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3.01 **Participation.** Every Employee shall automatically become a Participant in this Plan at the time when the first Contribution to this Plan is required to be made on his behalf by an Employer, and Employees shall not be required to file an application for participation. All Employees of the Union, the Training Fund, the Trust, ULAN, and other such persons employed by affiliated entities as are designated and approved by the Board of Trustees shall also participate in the benefits provided under this Plan, provided that Contributions are required to be made to the Pension Fund on behalf of such Employees pursuant to a written agreement with the Pension Fund approved by the Board of Trustees and in accordance with any regulations which may be adopted by the Board of Trustees.

## ARTICLE IV

### ELIGIBILITY FOR PENSION BENEFITS AND BENEFIT AMOUNTS

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4.01 **Regular Pension.** An Employee shall be eligible to retire on a Regular Pension when he meets the earlier of the following requirements:

- (a) He has attained Regular Retirement Date;
- (b) He has attained age 65 and has reached the tenth anniversary of his commencement of participation in the Plan without a Permanent Break in Service. For purposes of this Section, an Employee shall be deemed to have commenced participation in the Plan on the first day of the Plan Year in which the Employee works at least 300 hours in Covered Employment. After a Permanent Break in Service, an Employee shall be deemed to have commenced participation in the Plan on the first day of the first Plan Year following the Permanent Break in Service in which the Employee works at least 300 hours.

For purposes of this subsection (b), subsection 6.04 (j) of this Plan shall apply in determining whether or not an Employee has incurred a Permanent Break in Service.

No retirements will be effective before January 1, 1974.

4.02 **Early Pension.** Effective January 1, 1988 and after, an Employee who has attained Early Retirement Date, terminates employment and upon making application as required, shall be eligible to retire on an Early Pension. An election for early retirement shall be irrevocable after the date the first Early Pension payment is made.

4.03 **Amount of Regular Pension.** The amount of Regular Pension shall be determined by the sum of (a) and (b) below:

- (a) Prior to January 1, 1976 -
  - (1) **Past Service Benefit** - \$11.00 per month for each full year (1400 hours) of Pension Credit accumulated as of January 1, 1971, and,
  - (2) **Future Service Benefit** - \$11.00 per month for each full year (1400 hours) of Pension Credit earned during the period January 1, 1971, through December 31, 1975.
- (b) January 1, 1976, and after -

#### **Future Service Benefit.**

- (1) Effective for retirements commencing on or after January 1, 1992, and prior to January 1, 1998, an Employee's Future Service Benefit will be determined in accordance with the following schedule:

Hours of Service In Covered Employment During the Plan Year <u>(as defined In Section 2.15)</u>	<u>Monthly Accumulated Benefit</u>
2000 and over	\$31.05
1900-1999	29.51
1800-1899	27.93
1700-1799	26.41
1600-1699	24.85
1500-1599	23.30
1400-1499	21.74
1300-1399	20.19
1200-1299	18.62
1100-1199	17.06
1000-1099	15.53
900-999	13.98
800-899	12.41
700-799	10.88
600-699	9.30
500-599	7.77
400-499	6.20
300-399	4.64
Less than 300	None

- (2) Effective for retirements commencing on or after January 1, 1998, an Employee's Future Service Benefit will be determined in accordance with the following schedule:

Hours of Service In Covered Employment During the Plan Year <u>(as defined in Section 2.15)</u>	<u>Monthly Accumulated Benefit</u>
2000 and over	\$32.60
1900-1999	30.97
1800-1899	29.34
1700-1799	27.71
1600-1699	26.08
1500-1599	24.45
1400-1499	22.82
1300-1399	21.19
1200-1299	19.56
1100-1199	17.93
1000-1099	16.30
900-999	14.67
800-899	13.04
700-799	11.41

600-699	9.78
500-599	8.15
400-499	6.52
300-399	4.89
Less than 300	None

- (3) Effective for retirements commencing on or after January 1, 1999, an Employee's Future Service Benefit will be determined in accordance with the following schedule:

Hours of Service In Covered Employment During the Plan Year <u>(as defined in Section 2.15)</u>	Monthly Accumulated <u>Benefit</u>
2000 and over	\$34.39
1900-1999	32.67
1800-1899	30.95
1700-1799	29.23
1600-1699	27.51
1500-1599	25.80
1400-1499	24.08
1300-1399	22.36
1200-1299	20.64
1100-1199	18.92
1000-1099	17.20
900-999	15.48
800-899	13.76
700-799	12.04
600-699	10.32
500-599	8.60
400-499	6.88
300-399	5.16
Less than 300	None

- (c) **Minimum Pension.** Notwithstanding the foregoing, all Employees who become eligible for a Regular or Disability Pension on and after January 1, 1994 shall be entitled to receive a minimum pension of not less than \$175.00 per month. Employees who elect to receive an Early Pension shall not be entitled to the minimum pension, and any Employee who receives an Early Pension and returns to Covered Employment shall not be entitled to the minimum pension at their Regular Retirement Date.

4.04 **Regular Retirement Not Compulsory.** Nothing herein contained in this Article shall be construed to mean that an Employee must retire at age 62. Any Employee so desiring may work past his sixty-second birthday and in such event will continue to accrue Pension Credit in accordance with the provisions of this Article. Any Employee who begins receiving pension benefits may continue working in Covered Employment, but shall not accrue any additional Pension Credit under this Plan.

### **Special Rules for Benefit Accruals after Regular Retirement Age:**

- (a) The rules in this Section shall be effective as of January 1, 1990 and shall apply only to Employees described in Section 2.08(a) who work at least one Hour of Service in Covered Employment on or after such date. For Employees described in Section 2.08(b) the rules in this Section shall be effective January 1, 1988 and shall apply only to Employees who work at least one Hour of Service on or after such date. Once this Section applies to any Employee, then all periods after such Employee is first eligible to retire under Section 4.01 shall be taken into account, regardless of the effective date of this Section.
- (b) An Employee who continues employment after the date on which he is eligible to retire under Section 4.01 or on which Regular Pension Payments actually commence shall continue as a Participant in the Plan and, subject to the provisions of this paragraph, shall continue to accrue benefits and participate in the Plan on the same basis as other Employees. An Employee's benefits accrued during this period of continued employment shall be reduced (but not below zero) by the monthly benefit that is the Actuarial Equivalent of the benefits distributed to such Employee for each month during this period in which he had at least forty (40) hours of Covered Employment, or of service in the same trade, industry and geographic area as that covered by this Plan. Any additional benefit earned by an Employee after his eligibility to retire under Section 4.01 will be payable at the latest time permissible under the Regulations under Section 411 (b) (1) (H) of the Internal Revenue Code and, in the case of a Pensioner receiving a Regular Pension under Section 4.01, in the same benefit form as previously elected by such Pensioner.

4.05 **Amount of Early Retirement Pension.** The amount of Early Retirement Pension shall be determined as provided in 4.03(a) and (b) and shall be actuarially reduced by a total of:

- (a) 3/4 of 1 % per month for each month that Early Retirement precedes the Regular Retirement Date for Employees who retire on or after age 60, but prior to age 62; and
- (b) An additional 1/2 of 1 % per month for each month that Early Retirement precedes age 60 for Employees who retire on or after age 55, but prior to age 60.

There shall be no lump sum option and no lump sum payment under Section 8.02 of any benefits on Early Retirement.

Any Employee receiving an Early Pension who returns to Covered Employment shall have his benefit suspended as provided in Article XIII.

4.06 **Limitations on Benefits.** Notwithstanding any provision of this Plan to the contrary, the maximum annual benefit payable under the Plan shall not exceed the limitations determined under Section 415 of the Internal Revenue Code, which is incorporated herein by reference as though it were set out as part of this Plan. For purposes of this Section, compensation shall be as defined in IRS Regulation §1.415-2(d)(1) and (2). In applying Code Section 415 to this Plan, the Plan shall include each grandfather or transitional rule provided by such Section or any law amending such Section, in order to allow the largest benefit otherwise payable hereunder, or under other plans maintained by the Employer, to be paid.

(Section 4.06 was amended by Plan Amendment Number Two effective January 1, 1989.)

4.07 **Cost-of-Living Adjustment.** The Plan shall provide the following Cost-of-Living Adjustments.:

- (a) Effective January 1, 1998, for any Participant or surviving beneficiary whose pension commenced effective on or before December 31, 1997, there shall be a 3% cost-of-living increase in all monthly benefits thereafter paid from the Plan.
- (b) Effective January 1, 1999, for any Participant or surviving beneficiary whose pension commenced effective on or before December 31, 1998, there shall be a 12% cost-of-living increase in all monthly benefits thereafter paid from the Plan.

The granting of such Cost-of-Living Adjustments is not intended, and shall not be construed as giving any Participant, Pensioner, or beneficiary any entitlement to any future Cost-of-Living Adjustment, and the granting of future Cost-of-Living Adjustments shall be done, if at all, in the sole and absolute discretion of the Board of Trustees.

4.08 **Supplemental Benefit.** The Plan shall provide the following Supplemental Benefits:

- (a) To any Participant, Pensioner or surviving beneficiary alive as of August 1, 1998, whose pension commenced effective on or before July 31, 1998, there shall be paid before December 31, 1998, a one-time Supplemental Benefit in the amount of \$1,250.
- (b) To any Participant, Pensioner or surviving beneficiary alive as of August 1, 1999, whose pension commenced effective on or before July 31, 1999, there shall be paid before December 31, 1999, a one-time Supplemental Benefit in the amount of \$1,250.
- (c) To any Participant, Pensioner or surviving beneficiary alive as of August 1, 2000, whose pension commenced effective on or before August 1, 2000, there shall be paid before December 31, 2000, a one-time Supplemental Benefit in the amount of \$1,250.

The granting of any Supplemental Benefit is not intended, and shall not be construed as giving any Participant, Pensioner, or beneficiary any entitlement to any future Supplemental Benefit, and the granting of such Benefits shall be done, if at all, in the sole and absolute discretion of the Board of Trustees.

## ARTICLE V

### **DISABILITY PENSION BENEFITS**

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Each Employee whose employment is terminated prior to Regular Retirement Age because of a total and permanent disability and who meets the requirements set forth below shall be eligible for a disability pension payable in the amount and for the time periods set forth below.

5.01 **Total and Permanent Disability Defined.** As used in this Article, the term “total and permanent disability” shall mean:

- (a) The inability to engage in any substantial gainful activity in the hotel, restaurant, and bartending industry by reason of any medically determinable, physical impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months, or “blindness” which shall mean central visual acuity of 20/200 or less, in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

Effective commencing May 1, 1988, and solely with respect to Employees whose Date of Disability (as that term is defined in Section 5.03 (a) of this Article) occurs on or after such date, the term “substantial gainful activity in the hotel, restaurant and bartending industry” shall exclude employment in the job classifications of room service dispatcher, room inspector and cashier, provided that the Employee’s usual and customary employment was not one of those enumerated classifications. Employees whose Date of Disability occurs prior to the above referenced effective date shall continue to have their entitlement to Disability Pension benefits determined under the original rules.

- (b) A “total and permanent disability” may be caused by or result from any bodily injury or disease, either occupational or nonoccupational in cause, but excludes any disabilities resulting from service in the armed forces of any country unless the Employee first becomes totally and permanently disabled after he has accumulated at least five years of Credited Service following his separation from service in the armed forces.
- (c) The term “total and permanent disability” excludes any mental or emotional illness or condition preventing the Participant from any substantial gainful employment, as well as any condition relating to alcoholism or drug abuse, or any intentionally self-inflicted injury.

Any disability prior to January 1, 1971, from any cause is also excluded.

5.02 **Qualification for Disability Benefit.** In order to qualify for a disability retirement benefit, the individual seeking the benefit must meet each of the following tests:

- (a) **Active Service.** An Employee must have been engaged in Covered Employment and have been a Participant in the Plan for at least an aggregate of 300 hours during the Plan Year including the first day on which he was unable to work because of an injury, disease, or physical impairment, which thereafter became the event upon which he bases his disability, and the preceding Plan Year combined.

Notwithstanding the foregoing, effective January 1, 1992, in the event that an Employee fails to earn the required minimum number of hours solely as a result of a labor dispute resulting in economic action involving his current Employer, the Board of Trustees may, in the exercise of its sole discretion, waive the active service requirement if the Employee worked at least an aggregate of 300 hours in Covered Employment during the Plan Year in which the labor dispute commenced and the preceding Plan Year combined.

- (b) **Credited Service.** The individual must have accumulated at least five years of past or future “Credited Service,” without a Permanent Break in Service, prior to the first day on which he was unable to work because of an injury, disease, or physical impairment, which thereafter became the event upon which he bases his disability.
- (c) **No Early Pension.** The Employee must have never received an Early Pension benefit.
- (d) **Filing of Claims.** The Employee must have filed a claim, in writing, with the Trust for a disability retirement benefit within one year after his date of disability. If the claim is not filed within such time, then no benefits shall be payable for any period prior to the filing of a written claim with the Trust. The Trustees, in their sole discretion, may waive the one year filing limitation if they determine that failure to file within the one year time period was due to the physical incapacity of the Participant.
- (e) **Determination by Trustees.** The Board of Trustees shall, in its sole discretion, determine that:
  - (1) The Employee applying for disability retirement benefits has complied with all provisions of this Article;
  - (2) Has incurred an injury, illness, or condition of the type deemed to be a disability hereunder; and
  - (3) The date which was the first day on which he was unable to work because of an injury, disease, or physical impairment, which thereafter became the event upon which he bases his disability. In making this determination, the Board may, but need not necessarily, base its decision upon a grant of a social security disability insurance award by the Social Security Administration. The Board may use, in making its determination, such evidence as is reasonably acceptable to it.

5.03 **Amount of Disability Benefit.** The amount of the benefit shall be determined as follows:

- (a) If the Employee has at least five years of Pension Credit his or her benefit shall be an amount equal to the benefit computed under Section 4.03 of this Plan as of the date of his or her disability. “Date of Disability” shall mean the first day on which the Employee was unable to work because of an injury, disease, or physical impairment, which thereafter became the event upon which he or she bases his or her disability.
- (b) If the Employee has less than five years of Pension Credit on the date of disability, he or she shall receive no retirement disability pension.

5.04 **Applicable only to Disability Benefits First Payable Before January 1, 1992 (now superseded by Section 5.05).** An Employee eligible for a retirement disability benefit shall receive a monthly benefit for life, and, except as noted above in 5.02 (c), it shall commence as of the first day of the first calendar month following his date of disability. However, actual payment shall not be made prior to ninety days after the filing of the claim with the Trust plus such additional time as is reasonably necessary to process and make a determination on the claim. An Employee may elect in writing not to take his retirement disability benefit in the form of a single life annuity, but may instead elect a 50% joint and survivor annuity. Under this optional annuity, the Employee receives a reduced monthly pension and, following the death of the Employee, the surviving spouse receives for life 50% of the reduced pension to the Employee. In this regard, there shall be an adjustment in benefit amount payable to the Employee determined on the basis of the Actuarial Equivalents considering the Employee's age when payment is to commence and the age of the Employee's spouse. The effective date of the spouse's benefit shall be the first day of the month following the death of the Employee. To be eligible for the 50% joint and survivor annuity benefit, the Employee and his spouse must have been married at least twelve months prior to the date of the commencement of pension benefits. The election to accept the 50% joint and survivor annuity benefit may be revoked by the Employee at any time prior to the final determination of disability by the Board of Trustees.

There shall be no lump sum option and no lump sum payment of any benefits on disability retirement.

Notwithstanding anything in this Section 5.04 to the contrary, any benefits payable under this Article V beginning on or after January 1, 1989, shall be paid in the form specified in Section 8.04 of this Plan, except that no portion of such benefit may be paid in a lump sum under Section 8.02 of this Plan.

5.05 **Disability Benefits First Payable On or After January 1, 1992.** Notwithstanding anything in this Plan to the contrary, an Employee whose disability retirement benefit becomes payable on or after January 1, 1992, shall be paid as follows:

- (a) **Unmarried Employee.** The benefits of an Employee who is not married on the date his benefits first become payable shall be paid in the form of a life annuity. Except as provided below in Sections 5.05(b) and 5.05(d), the payments under a life annuity shall be made to an Employee for his life and shall cease upon the death of such Employee.
- (b) **Married Employee.** The benefits of an Employee who is married on the date his benefits first become payable shall be paid in the form of a Qualified Joint and Survivor Annuity. For Employees whose date of disability occurs on or after March 1, 2002, such benefits shall be paid in the form of a Qualified Joint and Survivor Annuity With Increase Feature.

If the Employee dies before the date he otherwise would become eligible to retire on a Regular Pension in accordance with the provisions of Section 4.01 of the Plan, is married on his date of death, and he and his spouse were married to each other at all times during the twelve-month period ending on his date of death, the Employee's surviving spouse will receive the greater of: (1) a Qualified Pre-retirement Survivor Annuity, or (2) the survivor benefit payable under the Qualified Joint and Survivor Annuity (or, as applicable, the Qualified Joint and Survivor Annuity With Increase Feature) provided under this Article V. For purposes of the foregoing, the Qualified Pre-retirement Survivor Annuity shall only be payable with respect to the benefits in which the Employee was vested under Section 6.05 immediately prior to death.

Except as provided below in Section 5.05(d), if an Employee dies after the date he otherwise would become eligible to retire on a Regular Pension in accordance with the provisions of Section 4.01 of the Plan, is married on his date of death, and he and his spouse were married to each other at all times during the twelve-month period ending on his date of death, the Employee's surviving spouse will receive the survivor benefit payable under the Qualified Joint and Survivor Annuity or Qualified Joint and Survivor Annuity With Increase Feature, as applicable.

- (c) An Employee's retirement disability benefit shall commence as of the first day of the first calendar month following his date of disability. However, actual payment shall not be made prior to ninety (90) days after such additional time as is reasonably necessary to process and make a determination of the claim.
- (d) In the case of an Employee who was Vested under Section 6.05 immediately prior to his date of disability, the payment of retirement disability benefits shall cease as of the date he otherwise would become eligible to retire on a Regular Pension in accordance with the provisions of Section 4.01 of the Plan. Commencing on that date, the Employee's Regular Pension shall be payable in the manner and form provided in Article VIII of the Plan. However, no person who is receiving or who has received retirement disability benefits under this Article V shall be eligible to receive or elect to receive a lump sum payment under Article VIII of the Plan.

5.06 **Disability Benefit Ceases When Employee No Longer Disabled.** If a retired Employee receiving a pension benefit under this Section shall cease to be totally and permanently disabled prior to his Regular Retirement Date, his disability pension benefit under this Article V shall cease as of the month in which he ceased to be totally and permanently disabled.

5.07 **Notification By Employee When Disability Ceases.** An Employee receiving a disability pension who ceases to be totally and permanently disabled shall so notify the Board of Trustees in writing within thirty days after such event. An Employee who is receiving a pension under this Section shall be required to submit proof (including submission to an examination by a physician of the Trustees' choice if requested by the Trustees, at the Trustees' expense) of his continuing total and permanent disability if requested to do so in writing by the Board of Trustees not more frequently than annually and, if he shall fail to comply with any such request within sixty days after the date of mailing of such request to his latest address on file with the Board of Trustees, any further benefit payments are to be suspended until the requested proof shall have been furnished. If any disagreement shall arise as to whether the retired Employee continues to be totally and permanently disabled, such disagreement shall be resolved in the manner provided for the resolution of pension claims under this Plan. Any Employee receiving a disability retirement benefit who engages in any gainful employment, in the hotel, restaurant, or bartending industry except for the purposes of rehabilitation as approved in advance by the Board of Trustees, will be deemed to be recovered and his disability pension will cease.

5.08 **Limitations.** Any and all early or Vested retirement benefits paid to an Employee under this Plan prior to attaining age 65 shall be deemed to be paid as the result of a "permanent and total disability" as defined in Section 22(e)(3) of the Internal Revenue Code of 1986, as amended. No person who is receiving or who has received disability retirement benefits under this Plan shall be eligible to receive or elect to receive a lump sum payment under Article VIII of the Plan.

- 5.09 **Miscellaneous.** Any person who was, prior to March 1, 1981, a Participant in this Plan and who ceased employment because of some form of disability, shall be deemed to have been a Participant in this Plan on March 1, 1981, and accordingly, shall be entitled to apply for and receive disability retirement benefits under this resolution as though the disability had first occurred on March 1, 1981.
- 5.10 **Effective Date.** The effective date of this benefit is March 1, 1981.

## ARTICLE VI

### PENSION CREDIT, BREAK IN SERVICE, VESTING

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- 6.01 **Basis of Crediting Service.** Credit for past and future service shall be based solely on Hours of Service performed by an Employee in Covered Employment. All Credit for Past and Future Service shall be determined on a Plan Year basis.
- 6.02 **Past Service Credit.**
- (a) An Employee shall be entitled to “Past Service Credit” for each Plan Year he was employed in one or more classifications of the Collective Bargaining Agreement in the geographical territory to which the Collective Bargaining Agreement is applicable or by the Unions or the Trust up to a maximum of seven (7) years, provided the Employee worked a minimum of 350 hours in one of the two Plan Years 1971 and 1972. In no event may an Employee receive “Past Service Credit” for any period prior to January 1, 1964.
  - (b) It is recognized that, for the period prior to January 1, 1971, it may be difficult to establish with certainty the Past Service of an Employee in the type of employment referred to in (a) above. In making necessary determinations as to Past Service Credit, the Board of Trustees may, at its sole discretion, consider and rely upon such relevant and material evidence, including without limitation any or all of the following:
    - (1) A statement from the Secretary or other authorized officer of the Union certifying that the Employee was a member in good standing in such Union during such period, or was employed by such Union during such period in a position included under the Plan pursuant to action taken by the Board of Trustees.
    - (2) A statement from an Employer certifying that the Employee performed work for such Employer entitling him to “Past Service Credit” during such period if such Employer was known or reported to be operating in the industry in the geographical territory to which the Collective Bargaining Agreement is applicable during such period.
    - (3) A W-2 form or check stub furnished for work performed during the period for any Employer known or reputed to have been operating in the geographical territory to which the Collective Bargaining Agreement is applicable during such period.
    - (4) A statement from the Social Security Administration to the effect that according to its records the Employee was employed during the period in the geographical territory to which the Collective Bargaining Agreement applies by a named Employer, which Employer was known or reputed to be operating in the geographical territory to which the Collective Bargaining Agreement is applicable during such period.
  - (c) **Special Past Service Credit for POPA Employees.** Notwithstanding any other provision of this Section 6.02 to the contrary, Employees of the Plan’s third party administrator, who work in Las Vegas in job classifications included in the Professional Office Personnel Alliance bargaining unit, shall be entitled to Past Service Credit for all service accrued prior to the effective date of

the administrator's participation in the Plan as a contributing Employer, and continuing back to their most recent hire date with the administrator. The benefit earned for each such year of Past Service Credit shall be equal to the Future Service Benefit that the Employee would have earned (based on hours actually worked in Covered Employment) in accordance with Section 4.03(b) of the Plan. The granting of Past Service Credit shall be subject to any rules or regulations adopted by the Trustees, and the provisions of Section 6.02(b) (relating to evidence establishing Past Service Credit). This provision is not intended, and should not be construed, as giving any other Employee or any other Employer, now or in the future, any entitlement to Past Service Credit.

**6.03 Future Service Credit.** "Future Service Credit" will be determined by (a) and (b) below:

- (a) For the period January 1, 1971 through December 31, 1975:

<u>Hours Worked During Plan Year</u>	<u>Accumulated Future Service</u>
1400 and Over	1 Year
1050 - 1399	$\frac{3}{4}$ Year
700 - 1049	$\frac{1}{2}$ Year
350 - 699	$\frac{1}{4}$ Year
Less than 350	None

- (b) For the period January 1, 1976 and after:

<u>Hours of Service In Covered Employment During the Plan Year (as defined in Section 2.15)</u>	<u>Accumulated Future Service</u>
1000 and over	1.0 Year
900 -999	.9
800 -899	.8
700 -799	.7
600 -699	.6
500 -599	.5
400 -499	.4
300 -399	.3
Less than 300	None

**6.04 Permanent Break In Service and Cancellation of Pension Credit.** It shall be considered a Permanent Break in Service and an Employee's previously accumulated Pension Credit shall be canceled according to the following rules:

If, after January 1, 1971 and before January 1, 1976, the Employee fails to work at least 350 hours in one Plan Year in Covered Employment in a period of two (2) consecutive years the Employee shall incur a Permanent Break in Service.

Effective January 1, 1976, if an Employee is employed for less than 300 hours in a Plan Year, it will be considered outside of creditable employment and such Plan Year will be counted toward a Permanent

Break in Service. In the case of an Employee who is not Vested, a Permanent Break in Service will be incurred if an Employee is outside creditable employment for as many consecutive Plan Years as he has Plan Years credited

Effective January 1, 1987, if an Employee is employed for less than 300 hours in a Plan Year, it will be considered outside of creditable employment and such Plan Year will be counted toward a Permanent Break in Service. In the case of an Employee who is not Vested, a Permanent Break in Service will be incurred if such Employee is outside creditable employment for that number of consecutive Plan Years equal to the greater of (i) five (5) or (ii) that number of aggregate Plan Years for which such Employee has received Past or Future Service Credit.

In determining whether an Employee has worked the required number of minimum number of hours in any one year to avoid a Permanent Break in Service, there shall be counted both hours worked in Covered Employment and hours worked in contiguous non-covered employment as required in Section 6.05(c).

In determining whether an Employee has incurred a Permanent Break in Service, the following exceptions shall apply:

**(a) Exception on Account of Disability**

- (1) An Employee shall not suffer a break year if his failure to work 300 hours in any one Plan Year in Covered Employment is due to disability, including pregnancy.
- (2) Disability for the purpose of this Section is to be determined to the satisfaction of the Board of Trustees. In order to secure the benefits of this exception for disability, an Employee must give written notice to the Board and must present such written evidence and submit to such examinations as the Board in its sole discretion may determine. An Employee shall not be granted any such exception for a period which commenced more than two (2) years prior to his filing the written notice required by this Section, unless the Board finds that there were extenuating circumstances which prevented a timely filing.

**(b) Exception on Account of Service in the Armed Forces**

- (1) An Employee whose failure to accumulate Future Service Credit is due to service in the Armed Forces of the United States in time of war or national emergency or pursuant to a national conscription law shall be allowed a grace period for the period that he retains re-employment rights under Federal law, provided he makes himself available for Covered Employment within 90 days after release from active duty, or within 90 days after recovery from a disability continuing after his release from active duty.
- (2) In order to secure a grace period for service in the Armed Forces of the United States, the Employee must give written notice to the Board of his availability for Covered Employment and must furnish in writing such information and proof concerning such service as the Board may in its sole discretion determine. An Employee must file the written notice and proof required by this Section within 90 days after release from active duty or 90 days after recovery from a disability continuing after his release from active duty, unless the Board finds that there were extenuating circumstances which prevented a timely filing.

- (3) Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.
- (c) **Exception for Periods of Unemployment if Available for Work.** An Employee whose failure to accumulate Future Service Credit is due to involuntary unemployment during a period when he was available for work, shall be allowed a grace period not to exceed twelve (12) months for any one period. Such unemployment and availability for work shall be determined to the satisfaction of the Board of Trustees. In order to be granted this grace period, an Employee must give written notice to the Board of Trustees and must present such evidence as the Board may, in its sole discretion, determine unless the Board finds that there were extenuating circumstances which prevented a timely filing.
- (d) **Exception for Periods While Employed in a Position Not Covered by the Collective Bargaining Agreement, or Employment by the Employer Outside the Geographical Area Covered by the Collective Bargaining Agreement.** An Employee whose failure to accumulate Future Service Credit is due to employment in a position not covered by the Collective Bargaining Agreement or employment by the Employer outside the area covered by the Collective Bargaining Agreement shall be allowed a grace period until such time as he returns to work in a classification covered by the Collective Bargaining Agreement. Such Employee requesting this grace period must give written notice to the Board of Trustees and must present such evidence as the Board may, in its sole discretion, determine unless the Board finds that there were extenuating circumstances which prevented a timely filing.
- (e) **Exception for Periods of Self-Employment.** An Employee whose failure to accumulate Future Service Credit is due to self-employment in the industry in the geographical area covered by the Collective Bargaining Agreement shall be granted a grace period not to exceed thirty-six (36) months. Such Employee requesting this grace period must give written notice to the Board of Trustees and must present such evidence as the Board may, in its sole discretion, determine unless the Board finds that there were extenuating circumstances which prevented a timely filing.
- (f) **Exception for Periods When Written Leaves of Absence Are Granted by an Employer.** An Employee shall be allowed a grace period not to exceed six (6) months provided he has a written leave of absence from his Employer and does not accept any other employment.
- (g) **Exception for Other Authorized Leaves of Absence.** An Employee whose failure to accumulate Future Service Credit is due to an authorized leave of absence granted by the Board of Trustees shall be allowed a grace period not to exceed twelve (12) months for any one period provided that said leave is granted in the following manner:
- (1) An Employee shall apply in writing to the Board of Trustees setting forth the reason for the request and the amount of time requested;
  - (2) Such written request for leave of absence is to be submitted to the Board of Trustees within thirty (30) days from the date of commencement of such leave of absence; and

- (3) The Board of Trustees, in their sole discretion and in a nondiscriminatory manner, shall determine that the reason for the granting of such leave of absence is consistent with the purpose of this Plan.

Nothing herein contained shall obligate the Trustees to grant a twelve (12) month grace period and the Trustees may grant such requests up to and including twelve (12) months as in their discretion is appropriate.

- (h) **Grace Period.** The grace periods referred to in Subsections (a) through (g) are not intended to add to the Pension Credit of the Employees. Rather, they are periods which are to be disregarded in determining whether there has been a period of two consecutive Plan Years during which the Employee failed to work at least 300 hours in Covered Employment in one Plan Year.

Absence for any of the foregoing reasons shall postpone the computation of the two consecutive Plan Years during which a minimum of 300 hours of Covered Employment must be worked. At the end of the period allowed for such absence, the balance of the time remaining in such two-year period, computed as of the date such absence begins, shall begin to run, regardless of whether or not the last day of such balance coincides with the end of the Plan Year.

- (i) Notwithstanding any provision in this Plan to the contrary, an Employee who commenced a break in service prior to November 26, 1973, and such a break in service did not exceed three years, shall be entitled to an authorized leave of absence without regard to either the twelve month maximum grace period limitation or the thirty-day notice requirement as referred to in the subparagraph above, provided that:

- (1) An Employee shall apply in writing to the Board of Trustees setting forth the reason for the request and the amount of time requested;
- (2) Such Employee establishes to the satisfaction of the Trustees that he was not aware of the rule that failure to earn 350 hours in a Plan Year in Covered Employment in a period of two consecutive years could result in cancellation of his previously accumulated Pension Credits; and
- (3) The Board of Trustees, in its sole discretion and in a nondiscriminatory manner, shall determine that the reason for the granting of such leave of absence is consistent with the purpose of this Plan.

Any Employee granted a leave of absence under this subsection shall be entitled to Past Service Credit, notwithstanding his failure to work a minimum of 350 hours in one of the two Plan Years 1971 and 1972.

- (j) **Exception for Maternity/Paternity Leaves.** An Employee whose failure to accumulate Future Service Credit during a period of time beginning on or after November 30, 1985, in which no duties are performed by reason of the pregnancy of the Employee, by reason of the birth of a child of the Employee, by reason of the placement of a child with the Employee in connection with the adoption of such child for a period beginning immediately following such birth or placement, or by reason of providing for the care of such child for a period beginning immediately after such child's birth or placement, shall be allowed a grace period not to exceed twenty-four (24) months.

In order to be eligible for such grace period, the Employee must furnish to the Board of Trustees in a timely manner, such information as the Board may reasonably require to establish that the absence was for one or more of the reasons set forth in **this subsection (j)**.

**6.05 Vesting.**

- (a) Vested Pension Credits are those credits that may not be taken away from an Employee even if he leaves the industry before becoming eligible for retirement. An Employee within the meaning of Section 2.08(a) shall have Pension Credits 100% Vested, and the break in service rule as set forth in Section 6.04 of this Article shall not apply, when such Employee has earned ten (10) full years of Past and Future Service Pension Credits. An Employee within the meaning of Section 2.08(b) shall have Pension Credits 100% Vested and the break in service rules as set forth in Section 6.04 of this Article and Section 4.01(b), respectively, shall not apply when such Employee has five (5) full years of Past and Future Service Pension Credits. An Employee shall also have Pension Credits 100% Vested upon reaching eligibility to retire in accordance with Section 4.01.

Notwithstanding the foregoing, effective January 1, 1994, an Employee within the meaning of Section 2.08(a) shall have Pension Credits 100% Vested when such Employee has earned eight (8) full years of Past and Future Service Pension Credits **and** has worked at least one (1) hour in Covered Employment on or after January 1, 1994 and before incurring a Permanent Break in Service as defined in Section 6.04. Effective January 1, 1997, an Employee within the meaning of Section 2.08(a) shall have Pension Credits 100% Vested when such Employee has earned five (5) full years of Past and Future Service Pension Credits **and** has worked at least one (1) hour in Covered Employment on or after January 1, 1997 and before incurring a Permanent Break in Service as defined in Section 6.04.

- (b) Effective January 1, 1988 for Employee's who have at least one (1) Hour of Service on or after that date, an Employee shall also have Pension Credits 100% Vested upon the later of (i) age 65 or (ii) the fifth anniversary of the date the Employee commenced participation in this Plan, if such date is earlier than the date the Employee is eligible to retire in accordance with Section 4.01. An Employee shall be deemed to have commenced participation in the Plan on the first day of the Plan Year in which the Employee works at least 300 hours in Covered Employment. For purposes of this subsection only, all service prior to January 1, 1988 shall be disregarded in determining an Employee's fifth anniversary.
- (c) Solely for purposes of determining years of Credited Service under this paragraph, all Covered Employment and all contiguous non covered employment shall be taken into account. For purposes of this Section, Non-Covered Employment shall be deemed "contiguous" if (1) the Non-Covered Employment immediately precedes or follows Covered Employment and (2) no quit, discharge, or retirement occurs between such Covered Employment and Non-Covered Employment.

**6.06 Inactive Vested Employee.** An inactive Vested Employee shall be eligible to receive his applicable retirement benefit on his Early or Regular Retirement Date.

**6.07 Prohibited Allocation of Forfeitures.** Effective January 1, 1976, forfeitures shall not be applied to increase the benefits that any Employee would otherwise receive under the Plan.

## ARTICLE VII

### BENEFIT PAYMENTS

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- 7.01 **Benefit Payments Generally.** An Employee who makes application in accordance with the rules and regulations of the Pension Plan, and whom the Board determines to be eligible, in accordance with the Plan and Trust Agreement, shall be entitled upon retirement to receive monthly benefits provided for the remainder of his life, subject, however, to all of the provisions of this Pension Plan. "Benefit Payment" shall be payable as of the first day of the first month which follows the date on which the Employee has fulfilled all of the conditions for entitlement to benefits. "Benefit Payments" shall end with the payment for the calendar month in which death of the Pensioner occurs.
- 7.02 **Start of Payment.** Unless the Participant otherwise elects by postponing application for benefits, payment of benefits to a Participant entitled thereto shall commence not later than sixty (60) days after the close of the Plan Year during which the Participant reaches his Regular Retirement Date or terminates service with a participating Employer, whichever shall occur later.
- 7.03 **Deferred Commencement of Benefits.**
- (a) A Participant may elect to defer the commencement of retirement benefits by deferring the filing of his application for benefits and, in such event, the Participant may continue as a Participant in the Plan.
- Effective January 1, 1989, in the event that an Employee's pension benefits commence after the first day of the month following his eligibility to retire for a Regular Pension, then at the time the Employee actually retires, his benefits shall be increased to reflect the greater of: (i) the Actuarial Equivalent of the Employee's Regular Pension at his initial eligibility for a Regular Pension under Section 4.01; or (ii) the additional benefit accrued during the period of service after the Employee's initial eligibility date. The increase in the Employee's benefit shall be computed at the end of each Plan Year following his initial eligibility for a Regular Pension and again at the time of his Pension Benefit Starting Date.
- (b) The payment of benefits may not be deferred beyond the later of: (1) the end of the taxable year in which the Participant reaches age 70 ½, or (2) the end of the taxable year in which the Participant actually retires, or (3) the date specified in Section 7.04(a) hereof.
- 7.04 **Mandatory Distributions.** Notwithstanding any other Plan provision to the contrary, Plan distributions shall be made in accordance with Code Section 401(a)(9) and the regulations thereunder, including Treasury Regulation §1.401(a)(9)-2.
- (a) **Before Death.** Notwithstanding any other provision of this Plan to the contrary, benefit distributions to Employees who were five percent (5%) owners (as defined in Code Section 416(i)(1)) at any time during the Plan Year ending with or within the calendar year in which such owner attained age 66-1/2 or any subsequent Plan Year must commence by the first day of April of the calendar year in which the Employee attained age 70-1/2. Distributions to Employees other than five percent (5%) owners must commence no later than the first day of April following the calendar year in which the later of termination of employment or attainment of age 70-1/2 occurs;

provided, however, that for tax years beginning after December 31, 1988 and only for Employees reaching age 70-1/2 on or after January 1, 1988, distributions must commence not later than the first day of April of the calendar year immediately following the calendar year in which the Employee attained age 70-1/2, and provided, further, that distributions to Employees who attained age 70-1/2 during 1988, 1989, or 1990 must commence not later than April 1, 1991. If an Employee fails to file an application for benefits on a timely basis, the Trustees may direct the commencement of benefits in the form of a joint and survivor annuity (and calculated on the assumption that husband is three years older than the wife) or, if the Employee cannot be located, may direct that the benefits be forfeited, subject to reinstatement if the Employee later appears and demonstrates an entitlement to benefits.

Notwithstanding the foregoing, effective January 1, 1997, and only for Employees (other than five percent (5%) owners) reaching age 70-1/2 on or after January 1, 1996, distributions must commence not later than the first day of April of the calendar year immediately following the calendar year in which the Employee attained age 70-1/2 or retires, whichever is later.

- (b) **After Death.** If an Employee dies after distribution of his interest has commenced, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Employee's death.

Effective for tax years beginning after December 31, 1987 for Employees described in Section 2.08(a) and for tax years beginning after December 31, 1984 for Employees described in Section 2.08(b) if the Employee dies before distribution of his interest commences, the Employee's entire interest will be distributed no later than December 31 of the calendar year which contains the fifth anniversary of the Employee's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below:

- (1) If any portion of the Employee's interest is payable to a designated beneficiary, distributions may be made in substantially equal installments over the life of the designated beneficiary commencing no later than December 31 of the calendar year immediately following the calendar year the Employee died.
- (2) If the designated beneficiary is the Employee's surviving spouse, the date distributions are required to begin in accordance with (1) above shall not be earlier than December 31 of the calendar year immediately following the calendar year the Employee died or December 31 of the calendar year the Employee would have attained age 70-1/2, if later. If the spouse dies before payments begin, subsequent distributions shall be made as if the spouse had been the Employee (except for the provisions in this subparagraph (2)).

An election under this subparagraph (2) must be made no later than the earlier of (i) December 31 of the calendar year a Plan distribution would have commenced under (1) or (2) above, or (ii) December 31 of the calendar year which contains the fifth anniversary of the Employee's death.

- 7.05 **Incompetence or Incapacity of a Pensioner.** In the event that it is determined to the satisfaction of the Board of Trustees that a Pensioner is unable to care for his affairs because of mental or physical incapacity, any payment due will be applied in the discretion of the Board of Trustees to the maintenance and support of such Pensioner in the manner decided by the Board (except that no payment shall be made

to a governmental institution or facility if the Pensioner is not legally required to pay for his care and maintenance), unless prior to such payment, claims shall have been made for such payment by a legally appointed guardian, committee or other legally

appointed representative.

- 7.06 **Duplication of Pension.** A Pensioner shall not be entitled to the payment under this Plan of more than one type of pension at any one time. Notwithstanding any other provisions of this Plan, there shall be no duplication of benefits allowed with respect to any period of service completed by any Participant.
- 7.07 **Non-Assignment of Benefits.** Each Employee or Pensioner under the Pension Plan is hereby restrained from selling, transferring, anticipating, assigning, hypothecating or otherwise disposing of his pension, prospective pension or any other rights or interest under the Plan, and the Board of Trustees shall not recognize, or be required to recognize, any such sale, transfer, anticipation, assignment, hypothecation or other disposition. Any such pension, prospective pension, right or interest shall not be subject in any manner to voluntary transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimants, and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permissible by law.
- 7.08 **Consent to Receive Benefits Prior to Regular Retirement Age.** If the present value of an Employee's vested benefit exceeds \$5,000 (\$3,500 prior to January 1, 1998), the Employee and the Employee's spouse (or where either the Employee or the spouse has died, the survivor) must consent to any distribution of such accrued benefit prior to the earlier of the Employee's Regular Retirement Date or the date specified in Section 6.05(b). The consent must be obtained in writing within the 90 day period ending with the Pension Benefit Starting Date. The Trustees shall notify the Employee and Employee's spouse of the right to defer any distribution until the date specified above, and such notification shall be given no less than 30 and no more than 90 days prior to the Pension Benefit Starting Date and shall otherwise comply with the requirements of Section 8.06.

Notwithstanding the foregoing, only the Employee need consent to the commencement of a distribution in the form of a Joint and Survivor Annuity prior to the date specified above. Neither the consent of the Employee nor the spouse shall be required if a distribution is required to satisfy Code Sections 401 (a) (9) or 415. The present value of an Employee's benefit shall be determined in accordance with Section 2.01(c).

- 7.09 **Qualified Domestic Relations Order.**
- (a) Section 7.07 above shall not apply to the creation, assignment, or recognition of a right to any interest payable hereunder with respect to an Employee pursuant to a qualified domestic relations order, as defined in Section 414 (p) of the Internal Revenue Code. In the case of a domestic relations order entered into before January 1, 1985, the Board shall treat such order as a qualified domestic relations order, if the Plan is paying benefits pursuant to such order on such date. In addition, the Board may treat any other such order entered into before January 1, 1985, as a qualified domestic relations order, even if such order does not meet the requirements of ERISA and the Internal Revenue Code as amended by the Retirement Equity Act of 1984.
  - (b) The Board of Trustees shall promptly notify an Employee and any alternate payee (as defined in Section 414 (p) (8) of the Internal Revenue Code) of the receipt of a qualified domestic relations

order as defined in Section 414 (p) (1) of the Internal Revenue Code and of the Board of Trustee's procedures for determining the qualified status of such order. Within a reasonable period after receipt of such order, the Board shall determine whether such order is a qualified domestic relations order and notify the Employee and each alternate payee of such determination. The Board shall establish reasonable procedures (i) to determine the qualified status of a domestic relations order and (ii) to administer distributions under such order. No legal action for a determination of the qualified status of a domestic relations order or for a review of a determination by the Plan as to the qualified status of a domestic relations order or for a review of a determination by the Plan as to the qualified status of a domestic relations order shall be brought until:

- (1) The order has been submitted to the Board for a determination of its qualified status;
  - (2) The Board has made a determination or the time in which to make such determination has expired; and
  - (3) All administrative remedies available under the procedures established by the Board for review of the determination have been exhausted.
- (c) Effective January 1, 1985, in the event that the Employee is treated as having two or more surviving spouses, the total amount to be paid as a survivor benefit under either the Qualified Joint and Survivor Annuity or the Qualified Pre-Retirement Survivor Annuity shall not exceed the amount that would be paid if there were only one surviving spouse; provided, however, that the amount payable shall be paid as an annuity based on the life of each such spouse.

7.10 **Unable to Locate Participant.** If a Participant to whom Vested benefits must be distributed pursuant to Section 7.04 of this Plan cannot be located, and reasonable efforts have been made to locate such Participant, the benefits of such Participant shall be forfeited, and need not be separately accounted for or segregated from the other assets of the Plan. If a Participant whose benefit has been forfeited in accordance with this Section 7.10 subsequently returns or makes a claim for benefits, his forfeited benefit shall be reinstated.

## ARTICLE VIII

### OPTIONAL FORMS OF PENSION BENEFIT

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#### 8.01 **Joint and Survivor Annuity Benefit**

- (a) **General Provisions.** An Employee eligible for an Early or Regular Retirement Pension shall receive a monthly benefit for life. Should an Employee predecease his spouse, his spouse will continue to receive 50% of the amount payable to the Employee for the lifetime of the spouse. There shall be an adjustment in benefit amount payable to an Employee determined on the basis of the Actuarial Equivalence considering the Employee's age when payment is to commence, and the age of the Employee's spouse.

To be eligible for the 50% Joint and Survivor Annuity Benefit, the Employee and his spouse must have been married at least twelve (12) months prior to the date of retirement.

The effective date of the spouse's benefit shall be the first day of the month following the death of the Employee.

- (b) **Election Period.** An Employee may elect in writing, at any time during the election period described below, not to take the Joint and Survivor Annuity Benefit. Such election period shall be a period of at least 90 days beginning with the date the Employee is furnished with a written explanation of the terms and conditions of the Joint and Survivor Annuity and the effect of the election not to take such benefit, and ending with the commencement of benefits. In the event such information is furnished to the Employee less than 90 days prior to his retirement date, benefit payments will be postponed until 90 days following the date the information is furnished, in which case, benefit payments will be made retroactive to the Employee's retirement date.

During the election period, the Employee may request additional information if not already provided. The additional information shall be a written non-technical explanation of the Joint and Survivor Annuity and other available forms of pension expressed in terms of specific dollar amounts. In this event, the election period shall be extended until the 90th day following the furnishing of such additional information. An election not to take the Joint and Survivor Annuity may be revoked at any time during the election period. Upon such an election, the Employee shall receive the increased benefit amount for his lifetime.

- (c) **Joint and Survivor Annuity In the Event of Death of an Employee While Eligible for Retirement.** In the event an Employee who is eligible to retire and receive an Early or Regular Pension dies and prior to commencement of any benefits, his surviving spouse, subject to all conditions of this Plan, shall be entitled to receive a monthly benefit for life equal to the Survivor Benefit payable under 8.01. The death benefit provided under 8.01(c) shall only be payable, however, if the Employee and his Spouse have been married one year or more on the date of the Employee's death. Such death benefit will not be payable if the Employee has made an unrevoked election in accordance with (b) above, not to receive such benefit.

- 8.02 **Lump Sum Option.** (Applicable to a Regular Pension only.) An Employee eligible for retirement on a Regular Pension shall have the option, upon application to the Trustees prior to his Pension Benefit

Starting Date and in accordance with Section 8.06 below, to elect to receive an amount equal to the Actuarial Equivalent of fifty percent (50%) of his monthly pension as a lump sum payment determined as of his Pension Benefit Starting Date; provided, however, that effective January 1, 1993, in no event shall any Employee be entitled to a lump sum payment under this provision exceeding \$50,000.

(a) Effective for pension benefit applications received on or after April 1, 1995, and Pension Benefit Starting Dates occurring before March 1, 2002, the remaining portion of an Employee's pension benefit may be paid in any one of the following forms of payment:

- (1) A monthly pension payable to the Employee for his life which ceases upon the death of such Employee;
- (2) For a married Employee, a Qualified Joint and Survivor Annuity payable to the Employee and his spouse;
- (3) For an unmarried Employee, a 50% Joint and Survivor Annuity; or
- (4) For married or unmarried Employees, a Modified 50% Joint and Survivor Annuity With Increase Feature.

(b) Effective for Pension Benefit Starting Dates occurring on or after March 1, 2002, the remaining portion of an Employee's pension benefit may be paid in any one of the following forms of payment:

- (1) A monthly pension payable to the Employee for his life which ceases upon the death of such Employee;
- (2) For a married Employee, a Qualified Joint and Survivor Annuity With Increase Feature payable to the Employee and his spouse; or
- (3) For an unmarried Employee, a 50% Joint and Survivor Annuity With Increase Feature.

8.03 **Waiver of Joint and Survivor Annuity After 1984.** Notwithstanding anything in Section 8.01 of this Plan to the contrary, subsequent to January 1, 1985, an Employee who is married as of his Pension Benefit Starting Date may waive the Joint and Survivor Annuity form of benefit only with the written consent of such Employee's spouse, witnessed by a Plan representative or a notary public.

8.04 **Automatic Form of Benefit For Applications Received On or After April 1, 1995.** Notwithstanding anything in this Plan to the contrary, an Employee (i) whose benefits become payable on account of eligibility for an Early, Regular or deferred retirement on or after January 1, 1994; (ii) who submits a pension benefit application on or after April 1, 1995, and (iii) whose Pension Benefit Starting Date occurs before March 1, 2002, shall be paid as follows:

(a) **Unmarried Employee.**

The benefits of an Employee who is not married on his Pension Benefit Starting Date shall be paid in the form of a life annuity. The payment under a life annuity shall be made to an Employee for his life and shall cease upon the death of such Employee. In lieu of a life annuity benefit, an

Employee may elect to receive his benefit in one of the following alternative forms: (i) a lump sum in accordance with Section 8.02, (ii) a 50% Joint and Survivor Annuity in accordance with Section 2.11, or (iii) a Modified 50% Joint and Survivor Annuity Benefit With Increase Feature in accordance with Section 8.07. Such election shall be valid only if made prior to the Employee's Pension Benefit Starting Date and otherwise in accordance with the provisions of Section 8.06.

(b) **Married Employee.**

The benefits of an Employee who is married on his Pension Benefit Starting Date shall be paid in the form of a Qualified Joint and Survivor Annuity. In lieu of a Qualified Joint and Survivor Annuity, a married Employee may elect to receive his benefit in one of the following alternative forms: (i) a single life annuity as provided in Section 8.04(a), (ii) a lump sum in accordance with Section 8.02; or (iii) as a Modified 50% Joint and Survivor Annuity Benefit With Increase Feature in accordance with Section 8.07. Such election shall be valid only if made with the consent of Employee's spouse, prior to the Employee's Pension Benefit Starting Date and otherwise in accordance with the provisions of Section 8.06.

8.05 **Automatic Form of Benefit For Pension Benefit Starting Dates Occurring On or After March 1, 2002.** Notwithstanding anything in this Plan to the contrary, an Employee who is eligible for an Early, Regular or deferred retirement and whose Pension Benefit Starting Date occurs on or after March 1, 2002, shall be paid as follows:

(a) **Unmarried Employee.**

The benefits of an Employee who is not married on his Pension Benefit Starting Date shall be paid in the form of a life annuity as set forth in Section 8.04(a). However, in lieu of a life annuity benefit, the Employee may elect to receive benefits only as (i) a lump sum in accordance with Section 8.02, or (ii) a 50% Joint and Survivor Annuity With Increase Feature in accordance with Section 2.12. Such election shall be valid only if made prior to the Employee's Pension Benefit Starting Date and otherwise in accordance with the provisions of Section 8.06.

(b) **Married Employee.**

The benefits of an Employee who is married on his Pension Benefit Starting Date shall be paid in the form of a Qualified Joint and Survivor Annuity with Increase Feature. In lieu of a Qualified Joint and Survivor Annuity With Increase Feature, a married Employee may elect to receive his benefit in one of the following alternative forms: (i) a single life annuity as provided in Section 8.04(a), or (ii) a lump sum in accordance with Section 8.02. An election to receive benefits in the form of a single life annuity as provided in Section 8.04(a) or a lump sum in accordance with Section 8.02 shall be valid only if such election is made with the consent of Employee's spouse, prior to the Employee's Pension Benefit Starting Date and otherwise in accordance with the provisions of Section 8.06.

8.06 **Waiver of Automatic Form of Benefit.** The Board of Trustees shall provide each Employee with a written explanation of the terms and conditions of the life annuity and the applicable Automatic Form of Benefit not more than ninety (90) days and not less than thirty (30) days prior to his Pension Benefit Starting Date. This explanation shall describe the Employee's right to make, and the effect of a waiver (or a revocation of waiver) of, the life annuity or the applicable Automatic Form of Benefit, and the rights of

an Employee's spouse, if any. Employees also shall receive a general description of the eligibility conditions, relative values, financial effect, and other material features of the optional forms of benefits available, if any, under the Plan. This explanation shall also inform the Employee of his right to defer receipt of his Plan distribution.

The life annuity and the applicable Automatic Form of Benefit may be waived by the Employee within the ninety (90) day period ending on the Employee's Pension Benefit Starting Date. The waiver must (a) be in writing, (b) designate the optional form of benefit to be paid, (c) identify, where applicable, the specific designated beneficiary who will receive the benefit, and (d) specify the form of the benefit to be paid the designated beneficiary. Each unmarried Employee shall have the right to designate, revoke and redesignate their choice of a contingent beneficiary hereunder, but a designation or redesignation shall become effective (and automatically revoke all prior elections) only if made properly in writing on a form provided by the Plan, and only upon actual delivery of the designation to the office of the Plan Administrator prior to the Employee's Pension Benefit Starting Date. If the Employee is married, the Employee's spouse must consent to the waiver of the applicable Automatic Form of Benefit, the designation of any non-spouse beneficiary (which is not permitted for married Employees), and the timing of the distribution, and must acknowledge the effect of such a waiver. The spouse's consent to a waiver must be witnessed by a Plan representative or a notary public.

Notwithstanding this consent requirement, if the Employee establishes to the satisfaction of the Board of Trustees that, such written consent may not be obtained because there is no spouse or the spouse cannot be located, or if the Employee is legally separated or the Employee has been abandoned (within the meaning of local law) and the Employee has a court order to such effect, a waiver will be deemed to be effective without such consent unless provided otherwise by a Qualified Domestic Relations Order under Section 7.09. Any consent necessary under this provision will be valid only with respect to the spouse who signs the consent, or in the event of a waiver described in the preceding sentence, the designated spouse. Additionally, a revocation of a prior waiver may be made by an Employee without the consent of the spouse at any time during the applicable election period provided that the form of benefit selected is the applicable Automatic Form of Benefit. The number of waivers and revocations shall not be limited. Once the spouse has consented (or is deemed to have consented) to the Employee's election to waive the applicable Automatic Form of Benefit, such consent cannot be revoked unless the Employee revokes his waiver, in which case the spouse's consent shall be deemed to be revoked.

8.07 **Modified 50% Joint and Survivor Annuity Benefit with Increase Feature.** The benefit provided in this section is available only to those Employees who are (i) eligible for an Early or Regular Retirement Pension on or after January 1, 1994, (ii) who submit a pension benefit application on or after April 1, 1995, and (iii) whose Pension Benefit Starting Date occurs before March 1, 2002. An Employee eligible for an Early or Regular Retirement Pension may elect to receive this form of benefit upon application prior to his Pension Benefit Starting Date and in accordance with Section 8.06.

## ARTICLE IX

### APPLICATION FOR BENEFIT

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- 9.01 **Application.** All claims for benefits shall be filed on forms provided by the Plan, which will be available from its principal office and such other places as may from time to time be designated by the Board. A claim shall be considered to have been filed as soon as it is received by the Trust Fund at its principal office or such other location as may be indicated on the claim form, provided it is substantially complete, with all necessary documentation required by the form. If the form is not substantially complete, or if required documentation has not been furnished, the claimant will be notified as soon as reasonably possible of what is necessary to complete the claim.
- 9.02 **Information Required.** The Board of Trustees shall, as a condition precedent to the payment of any benefit under this Plan, have the right to secure any information from the Unions, the Employers, the Employees and the Pensioners which they deem to be reasonably necessary to determine Employee's entitlement to benefits.

Each Employee, Pensioner or any other claimant for benefits shall furnish the Board of Trustees with any information or proof requested by it and reasonably required to administer the Pension Plan, including proof of employment, proof of marriage, dates of birth and death, and evidence of existence. Failure on the part of any Employee, Pensioner or claimant to comply with such request promptly, completely and in good faith shall be sufficient grounds for denying, suspending or discontinuing benefits to such person. If an Employee, Pensioner or other claimant to benefits hereunder makes a false statement material to his claim for benefits, the Board shall recoup, offset, or recover the amount of any payment made in reliance on such a false statement in excess of the amount to which such Employee, Pensioner or other claimant was rightfully entitled under the provisions of this Plan.

## ARTICLE X

### **PRE-RETIREMENT DEATH BENEFIT**

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In the case of any Employee who dies after December 31, 1982, and who meets the conditions below, such Employee's qualified surviving spouse, or if there is no qualified surviving spouse, such Employee's estate, shall receive a Pre-Retirement Death Benefit.

10.01 **Eligibility.** In order for the "Pre-Retirement Death Benefit" to be payable:

- (a) **Active Service.** The Employee must have worked in Covered Employment and have been a Participant in the Plan for at least an aggregate period of 300 hours during the Plan Year of death and the preceding Plan Year combined. Notwithstanding the foregoing, in the event that an Employee fails to earn the required minimum number of hours solely as a result of a labor dispute resulting in economic action involving his current Employer, the Board of Trustees may, in the exercise of its sole discretion, waive the active service requirement if the Employee worked at least an aggregate of 300 hours in covered employment during the Plan Year in which the labor dispute commenced and the preceding Plan Year combined.
- (b) **Credited Service.** The Employee must have one (1) year of Future Service Credit at the time of death.
- (c) **Other Benefits.** There must not be any other benefit payable or any other benefit payment of any type received from this Plan by the Employee or the beneficiary.

For purposes of this subparagraph only, the term "benefit payable" shall mean a benefit:

- (1) which the Employee had become eligible to receive;
- (2) for which the Employee had completed and signed an application; and
- (3) which had been approved for payment by the Trustees or any applicable subcommittee, all prior to the Employee's death.

10.02 **Breaks In Service.** No benefit is payable for Service Credit that precedes a Permanent Break in Service as described in Section 6.04 of this Plan.

10.03 **Amount.** Effective with respect to a Participant whose date of death occurs on or after January 1, 1994, the amount of the pre-retirement death benefit payable shall be five hundred dollars (\$500.00) for each full year of accumulated Past or Future Service Credit, up to a maximum benefit of twenty thousand dollars (\$20,000.00). If the total accumulated Credited Service is not a whole number of years of credit, then the amount payable shall be prorated to recognize the fractional year of credit.

10.04 **Recipient.** If the Employee and his Spouse have been married at least twelve (12) full months prior to the date of the Employee's death, the benefit payable hereunder, shall be payable to the spouse. In any other circumstance, the benefit shall be payable to the Employee's estate.

10.05 **Qualified Pre-retirement Survivor Annuity.**

- (a) Notwithstanding the provisions of Sections 10.01 through 10.04 above and of Section 8.01(c) of this Plan, and subject to the exception provided in Section 5.05(b) of this Plan, the surviving spouse of an Employee who (i) dies on or after August 23, 1984, and before such Employee's Pension Benefit Starting Date and (ii) was Vested as of the date of his death, shall receive a Qualified Preretirement Survivor Annuity, but only if such Employee and his or her surviving spouse were married to each other at all times during the twelve (12) month period ending on the date of the Employee's death.
- (b) The Trustees, in their sole discretion, may require immediate distribution of the present value of the survivor annuity payable under subsection (a); provided, however, that no amounts shall be distributed to a surviving spouse without such surviving spouse's written consent if the present value of such benefit exceeds \$5,000 (\$3,500.00 prior to January 1, 1998). The present value of such benefit shall be calculated in the manner set forth in Section 7.08.

Notwithstanding the foregoing, any distribution to a surviving spouse shall be subject to the limitations contained in Section 7.08. In addition, no lump sum distribution of a survivor annuity shall be made after the Pension Benefit Starting Date unless the surviving spouse consents in writing to such distribution. The provisions of this paragraph shall be effective as of January 1, 1990 for Employees described in Section 2.08(a) and as of January 1, 1985 for Employees described in Section 2.08(b).

- (c) The benefit provided under this Section 10.05 shall be in lieu of the death benefit provided under Sections 10.01 through 10.04 above. However, the surviving spouse may elect in writing, in such manner and form as the Board of Trustees from time to time shall specify, to receive, in lieu of the Qualified Preretirement Survivor Annuity, a lump sum distribution equal to the greater of (i) the Actuarial Equivalent (within the meaning of Section 2.01(c)) of the Qualified Preretirement Survivor Annuity, and (ii) the lump sum death benefit specified in Section 10.03.

## ARTICLE XI

### AMENDMENT, ACTUARIAL REVIEWS, TERMINATION

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11.01 **Amendment.** The Board of Trustees may amend or modify this Pension Plan at any time or from time to time in accordance with the Trust Agreement, except that no amendment or modification may reduce any benefits payable to Employees who retired prior to such amendment or modification as long as funds are available for payment of such benefits. In no event shall any amendment or modification of this Pension Plan cause or result in any portion of the Fund to revert to, or be recovered by, the Employer, The Association or the Union, or cause or result in the conversion of any portion of the Fund for any purpose other than the exclusive benefit of Employees, Pensioners or their beneficiaries under the Plan and the payment of the administrative expenses of the Fund and the Plan.

In addition, no amendment to the Plan (including a change in the actuarial basis for determining optional or early retirement benefits) shall be effective to the extent that it has the effect of decreasing an Employee's accrued benefit. Notwithstanding the preceding sentence, an Employee's accrued benefit may be reduced to the extent permitted under Section 412 (c) (8) of the Internal Revenue Code or Section 4281 of ERISA. For purposes of this paragraph, an amendment which has the effect of (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment, shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to an Employee who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. In general, a retirement-type subsidy is a subsidy that continues after retirement, but does not include a qualified disability benefit, a medical benefit, a social security supplement, a death benefit (including life insurance), or a plant shutdown benefit (that does not continue after retirement age). Furthermore, no amendment to the Plan shall have the effect of decreasing an Employee's vested interest determined without regard to such amendment as of the later of the date such amendment is adopted or becomes effective.

11.02 **Actuarial Reviews.** This Plan has been adopted on the basis of an actuarial estimate which has established (to the fullest extent possible) that the income and accruals of the Fund will be fully sufficient to support this benefit Plan on a permanent basis.

However, it is recognized as possible that in the future the income or the liabilities of the Fund may be substantially different from those previously anticipated. It is understood that the Pension Plan can be fulfilled only to the extent that the Fund has assets available from which to make payments. Consequently, the Board of Trustees shall have prepared periodically actuarial valuations of the Trust and shall take the actuarial status of the Fund into account in determining amendment or modification of this Pension Plan.

11.03 **Termination.** Notwithstanding any other provision of this Plan to the contrary, upon the date of termination of the Plan, an affected Participant's right to his accrued benefit, to the extent funded as of such date, shall be 100% nonforfeitable.

11.04 **Limitation of Trustee Liability.** There shall be no liability upon the Trustees individually, or collectively, to provide the benefits established by this Plan, if the Fund does not have assets to make such payments.

## ARTICLE XII

### EMPLOYER WITHDRAWAL LIABILITY

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- 12.01 For purposes of determining Employer's withdrawal liability under Part I of Subtitle E of ERISA, as amended by the Act, during any particular year that the actuarial assumptions and methods to be applied with respect to that portion of the Vested benefit obligations funded by accumulated assets (valued at market) shall be those contained in regulations issued by the Pension Benefit Guaranty Corporation for corporate plan terminations and which are in effect as of December 31 of the prior year.
- 12.02 The assumptions and methods to be used by the Plan in determining Employer's withdrawal liability may be changed from time to time at more frequent intervals at the discretion of the Board of Trustees upon advice of the actuaries of the Plan that such changes are reasonable.
- 12.03 The reduction of the amount of Employer withdrawal liability determined pursuant to Section 4211 of ERISA, as amended by the Act, by not more than the greater of:
- (a) 3/4 of 1 % of the Plan's unfunded Vested obligations (determined as of the end of the Plan Year ending before the date of withdrawal), or
  - (b) \$100,000,
- reduced by the amount, if any, by which the amount determined under Section 4211 of ERISA, as amended by the Act, for the Employer, determined without regard to this plan rule or without regard to Section 4209 of ERISA, exceeds \$150,000; and
- 12.04 The above reduction shall not apply to an Employer who withdraws in a Plan Year in which substantially all Employers withdraw from the Plan, or in any case in which substantially all the Employers withdraw from the Plan during a period of one or more Plan Years pursuant to an agreement or arrangement to withdraw, to an Employer who withdraws pursuant to such an agreement or arrangement; and
- 12.05 Any action or proceeding to determine or collect withdrawal liability, if substantially all of the Employers who have withdrawn from the Plan within a period of three Plan Years, an Employer who has withdrawn from the Plan during such period shall be presumed to have withdrawn from the Plan pursuant to an agreement or arrangement, unless the Employer proves otherwise by a preponderance of the evidence.
- 12.06 An Employer who withdraws from the Plan in complete or partial withdrawal is not liable to the Plan if the Employer:
- (a) First has an obligation to contribute to the Plan after the date of enactment of the Multi-employer Pension Plan Amendments Act of 1980, and
  - (b) Had an obligation to contribute to the Plan for no more than or the lesser of:
    - (1) six consecutive Plan Years preceding the date on which the Employer withdraws, or
    - (2) the number of years required for Vesting under this Plan, and

- (c) Was required to make Contributions to the Plan for each such Plan Year in an amount equal to less than 2% of the sum of all Employer Contributions made to the Plan for each such Plan Year, and
- (d) Has never avoided withdrawal liability because of the application of this rule with respect to the Plan.

12.07 The reduction under Section 21 (a) (3) (E) of the Internal Revenue Code of 1954, as amended, shall apply with respect to the Employees of any Employer who, because of the operation of the above provisions, is not liable to the Plan upon a complete or partial withdrawal.

12.08 The share of the Plan's unfunded Vested benefits allocable to a withdrawing Employer shall be the product of:

- (a) The Plan's unfunded Vested benefits as of the end of the Plan Year preceding the Plan Year in which the Employer withdraws, less the value as of the end of such year of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from the Employer withdrawing before such year multiplied by:
- (b) A fraction:
  - (1) The numerator of which is the total amount required to be contributed by the Employer under the Plan for the last five Plan Years ending before the withdrawal, and
  - (2) The denominator of which is the total of Employer Contributions as reported on Line 14 (c) of Form 5500 or on any predecessor form required by the Department of Labor or the Internal Revenue Service for the five Plan Years ended prior to the year of withdrawal, less any Contributions included in that total made by any substantial Employer that had withdrawn from the Plan within that five-year period. For this purpose, "substantial employer" means:
    - (i) An Employer that contributed, in any one of those five Plan Years, at least one percent of total Employer Contributions to the Plan reported for the year or, if lower, \$250,000, and
    - (ii) Any other Employer that was a member of an Employer association, a group of Employers covered by a single Collective Bargaining Agreement or a group of Employers covered by agreements with a single labor organization, if the contribution obligations of all members of the group ceased in a single Plan Year and the group's aggregate Contributions to the Plan in any one of the five Plan Years totaled at least one percent of total Employer Contributions to the Plan reported for that year or, if lower, \$250,000.

## ARTICLE XIII

### SUSPENSION AND RESTORATION OF EARLY PENSION BENEFIT

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#### 13.01 **Suspension.**

- (a) If an Employee commences to receive an Early Pension Benefit and later returns to work in the Hotel and Restaurant Industry prior to reaching his Regular Retirement Date, then the Employee's benefit shall be permanently suspended for one month for each month in which the Employee works forty (40) or more hours in the Hotel and Restaurant Industry.
- (b) For purposes of this Article XIII only, the term "Hotel and Restaurant Industry" shall mean all work, whether or not with an Employer or in a self-employed capacity, which is covered, or of the type that would be covered, by a Collective Bargaining Agreement. However, all work which is not in the same industry, the same trade or craft (including supervisory activities relating thereto), and the same geographic areas covered by the Plan at the time pension payments commence or would have commenced had the Employee not remained in or returned to work in the Hotel and Restaurant Industry shall not be treated as disqualifying employment under this Article.

#### 13.02 **Notification.**

- (a) If a Pensioner returns to work in the Hotel and Restaurant Industry, prior to attaining his Regular Retirement Date, he must promptly notify the Trustees, in writing, of such employment. A Pensioner shall provide the Trustees with such information as they may request in order to establish the nature and extent of any employment after the date of commencement of his benefits. In addition, at least once each year a Pensioner shall be required to certify on a form acceptable to the Trustees that he is not and has not been employed at work which would cause a suspension of pension payments. Any pension payments otherwise due shall be withheld pending adequate response by the Pensioner to such request.
- (b) If the Trustees become aware that the Pensioner may be employed in the Hotel and Restaurant Industry, it may be presumed, unless and until the Pensioner provides evidence to the contrary, that he was employed for forty (40) or more hours for that month, and benefits may be suspended as provided hereunder.
- (c) A Pensioner whose pension has been suspended shall advise the Trustees in writing when disqualifying employment has ended. Benefit payments shall be held back until such notice is filed with the Trustees.
- (d) A Pensioner may request of the Trustees, in writing, a determination whether contemplated employment will be disqualifying and the Trustees shall provide the Participant with their determination within a reasonable time.
- (e) **Notice of Suspension.** The Trustees shall inform a Pensioner of any suspension of benefits by notice given by personal delivery or first class mail during the first calendar month in which his benefits are withheld. Such notice shall include a description of the specific reasons for the suspension, a description and a copy of the relevant plan provisions, reference of the applicable

regulations of the U.S. Department of Labor, a statement of the procedure for securing a review of the suspension, and a description of the procedures with any necessary forms that must be filed before benefits can be resumed.

- (f) **Review.** A Pensioner shall be entitled to a review of a determination suspending his benefits or a determination that contemplated employment will be disqualifying. Such requests for review must be filed with the Trustees not later than 60 days following Pensioner's receipt of the applicable notice, and shall be governed by the Appeal Procedures set out in Article XIV of this Plan.
- (g) **Waiver of Suspension.** The Trustees may, upon their own motion or on request of a Pensioner, waive suspension of benefits subject to such limitations as the Trustees in their sole discretion may determine, including any limitations based on the Pensioner's previous record of benefit suspensions or noncompliance with reporting requirements under this Article.

13.03 **Restoration.** A Pensioner whose benefits are suspended shall be entitled to resume receiving a retirement benefit:

- (a) For any month the Pensioner works less than 40 hours in the Hotel and Restaurant Industry.
- (b) Benefit payments to a Pensioner shall be resumed beginning no later than the third month after the last calendar month for which his benefit was suspended, provided the Pensioner has complied with the notification requirements of this Plan. Subject to any offset under this Section 13.03, the initial payment upon resumption shall include all amounts payable after cessation of employment.
- (c) A Pensioner who returns to work in the Hotel and Restaurant Industry and subsequently retires before his Regular Retirement Date shall, upon such retirement, be entitled to receive the same pension as before his return to the Hotel and Restaurant Industry. Such Pensioner shall be entitled to receive any additional pension benefit accumulated during his subsequent period(s) of work in Covered Employment as of the month following the month in which he attains his Regular Retirement Date. A Pensioner who returns to Covered Employment may continue working beyond his Regular Retirement Date and in such event will continue to accrue Pension Credit in accordance with the provisions of Article IV of this Plan. Any such Employee who begins receiving pension benefits after his Regular Retirement Date shall not accrue any additional Pension Credit after the date on which such pension benefits commence. Upon retirement after his Regular Retirement Date, an Employee's pension benefits shall be increased in the manner specified in Section 7.03 of this Plan.
- (d) If a Pensioner receives any pension payment to which he was not entitled under the provisions of this Article, the Trustees may recover the amount of such overpayment(s) by deducting the amount of the overpayment(s) from the Pensioner's future monthly payments until such overpayment is fully recovered. The amount of such offset shall be limited to 100% of the amount due to the Pensioner for the first payment upon resumption of benefits and 25% of the monthly Pension Benefit amount thereafter, until all overpayments are fully recovered. This provision shall not limit the right of the Trustees to recover an overpayment by means other than deduction from the pension.
- (e) In the event the Trustees intend to recover an overpayment as provided in paragraph (d) above, the Notice of Suspension provided to the Pensioner shall identify specifically the periods of

employment, the overpayment amounts that are subject to offset, and the manner in which the Plan intends to offset such overpayment amount.

## ARTICLE XIV

### APPEAL PROCEDURE

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#### 14.01 (a) **Initial Benefit Determination.**

Any person whose application for benefits under the Pension Plan has been denied in whole or in part by the Board of Trustees, or whose claims to benefits otherwise is denied, or who otherwise is adversely affected by any action of the Board of Trustees, shall be given prompt written notice of such adverse benefit determination and may petition the Board of Trustees to reconsider its decision. The notice of adverse benefit determination shall be given within a reasonable period of time, but not later than ninety (90) days after receipt of the claim by the Plan, unless special circumstances require an extension of time for processing the claim. If such an extension is required, written notice shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of ninety (90) days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the benefit determination.

The period of time within which a benefit determination is required to be made shall begin at the time a claim is filed in accordance with the reasonable procedures of the Plan, without regard to whether all the information necessary to make a benefit determination accompanies the filing.

The notice of adverse benefit determination shall be phrased in terms calculated to be understood by the claimant and shall:

- (1) State the specific reason(s) for the adverse determination;
- (2) Refer to the specific Plan provisions on which the determination is based;
- (3) Describe any additional material or information necessary for the claimant to perfect the claim with an explanation why such material or information is necessary;
- (4) Describe the Plan's review procedures and the time limits applicable to such procedures; and
- (5) Set forth a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review.

#### (b) **Benefit Determination Upon Review.**

A claimant may file a petition for reconsideration of an adverse benefit determination. Such petition shall be in writing and shall state in clear and concise terms the reason or reasons for disagreement with the Plan's determination. The claimant's petition shall be filed with the Administration Office within sixty (60) days following receipt of a notification of an adverse benefit determination. The Board may consider a late application if it concludes the delay in filing was for reasonable cause.

The failure to file a petition for reconsideration within the sixty (60) day period shall constitute a waiver of the claimant's right to reconsideration of the decision. Such failure shall not, however, preclude the applicant or claimant from establishing his entitlement at a later date based on additional information and evidence which was not available to him at the time the denial became effective.

When any such petition is received, the claim and adverse benefit determination shall receive a full and fair review by the Board of Trustees or any sub-committee to which it delegates this function.

As part of the review procedure, the claimant will be provided the opportunity to submit written comments, documents, records, and other information relating to the claim for benefits. The claimant shall also be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits (a document, record, or other information will be considered "relevant" if such document, record, or other information was (i) relied upon in making the benefit determination; (ii) was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination; (iii) demonstrates compliance with the administrative process and safeguards established to ensure and verify that benefit claim determinations are made in accordance with governing Plan documents and that, where appropriate, the Plan provisions have been applied consistently with respect to similarly situated claimants). The review procedure will also take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

The claimant shall have no right to appear personally before the reviewing group unless that group concludes that such an appearance would be of value in enabling it to perform its obligations hereunder.

If a benefit determination upon review is to be made by the Board or the subcommittee which is holding regularly scheduled meetings at least quarterly, the benefit determination shall be made no later than the date of the first such meeting which occurs at least 30 days following receipt of the request for review; but if special circumstances require an extension of time for processing, the benefit determination shall be rendered not later than the third meeting following receipt of the request. The claimant shall be notified of the benefit determination as soon as possible, but not later than five (5) days after the benefit determination is made. In all other cases, the claimant shall be notified of the Plan's benefit determination upon review within a reasonable period of time, but not later than sixty (60) days after receipt of the request for review, unless special circumstances require an extension of time for processing the claim; in no event shall such extension exceed a period of sixty (60) days from the end of the initial period.

Whenever special circumstances require an extension of time for processing, written notice of the extension shall be furnished to the claimant before the extension period begins. Such notice shall describe the special circumstances and the date as of which the benefit determination will be made.

The period of time within which a benefit determination on review is required to be made shall begin at the time an appeal is filed in accordance with the reasonable procedures of the Plan, without regard to whether all the information necessary to make a benefit determination on review accompanies the filing. In the event that a period of time is extended due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

The claimant shall be provided with written notification of the Plan's benefit determination on review. In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the claimant, the information described in paragraphs (1), (2), and (5) of Section 14.01(a). In addition, the notification shall state that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits.

The decision of the Board of Trustees or the subcommittee with respect to the petition for reconsideration shall be final and binding upon all parties, including the petitioner and any person claiming under the petitioner.

(c) **Miscellaneous.**

This procedure sets forth the exclusive remedy for Participants and beneficiaries to perfect any and every claim or right asserted under the Plan or against the Fund, regardless of when the act of omission upon which the claim is based occurred. No court suit or action may be brought for benefits under the Trust or the Plan to enforce any rights thereunder without compliance with this procedure and the only action that may then be brought shall be to enforce the decision of the Board of Trustees.

In the case of the failure of the Plan to establish or follow claims procedures consistent with the requirements of 29 CFR Section 2560.503-1, a claimant shall be deemed to have exhausted the administrative remedies available under the Plan and shall be entitled to pursue any available remedies under Section 502(a) of ERISA on the basis that the Plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim.

These procedures do not preclude an authorized representative of a claimant from acting on behalf of such claimant in pursuing a benefit claim or appeal of an adverse benefit determination. Nevertheless, the Plan may establish reasonable procedures for determining whether an individual has been authorized to act on behalf of a claimant.

## ARTICLE XV

### MISCELLANEOUS PROVISIONS

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- 15.01 **Availability of Documents.** Copies of the Plan and Trust Agreement, together with all amendments thereto, and annual reports and other information required to be furnished under ERISA, will be available to Participants at the administrative office of the Plan.
- 15.02 **Expenses of Administration.** The Expenses of administering the Plan will be paid from the Trust Fund.
- 15.03 **Employer-Employee Relationship Not Affected.** This Plan is not intended to affect in any way the Employer-Employee relationship between any Employee and Employer hereunder. This Plan shall not limit or expand any rights or obligations under any Collective Bargaining Agreement or other Agreement between those parties which may be in effect from time to time.
- 15.04 **He, Him, His, etc.** Whenever the fulfillment of the intent and purpose of this Plan requires, and the context will permit, use of the masculine gender includes the feminine and use of the singular includes the plural.
- 15.05 **Rights on Asset Transfer.** In the event of merger, consolidation or transfer of this Plan or the assets and liabilities of the Pension Fund into any other Plan and Trust, or vice versa, each Participant shall be entitled to receive a benefit under the successor or survivor plan immediately after the merger, consolidation or transfer no less than the benefit to which he would have been entitled had this Plan been terminated immediately prior to such merger, consolidation or transfer.
- 15.06 **Board Determinations Conclusive.** The Board of Trustees shall have full discretion and authority to determine questions concerning the interpretation or administration of this Plan, including without limitation, all questions relating to eligibility for Plan benefits, and the determinations of the Board shall be conclusive and binding as to all persons and for all purposes.
- 15.07 **Direct Rollover of Eligible Rollover Distribution.** This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (a) **Eligible Rollover Distribution.** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401 (a) (9) of the Code.
- (b) **Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust

described in Section 401 (a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

- (c) **Distributee.** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (d) **Direct Rollover.** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.