# RESTATED
# PENSION PLAN OF THE

# SAN DIEGO UNITE-HERE PENSION PLAN

By resolution of the Board of Trustees, the following Restated Pension Plan, effective January 1, 2015, is made and entered into on the day and date set forth at the end of this Restatement.

Future amendments to this Plan shall be numbered sequentially as an amendment to the San Diego UNITE-HERE Pension Plan (2015 Restatement).

## TABLE OF CONTENTS

**Page**


**ARTICLE I. DEFINITIONS ..... 1**
Section 1.01 Actuarial Equivalent. ..... 1
Section 1.02 Beneficiary. ..... 1
Section 1.03 Code. ..... 1
Section 1.04 Collective Bargaining Agreement. ..... 1
Section 1.05 Covered Employment. ..... 2
Section 1.06 Early Retirement Date. ..... 2
Section 1.07 Employee. ..... 2
Section 1.08 Employer. ..... 3
Section 1.09 Employer Contribution. ..... 3
Section 1.10 Employer Contribution Agreement. ..... 4
Section 1.11 Employment in the Industry. ..... 4
Section 1.12 Future Service. ..... 4
Section 1.13 Hour of Service. ..... 4
Section 1.15 Leased Employee. ..... 4
Section 1.16 Life Annuity. ..... 5
Section 1.17 Normal Retirement Date. ..... 5
Section 1.18 Past Service. ..... 5
Section 1.19 Pension. ..... 5
Section 1.20 Pension Benefit Starting Date. ..... 5
Section 1.21 Pension Fund. ..... 5
Section 1.22 Pension Plan. ..... 5
Section 1.23 Plan Year. ..... 5
Section 1.24 Qualified Joint and Survivor Annuity. ..... 5
Section 1.25 Qualified Pre-retirement Survivor Annuity. ..... 6
Section 1.26 Related Plan. ..... 6
Section 1.27 Retired Employee. ..... 7
Section 1.28 Spouse. ..... 7
Section 1.29 Trust Agreement. ..... 7
Section 1.30 Trustee. ..... 7
Section 1.31 Union. ..... 7
Section 1.32 Vesting Year of Service. ..... 7
Section 1.33 Retroactive Annuity Starting Date. ..... 7

**ARTICLE II PLAN PARTICIPATION ..... 8**
Section 2.01 Before 1992 ..... 8
Section 2.02 1992 Through and Continuing Through December 31, 1995. ..... 8
Section 2.03 On/After January, 1996. ..... 8
Section 2.04 Suspension of Participation. ..... 8
Section 2.05 Termination of Participation. ..... 8
Section 2.06 Subsequent Participation. ..... 8

**ARTICLE II ELIGIBILITY FOR PENSION BENEFITS AND PENSION AMOUNTS..... 9**
Section 3.01 Normal Pension..... 9
Section 3.02 Amount of Normal Pension. ..... 9
Section 3.03 Early Pension. ..... 12
Section 3.04 Amount of Early Pension..... 12
Section 3.05 Disability Pension. ..... 13
Section 3.06 Amount of Disability Pension..... 13
Section 3.07 Disability Defined. ..... 13
Section 3.08 Disability Pension Payments. ..... 14
Section 3.09 Effect of Recovery From a Disability. ..... 14
Section 3.10 Service Pension. ..... 14
Section 3.11 Amount of Service Pension. ..... 15
Section 3.12 Return to Covered Employment. ..... 15
Section 3.13 Voluntary Retirement. ..... 15
Section 3.14 Pro Rata Pension. ..... 16
Section 3.15 Maximum Benefits. ..... 17
Section 3.16 Payments From Outside Plans. ..... 18
Section 3.17 Deferred Retirement Date. ..... 18
Section 3.18 Amount of Deferred Retirement Benefit. ..... 18

**ARTICLE IV DEATH BENEFIT PAYMENTS..... 19**
Section 4.01 Death Benefit on or Before Eligibility for Early Retirement..... 19
Section 4.02 Death Benefit After Eligibility for Retirement. ..... 20
Section 4.03 Consent for Small Benefit..... 20
Section 4.04 Death Benefit After Retirement. ..... 20
Section 4.05 Designation of Beneficiary. ..... 21
Section 4.06 Failure to Designate a Beneficiary..... 21

**ARTICLE V ACCUMULATION OF PENSION CREDIT..... 21**
Section 5.01 Outline. ..... 21
Section 5.02 Past Service Credit. ..... 22
Section 5.03 Future Service Credit. ..... 22
Section 5.04 Vesting. ..... 22
Section 5.05 Break in Service and Cancellation of Pension Credit. ..... 24
Section 5.06 Deemed Distribution. ..... 26
Section 5.07 Military Service. ..... 27

**ARTICLE VI BENEFIT PAYMENTS..... 27**
Section 6.01 Benefit Payments. ..... 27
Section 6.02 Incompetence or Incapacity of Pensioner. ..... 28
Section 6.03 Forms of Pension Benefits. ..... 28
Section 6.04 Commencement of Benefit Payments..... 29
Section 6.05 Duplication of Pensions. ..... 31
Section 6.06 Non-Assignment of Benefits. ..... 31
Section 6.07 Trust Assets..... 32
Section 6.08 Eligible Rollover Distributions. ..... 32
Section 6.09 Qualified Domestic Relations Order..... 33

Section 6.10 Change in Pension Benefits. ..... 35

**ARTICLE VII APPLICATIONS FOR PENSIONS ..... 37**
Section 7.01 Advance Written Applications Required. ..... 37
Section 7.02 Information Required ..... 37

**ARTICLE VIII MISCELLANEOUS PROVISIONS ..... 37**
Section 8.01 Limitation of Liability. ..... 37
Section 8.02 Construction of the Plan. ..... 37

**ARTICLE IX AMENDMENT, TERMINATION AND MERGER ..... 38**
Section 9.01 Amendment. ..... 38
Section 9.02 Plan Termination. ..... 38
Section 9.03 Mergers. ..... 39
Section 9.04 Non-Reversion. ..... 39

**ARTICLE X APPEALS PROCEDURE ..... 39**
Section 10.01 Determination of Disputes. ..... 39
Section 10.02 Arbitration ..... 41

**ARTICLE XI RULES FOR WITHDRAWAL LIABILITY ..... 41**
Section 11.01 Calculating Withdrawal Liability. ..... 41

**ARTICLE XII TOP HEAVY PROVISIONS ..... 42**
Section 12.01 Rule of Application. ..... 42
Section 12.02 Top-Heavy Definitions. ..... 43
Section 12.03 Compensation Definition and Limitation. ..... 45
Section 12.04 Minimum Benefit. ..... 45
Section 12.05 Final Average Compensation. ..... 45
Section 12.06 Special Vesting Schedule. ..... 46
Section 12.07 Maximum Limitation Under Top Heavy Plan. ..... 46
Section 12.08 Modification of Top Heavy Rules. ..... 46

## ARTICLE I.
## DEFINITIONS

Unless the context or subject matter otherwise requires, the following definitions shall govern in the Plan:

Section 1.01 Actuarial Equivalent. The term "Actuarial Equivalent" shall mean, unless otherwise defined herein, a benefit which has the same actuarial present value as a given benefit based on the 1984 Unisex Pension Mortality Table and an interest rate of seven percent (7.0%). However, for the purpose of a benefit payable in accordance with Sections 4.02(a)(1), 4.02(b)(2), 4.03, 4.04, 5.06, 6.03(c) and 6.04(c), the interest and mortality used to determine Actuarial Equivalence shall be as follows:

For annuity starting dates before the year 2000, the interest rate shall be the lesser of 7.0% and the interest rate used by the Pension Benefit Guaranty Corporation to value annuities for terminating plans as of the first day of the Plan Year that contains the proposed distribution date. For other annuity starting dates, Actuarial Equivalence shall be determined using the "applicable interest rate" and "applicable mortality table" determined as follows. The "applicable interest rate" shall be determined under Section 417(e)(3)(A)(ii)(II) of the Code for the applicable lookback month. The applicable lookback month shall be the third full calender month preceding the Plan Year which contains the annuity starting date. The "applicable mortality table" shall be the table prescribed by the Secretary of the Treasury under Section 417(e)(3)(A)(ii)(I) of the Code.

For annuity starting dates on or after January 1, 2003, the "applicable mortality table" shall be the table prescribed by the Secretary of the Treasury in Revenue Ruling 2001-62.

For annuity starting dates on or after January 1, 2008, Actuarial Equivalence shall be determined using the "applicable interest rate" and "applicable mortality table" determined as follows. The "applicable interest rate" for a calendar year under Code Section 417(e)(3)(C), namely the adjusted three segment rates applied under rules similar to the rules of Code Section 430(h)(2)(C), without regard to the 24-month averaging period provided under Code Section 430(h)(2)(D)(i), for the month of October immediately preceding the calendar year that contains the annuity starting date. These three-segment rates are phased-in over five years in accordance with the transition rule provided under Code Section 417(e)(3)(D)(ii). The "applicable mortality table" for a calendar year is the table prescribed for use in that year under Code Section 417(e)(3)(B).

Section 1.02 Beneficiary. The term "Beneficiary" shall mean any person or entity designated by the Employee or by law to receive any Benefits from the Fund in place of a deceased Employee.

Section 1.03 Code. The term "Code" shall mean the Internal Revenue Code of 1986, as amended.

Section 1.04 Collective Bargaining Agreement. The term "Collective Bargaining Agreement" shall mean:

(a) any written Agreement by and between the Union and any Employer, and

(b) any and all extensions, modifications, amendments and/or renewals of either of the foregoing Agreements or any substitute or successor Agreements which provide for the making of Employer contributions to this Fund.

Section 1.05 Covered Employment. The term "Covered Employment" means all work performed by Employees on behalf of their Employers.

Section 1.06 Early Retirement Date. The term "Early Retirement Date" shall have the meaning set forth in Section 3.03.

Section 1.07 Employee. The term "Employee" shall mean any person who is employed by an Employer and on whose behalf an Employer is required to pay contributions to this Fund pursuant to a Collective Bargaining Agreement or pursuant to an Employer Contribution Agreement. "Employee" may also include any paid employee of the Union and/or any duly elected and paid officer of the Union, at the option of the Union, or any paid employee of the Trust Fund Administrative Office. "Employee" shall not include Leased Employees without regard to whether such Leased Employees are covered by a plan maintained by their leasing organization that is a money purchase pension plan providing: (a) a nonintegrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Section 125, Section 402(a)(8), Section 402(h) or Section 403(b) of the Code; (b) immediate participation; and (c) full and immediate vesting; and Leased Employees do not constitute more than twenty percent (20%) of the Employer's non-highly compensated work force. Compensation shall include all compensation. Effective January 1, 1998, compensation shall include any elective deferral as defined in Section 402(g)(3) and any amount which is contributed or deferred by the employer at the election of the employee and which is not includable in gross income of the employee by reason of Section 125, Section 132(f)(4) or Section 457.

Years of service with the Employer before a participant entered the Plan, including years of service in non-covered employment, will be counted for vesting purposes, unless one of the exceptions noted in IRC Section 411(a)(4) applies.

For vesting purposes, service with an Employer must include service for certain related Employers for the period in which the Employers are related. These related Employers include members of a controlled group of corporations (within the meaning of IRC Section 1563(a), determined without regard to subsections (a)(4) and (e)(3)(c) thereof) and trades or businesses (whether or not incorporated) which are under common control. Service must also be counted for organizations that are part of an affiliated service group under IRC Section 414(m).

Service of any Employee who is a Leased Employee to any Employer aggregated under Section 414(b), (c) or (m) must be credited for vesting purposes whether or not such individual is eligible to participate in the plan.

The term "Employee" shall also include employees of Unions of the Trust Fund

on whose behalf contributions are made to the Plan pursuant to regulations adopted by the Board of Trustees, provided the inclusion of said employees is not a violation of any existing regulation.

The term "Employee" also means employees described above and employees not performing work under any of the collective bargaining agreements but who formerly performed services under any of the collective bargaining agreements. The Employer must notify the Trustees in advance in writing of an election to pay contributions on behalf of collective bargaining unit alumni pursuant to this subsection and pursuant to regulations adopted by the Board of Trustees and provided further that the inclusion of said employees is not a violation of any existing law or regulation.

Participation in the Plan by non-collectively bargained employees shall be subject to a Participation Agreement duly executed by the Board of Trustees and the Employer.

Employees not performing services under a collective bargaining agreement may only participate in the Plan if no more than five percent (5%) of the Employees covered under the Plan are non-collective bargaining unit employees. Employees who previously participated as collective bargaining unit employees and who continue participation in the Plan as collective bargaining unit alumni pursuant to this Section shall not be treated as collective bargaining unit employees for purposes of the five percent (5%) maximum but shall be considered collective bargaining unit employees to the fullest extent permissible under Internal Revenue Code Section 410, Regulations related to that Section and all related Sections and Regulations. Except as may be required by law, collective bargaining unit alumni whose participation is allowed pursuant to this Section of the Plan and other participants not performing services under the collective bargaining agreement participating pursuant to the provisions of this Section of the Plan, shall in no event accrue benefits under the Plan in a fashion more favorable than that applicable to similarly situated Employees who are performing services under the collective bargaining agreement.

In no event may an Employer that wishes to pay contributions to the Plan on behalf of non-collectively bargained unit employees do so without the prior approval of the Trustees. Should an Employer pay such contribution without the prior approval of the Trustees, those contributions less any investment losses but in no event with any investment gains, shall be returned by the Trustees to the Employer. The Trustees shall not permit initial or continued participation pursuant to this Section if such participation would result in the five percent (5%) limitation of this Section being violated.

The term "Employee" does not include any self-employed person, whether a sole proprietor or partner.

Section 1.08 Employer. The term "Employer" means any association, individual, partnership or corporation which employs Employees as hereinafter defined and which is a party to a Collective Bargaining Agreement with the Union. The term "Employer" also means the Union or the Trust Fund Administrative Office, where applicable.

Section 1.09 Employer Contribution. The term "Employer Contribution" means

payments made or to be made to this Fund by an Employer under the provisions of a Collective Bargaining Agreement and/or pursuant to an Employer Contribution Agreement. The term "Employer Contribution" also means contributions made in accordance with the terms of this Plan by the Union or the Trust Fund Administrative Office, if any.

Section 1.10 Employer Contribution Agreement. The term "Employer Contribution Agreement" means a written agreement between an individual, partnership or Employer who is signatory to a Collective Bargaining Agreement and this Fund which requires the Employer to make contributions to this Fund on behalf of all non-bargaining unit Employees, except those employed by the Employer pursuant to another Collective Bargaining Agreement.

Section 1.11 Employment in the Industry. The term "Employment in the Industry" means employment in the hotel-motel-restaurant-grocery business in San Diego County in a position previously or currently covered by a Collective Bargaining Agreement or in a position currently or previously covered by an Employer Contribution Agreement.

Section 1.12 Future Service. The term "Future Service" shall mean periods of Covered Employment on and after an Employee's "Initial Date of Coverage", credited in accordance with Section 5.03 of this Plan.

Section 1.13 Hour of Service. The term "Hour of Service" shall mean:

(c) Each hour for which an Employee is paid, or entitled to payment by the Employer for the performance of duties for the Employer during the applicable computation period.

(d) Each hour for which an Employee is paid, or entitled to payment, by the 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.

(e) 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 subparagraphs (a) and (b), as the case may be.

(f) 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 Section 2530.200b-2.

The term "Initial Date of Coverage" shall mean the date on or after January 1, 1968, on which an Employee shall first be employed by an Employer pursuant to a Collective Bargaining Agreement or pursuant to an Employer Contribution Agreement, requiring the Employer to make contributions to this Fund.

Section 1.15 Leased Employee. Effective January 1, 1997, the term "Leased Employee" means any person who is not an employee of the recipient as defined in Internal Revenue Code Section 414(n)(1) and who provides services to the recipient if -

(a) Such services are provided pursuant to an agreement between the recipient and any other person (in this subsection referred to as the "leasing organization"),

(b) Such person has performed such services for the recipient (or for the recipient and other persons) on a substantially full-time basis for a period of at least one (1) year, and

(c) Such services are performed under primary direction or control by the recipient.

Section 1.16 Life Annuity. The term "Life Annuity" shall mean an annuity that provides retirement payments to a person for his or her life but for not less than a period of thirty-six (36) months.

Section 1.17 Normal Retirement Date. The term "Normal Retirement Date" shall have the meaning set forth in Section 3.01.

Section 1.18 Past Service. The term "Past Service" shall mean periods of employment prior to an Employee's "Initial Date of Coverage" to the extent credited in accordance with Section 5.02 of this Plan. However, should an Employee first be employed by an Employer pursuant to a Collective Bargaining Agreement or pursuant to an Employer Contribution Agreement, requiring the Employer to make contributions to this Fund on or after January 1, 1973, said Employee shall not be entitled to any Past Service Credit. In addition to the foregoing, it is further provided that an Employee whose Initial Date of Coverage is later than the date on which the Employer was first required to make contributions to this Trust shall receive no Past Service Credit.

Section 1.19 Pension. The terms "Pension", "Pension Payment", "Benefit", or "Pension Benefit" shall mean the total payment due a Retired Employee each month as a total of sums due for Past Service Credit and sums due for Future Service Credit as set forth herein.

Section 1.20 Pension Benefit Starting Date. The term "Pension Benefit Starting Date" shall mean the first day of the first period for which benefits are payable under the Plan.

Section 1.21 Pension Fund. The terms "Pension Fund" or "Fund" mean the Fund created and established pursuant to the Trust Agreement composed of contributions made by the Employers and from which Benefits under this Plan are to be paid.

Section 1.22 Pension Plan. The terms "Pension Plan" or "Plan" shall mean this Plan created pursuant to the Collective Bargaining Agreement and the Trust Agreement, including all amendments to any of the foregoing.

Section 1.23 Plan Year. The term "Plan Year" means the period commencing January 1 of any year and concluding December 31 of the same year, both dates inclusive.

Section 1.24 Qualified Joint and Survivor Annuity. The term "Qualified Joint and Survivor Annuity" shall mean an immediate annuity for the life of the Employee with a survivor annuity for the life of his or her spouse which is one-half (1/2) of the annuity payable during the

joint lives of the Employee and his or her spouse. For retirements effective on or after January 1, 2007, the term "Qualified Joint and Survivor Annuity" shall also mean an immediate annuity for the life of the Employee with a survivor annuity for the life of his or her spouse which is 75% of the annuity payable during the joint lives of the Employee and his or her spouse

For purposes of the preceding sentence, a Qualified Joint and Survivor Annuity shall not include an annuity, or that portion of an annuity, that provides those benefits which, under Section 411(a)(9) of the Code, are not required to be taken into account in the determination of the Normal Retirement Benefit or Early Retirement Benefit. A Qualified Joint and Survivor Annuity shall be at least the actuarial equivalent of a Life Annuity and shall provide that payments to a Spouse of a deceased Employee shall not be reduced or terminated solely by reason of such Spouse's remarriage.

For retirements effective on or after January 1, 2000, the term "Qualified Joint and Survivor Annuity" shall mean an annuity as described above in regard to any payments made during the lifetime of the Employee's spouse. The amount payable to the Employee following the death of the spouse shall be equal to the amount that would have been payable to the Employee had the Employee rejected the Joint and Survivor Annuity at retirement. This amount shall be adjusted for any post-retirement benefit increases that have been adopted after the effective date of the Employee's retirement.

Section 1.25 Qualified Pre-retirement Survivor Annuity. The term "Qualified Pre-retirement Survivor Annuity" shall mean an immediate annuity for the life of the Employee's surviving spouse, 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 Benefits, the Employee's surviving Spouse shall receive the same Benefit that would be payable if the Employee had retired with a Qualified Joint and Survivor Annuity 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 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 earlier of actual separation or the date of death;

(2) survived to the earliest date on which, the Employee could elect to receive Benefits under the Plan;

(3) retired on such date with a Qualified Joint and Survivor Annuity; and

(4) died on the day after the earliest date on which the Employee could elect to receive Benefits under the Plan.

Section 1.26 Related Plan. The term "Related Plan" shall mean any other Pension Fund with which the Trustees have entered into an agreement providing for any form of reciprocity.

Section 1.27 Retired Employee. The term "Retired Employee" shall mean an Employee who has retired from Employment in the Industry within the meaning of Article III.

Section 1.28 Spouse. The term "Spouse" shall mean the person to whom the Employee is married as of the Pension Benefit Starting Date; provided, however, that 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. In the event the Employee is treated as having two or more surviving Spouses, the total amount to be paid as a 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 Spouse.

Section 1.29 Trust Agreement. The term "Trust Agreement" shall mean the Pension Trust Fund Agreement establishing the Pension Trust Fund of the San Diego Bartenders and Culinary Workers, effective January 1, 1968, and all extensions, amendments, modifications or renewals of that Agreement or any substitute or successor Agreement to that Agreement which provides for the reception by this Fund of Employer Contributions.

Section 1.30 Trustee. The term "Trustee" shall mean any Trustee or the several Trustees appointed and acting under the Trust Agreement. Such Trustees as are designated by the Union pursuant to Article II of the Trust Agreement may be referred to as "Union Trustees". Such Trustees as are designated by Employers pursuant to Article II of the Trust Agreement may be referred to as "Employer Trustees".

Section 1.31 Union. The term "Union" means the UNITE HERE Local 30 and UFCW.

Section 1.32 Vesting Year of Service. Any Plan Year in which a Participant has earned at least 1,000 hours in Covered Employment or One Future Service Credit, or any Plan Year that is included for vesting purposes in accordance with the provisions of Section 5.04.

Vesting Year of Service shall also include any Plan Year in which an Employee was employed in work covered under a collective bargaining agreement with UNITE HERE Local 30 and an employer for whom no contributions were made to this Fund, provided that such employment is immediately before or immediately after work for an Employer who provides contributions to this Fund on such Employee pursuant to a collective bargaining agreement or an Employer Contribution Agreement.

For participants who died on or after January 1, 2007 while performing qualified military service, Vesting Year of Service shall include the participant's period of qualified military service. The survivors of such Participant shall be entitled to any additional benefits (other than benefits accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.

Section 1.33 Retroactive Starting Annuity Date. The term "Retroactive Annuity Starting Date" means an Annuity Starting Date that is affirmatively elected by a Participant that occurs on or before the date the written explanation of benefit payment options is provided to the Participant and occurs on or after the Participant's earliest retirement date in Plan. The Participant must request the Retroactive Annuity Starting

Date in the pension application. Benefits payable under a Retroactive Annuity Starting Date shall consist of a single sum payment of benefits attributable to the period beginning on the Retroactive Starting Date and ending prior to the first of the month benefit payments commenced. The single sum payment shall include interest at the One year T-Bill rate. The Board of 'Trustees shall update the One year T-Bill rate annually based on the rate in effect for the month preceding the start of each Plan Year.

## ARTICLE II
## PLAN PARTICIPATION

Section 2.01 Before 1992. Effective for Plan Years commencing prior to January 1, 1992, each Employee of an Employer shall become a participant in the Plan after his or her Initial Date of Coverage on the date on which the Employee is credited with at least 500 Hours of Service in a Plan Year.

Section 2.02 1992 Through and Continuing Through December 31, 1995. Effective for Plan Years commencing on and after January 1, 1992, each Employee of an Employer shall become a participant in the Plan after his or her Initial Date of Coverage on the date on which the Employee is credited with at least 500 Hours of Service within a period of two (2) consecutive Plan Years.

Section 2.03 On/After January, 1996. Effective for Plan Years commencing on and after January 1, 1996, each Employee of an Employer shall become a participant in the Plan after his or her Initial Date of Coverage on the date on which the Employee is credited with at least 300 Hours of Service in the Plan.

Section 2.04 Suspension of Participation. Any Employee who becomes a Participant in this Pension Plan and who thereafter suffers a Break in Service, shall cease to be a Participant on the last day of the Plan Year in which the Employee incurred an initial Break in Service. For the purpose of determining an initial Break in Service, prior to January 1, 1996, such Break in Service shall not occur until the later of the failure of an Employee to complete 500 hours of service in a Plan Year or within one year after the date an Employee became a Covered Employee. On or after January 1, 1996, such Break in Service shall not occur until the later of the failure of an Employee to complete 300 hours of service in a Plan Year or within one year after the date an Employee became a Covered Employee. For the purposes of determining when an Employee shall re-qualify as a Participant after suffering a Break in Service which has not resulted in a forfeiture of all previously accrued benefits, an Employee shall re-qualify as a Participant on the first day of commencement of employment by an Employer who contributes to this Plan.

Section 2.05 Termination of Participation. Any Employee who becomes a Participant in this Pension Plan and who thereafter suffers a cancellation of pension credit under Article V, Section 5.05, shall lose all rights to his or her accumulated Past or Future Service Credit.

Section 2.06 Subsequent Participation. If an Employee who had lost his or her accumulated Past or Future Service Credit under Section 2.04, above, again becomes a participant in this Pension Plan, prior to January 1, 1996, only those Plan Years in which the

employee has again accumulated at least 500 Hours of Service in a Plan Year shall be considered in determining the Employee's pension credit. On or after January 1, 1996, only those Plan Years in which the employee has again accumulated at least 300 hours of service in a Plan Year shall be considered in determining the Employee's pension credit. This provision shall not apply if the Employee qualifies for a restoration of credits under the provisions set forth in Article V, Section 5.06(b) of this Plan.

A vested Employee, or a non-vested Employee whose prior service cannot be disregarded under Section 5.06 of the Plan who is re-employed after a Break in Service (period of severance), will participate retroactively as of his or her date of re-employment upon completion of a year of service measured by his or her re-employment commencement date or any Plan Year including the re-employment commencement date.

## ARTICLE III
## ELIGIBILITY FOR PENSION BENEFITS AND PENSION AMOUNTS

Section 3.01 Normal Pension. An Employee shall be eligible to retire on a normal pension on his or her Normal Retirement Date. The Employee's Normal Retirement Date shall be the date the Employee attains the later of:

(a) age sixty-five (65); or

(b) the fifth (5th) anniversary of the Employee's participation in the Plan after January 1, 1988.

Section 3.02 Amount of Normal Pension.

(a) For retirement effective prior to January 1, 1983, the amount of normal monthly pension shall be based upon:

(1) The sum of One Dollar ($1.00) per month for each year of Recognized Past Service;

(2) Twenty-three cents ($0.23) for each full one hundred (100) Hours of Service credited per employee in a Plan Year subsequent to January 1, 1968;

(b) For retirements effective on or after January 1, 1983, the amount of normal monthly pension shall be based upon:

(1) The sum of One Dollar ($1.00) per month for each year of Recognized Past Service;

(2) Twenty-three cents ($0.23) for each full one hundred (100) Hours of Service credited per Employee in Plan Years January 1, 1968 through December 31, 1982;

(3) 3.07% of all contributions made on behalf of an Employee on or after January 1, 1983 through December 31, 1984 with a minimum of twenty-three cents ($0.23) for each full one hundred (100) Hours of Service credited per Employee in a Plan Year

subsequent to January 1, 1983;

(4) 3.25% of all contributions made on behalf of an Employee on or after January 1, 1985 through December 31, 1985 with a minimum of twenty-three cents ($0.23) for each full one hundred (100) Hours of Service credited per Employee in a Plan Year subsequent to January 1, 1985; and

(5) 3.33% of all contributions made on behalf of an Employee on or after January 1, 1986 with a minimum of twenty-three cents ($0.23) for each full one hundred (100) Hours of Service credited per Employee in a Plan Year subsequent to January 1, 1986.

(6) 1.3% of all contributions made on behalf of an Employee after January 1, 2004 with a minimum of twenty-three cents ($0.23) for each full one hundred (100) Hours of Service credited per Employee in a Plan Year subsequent to January 1, 2004.

(c) Effective January 1, 1988, all Retired Employees and Beneficiaries who were receiving Benefits under this Plan as of December 31, 1987, shall receive a 30% increase in their Benefits.

(d) Effective January 1, 1988, all Employees who had not retired as of December 31, 1987, and who had 500 or more Hours of Service in Plan Year 1987 for which the Employer was obligated to remit contributions shall receive a 30% increase in the amount of their normal Pension accrued through December 31, 1987.

(e) Effective January 1, 1989, all Retired Employees and Beneficiaries who were receiving Benefits under this Plan as of December 31, 1987, shall receive a 20% increase in their Benefits. For purposes of determining the increase in Benefits provided for in this subparagraph (e), increases in Benefits after December 31, 1987, pursuant to Section 3.02(c) shall be disregarded.

(f) Effective January 1, 1989, all Employees who had not retired as of December 31, 1987 and who had 500 or more Hours of Service in Plan Year 1987 for which the Employer was obligated to remit contributions shall receive a 20% increase in the amount of their normal Pension accrued through December 31, 1987. For purposes of determining the increase in Benefits provided for in this subparagraph (f), the normal Pension accrued through December 31, 1987 shall be determined without regard to Section 3.02(d).

(g) Effective April 1, 1991, all Retired Employees and Beneficiaries who were receiving Benefits under this Plan as of December 31, 1990, shall receive an increase in their Benefits of $3.20 per month.

(h) Effective January 1, 1991, all Employees who had not retired as of December 31, 1990, and who had 500 or more Hours of Service in Plan Year 1990 for which the Employer was obligated to remit contributions shall receive a fifty percent (50%) increase in the amount of their Normal Pension accrued for Plan Years 1988, 1989, and 1990.

(i) All active participants who worked at least 500 hours during Plan Year 1992 will earn an increase in benefits earned from January 1, 1991 through December 31, 1992 by one hundred percent (100%) (*e.g.* 6.66% of contributions).

(j) All retirees and/or beneficiaries of retired participants on the eligibility rolls as of December 31, 1992 will receive an increase of $11.75 per month in their pension benefits. All retirees who retired during Plan Year 1992 and worked 500 or more hours during Plan Year 1992 will receive the greater of the two increases described in this paragraph and paragraph (i), above. No increase shall be granted to inactive Employees (those who failed to work at least 500 hours in Plan Year 1992) or with respect to benefits accrued after December 31, 1992.

(k) All active participants who worked at least 500 hours during Plan Year 1993 will earn an increase in benefits earned from January 1, 1991 through December 31, 1992 of twenty percent (20%) (*e.g.* 7.992% of contributions) and an increase in benefits earned from January 1, 1993 through December 31, 1993 of one-hundred-forty percent (140%) (*e.g.* 7.992% of contributions).

(l) All active participants who worked at least 500 hours during Plan Year 1994 will earn an increase in benefits earned from January 1, 1991 through December 31, 1994 of eleven percent (11%) (e.g. 8.871% of contributions).

(m) All active participants who worked at least 500 hours during Plan Year 1995 will earn an increase in all benefits accrued through December 31, 1995 of sixteen percent (16%). Effective January 1, 1996, all Retired Employees and Beneficiaries who were receiving Benefits under this Plan as of December 31, 1995, shall receive a twelve percent (12%) increase in their Benefits.

(n) All active participants who worked at least 300 hours during Plan Year 1996 will earn an increase in all benefits accrued from January 1, 1968 through December 31, 1996 of twenty-five percent (25%). All Retired Employees and Beneficiaries who were receiving Benefits under this Plan as of December 31, 1996, shall receive a one-time additional pension benefit in December 1997, equal to the benefit paid for the month of December 1997.

(o) Notwithstanding the foregoing, the normal pension shall be not less than the sum of thirty dollars ($30.00) per month; provided that this subparagraph (o) shall not apply to the payment of a Pro-Rata Pension Benefit.

(p) An Employee who is credited with at least one Hour of Service on or after January 1, 1990 and who continues his or her Employment in the Industry beyond his or her Normal Retirement Date shall earn credit for work in Covered Employment after the Employee's Normal Retirement Date including retroactive credit for work in Covered Employment performed before January 1, 1990. However, the Benefit accrued for Plan Years after the Employee's Normal Retirement Date shall be reduced (but not below zero) by the Actuarial Equivalent of total Benefit distributions made to the Employee after his or her Normal Retirement Date. In addition, there is no actuarial increase in the Normal Pension if the

Employee attains his or her Normal Retirement Date and defers retirement beyond his or her Normal Retirement Date.

(q) For retirements effective on or after July 1, 2006, the amount of normal monthly pension shall be 3.33% with respect to all contributions made on behalf of an Employee during the periods of January 1, 2004 through December 31, 2005.

(r) For retirements effective on or after January 1, 2008, the amount of normal retirement monthly pension shall be 3.33% with respect to all contributions made on behalf of an Employee during the periods January 1, 2006 through December 31, 2007.

(s) All retirees with a retirement effective date before January 1, 2008 shall receive one additional monthly retirement check equivalent to their monthly retirement check. However, in no event will any additional monthly check payable under this sub-section be less than $100.00.

Section 3.03 Early Pension. An Employee shall be eligible to retire on an early Pension on his or her Early Retirement Date. The Employee's Early Retirement Date shall be the date the Employee meets each of the following requirements:

(a) Attains age fifty-five (55);

(b) He or she has accrued at least ten (10) years of Past and Future Service, one (1) year of which must be Future Service, but excluding years of Employment that have been canceled under Section 5.05, or if an Employee has at least one (1) hour of Covered Employment on or after June 1, 1996, he or she has accrued five or more vesting years of service; and (b) and he or she has applied for an Early Pension; and

(c) he or she applied for an Early Pension.

An Employee who meets the service requirement for early retirement upon termination of employment and who is entitled to receive a vested benefit, will commence to receive a benefit which is not less than the reduced normal retirement benefit upon reaching age 55. For Early Pensions effective on or after January 1, 2007, an Employee who meets the service requirement for an Early Pension and who is entitled to a vested benefit, may commence to receive an Early Pension upon attaining age 62 without a termination of employment. The amount of Early Pension payable to an eligible Employee qualifying for such benefit shall be in accordance with Article III, Section 3.04.

Section 3.04 Amount of Early Pension. The amount of an Employee's early Retirement Pension shall be determined as follows:

(a) The amount of monthly normal retirement Pension shall be determined pursuant to Article III, Section 3.02 hereof, as though the Retired Employee had retired on his or her Normal Retirement Date.

(b) The amount computed under subparagraph (a) above shall then be reduced by one-half of one percent (.5%) for each month by which the month of actual retirement

precedes the month in which the Retired Employee would have attained his or her Normal Retirement Date.

(c) The reduced normal retirement Pension computed in subparagraph (b) shall be the monthly early retirement Pension. Benefit payments to an Employee shall not be suspended if that Employee returns to Employment in the Industry, unless the Employee voluntarily suspends benefit payments pursuant to Section 3.12(b)(1).

Section 3.05 Disability Pension. An Employee shall be entitled to receive a Disability Pension if he or she is permanently and totally disabled and meets each of the following requirements:

(a) He or she has been credited with a total of at least five thousand (5,000) hours of Employment in the Industry during any five (5) Plan Years in which Employer Contributions were required to be made, provided that Hours of Service for years of Employment in the Industry that have been canceled under Section 5.05 shall be excluded.

(b) He or she had accrued at least ten (10) years of Past and Future Service, excluding years of Covered Employment that have been canceled under Section 5.05, or if an Employee has at least one hour of Covered Employment on or after January 1, 1996, he or she has accrued five or more Vesting Years of Service.

(c) He or she has been credited with a total of at least six hundred (600) Hours of Service in the two Plan Years immediately prior to the onset of disability

(d) He or she has applied for a Disability Pension.

Section 3.06 Amount of Disability Pension. The Disability Pension shall be an amount equal to the normal retirement Pension determined as though the disabled Employee had attained his or her Normal Retirement Date on the date of his or her disability. The disability benefit shall be paid in the form of a Life Annuity.

Section 3.07 Disability Defined. An Employee shall be deemed disabled within the meaning of this Section 3.07 only if the Trustees in their sole and absolute judgment, find that:

(a) On the basis of such competent medical evidence as the Trustees may require to be shown, the Employee is totally and permanently disabled, due to sickness or accidental bodily injury or both, so as to be unable to perform the duties of any position covered by the Collective Bargaining Agreement; and

(b) Such bodily injury or disease is not due to such Employee's commission of or attempt to commit a felony, or the engagement in any felonious activity or occupation, or the self-infliction of any injury, or as a result of habitual alcohol abuse or the use of narcotics, unless the same were administered pursuant to the orders of a licensed physician.

In exercising such judgment, the Trustees may obtain and act upon such competent medical evidence as they may require to be shown and they may accept as proof of disability a determination by the Federal Social Security Administration of a disability benefit

award in connection with the Employee's Old Age and Survivors' Insurance coverage.

The Trustees may, at any time, or from time to time, require evidence of continued disability of any Employee receiving a disability Pension, notwithstanding the prior granting of a disability Pension under the Plan. The Trustees may, at any time, or from time to time, require evidence that the Employee satisfied the provisions of subparagraphs (a) and (b) as a prerequisite to the continuance of the disability Pension granted under the Plan.

(c) Effective September 11, 2001, an Employee who has previously applied for and been approved for an Early Pension under this Plan shall be entitled to convert such Early Pension to a Disability Pension if the Employee is younger than Normal Retirement Age under the Plan and the Employee was employed by a contributing Employer to the Fund at the time the Employee sustained his or her disability. Such Disability Pension shall be deemed effective as of the date of the Employee's disability benefit awarded by the Social Security Administration. In the event of such conversion of an Early Pension to a Disability Pension under this Section, if the Retiree had originally elected a joint and survivor form of benefit in the original application for an Early Pension under this Plan, the Retiree and his or her spouse must waive such joint and survivor benefits in writing and agree to receive the Disability Pension in the form of a Life Annuity in accordance with Section 6.03(b) of this Plan.

Section 3.08 Disability Pension Payments. Payment of Disability Pension Benefits shall commence as soon as is administratively feasible after a determination of disability has been made. Benefits shall be determined as of the first day of the month following the date of disability. Payments shall continue for so long as the Retired Employee remains totally and permanently disabled, as herein defined, except that upon attainment of age sixty-five (65), a disabled Retired Employee shall be entitled to his or her normal retirement Benefit without regard to whether he or she remains disabled. Such benefit shall be paid in accordance with Section 6.03.

Section 3.09 Effect of Recovery From a Disability. If a disabled Retired Employee recovers from a disability or loses entitlement to his Social Security disability benefit, such fact shall be reported, in writing, by him or her to the Trustees within thirty (30) days of the date of such recovery or the date he receives notice from the Social Security Administration. The disability Pension Benefit ceases as of the first day of the month following the month in which the disabled Retired Employee ceased to be disabled. The Trust shall be entitled to reimbursement for any Benefits paid after recovery from disability.

Section 3.10 Service Pension. Effective after January 1, 1998, an Employee shall be eligible for a service pension on his or her Service Pension Retirement Date. An Employee's Service Pension Retirement Date shall be the first of any month following the date the Employee has met all of the following requirements:

(i) The Employee has accrued a total of at least thirty (30) Past and Future Service Credits, at least one of which must be Future Service; and
(ii) The Employee has applied for a Service Pension.

For Service Pensions effective on or after January 1, 2007, an Employee who satisfies the service

requirement for a Service Pension may commence to receive a Service Pension upon attaining age 62 without a termination of employment.

Section 3.11 Amount of Service Pension. The amount of an employee's Service Pension shall be the amount of his or her monthly Normal Retirement Pension determined under Section 3.02 as though he or she had retired on his or her Normal Retirement Date.

Section 3.12 Return to Covered Employment.

(a) Any Employee who is retired on a disability Pension and returns to covered Employment in a job covered by the Collective Bargaining Agreement shall not be entitled to disability Pension Benefits for any calendar month during which he or she performs such services for wages or profit within the Industry. In addition thereto, the employee shall notify the Trustees, in writing, of his return to Covered Employment.

(b) In the event that an Employee who retires on an Early, Service or Normal Pension, commences to receive Benefits and, thereafter, recommences Employment in the Industry, he or she shall he entitled to Pension Benefits. An Employee who recommences Employment in the Industry between the Employee's Early Retirement Date or Service Pension Retirement Date and his or her Normal Retirement Date shall earn credit for work in Covered Employment after the Employee's Early Retirement Date or Service Pension Retirement Date and before the Employee's Normal Retirement Date in accordance with Section 3.02. These additional credits earned prior to the Employee's Normal Retirement Date shall be credited to the Employee on January l of the year following the year the additional credits were earned.

An Employee who recommences Employment in the industry beyond his or her Normal Retirement Date or who recommences Employment in the Industry after his or her Early Retirement Date or Service Pension Retirement Date and continues to work in Covered Employment beyond his or her Normal Retirement Date shall earn credit for work in Covered Employment beyond his or her Normal Retirement Date in accordance with Section 3.02(p).

(1) However, a retired Employee who has reached his or her Normal Retirement Date may voluntarily suspend Pension Benefits. In that event, Benefits for Covered Employment shall accrue in accordance with Section 3.02, and any reduction in Benefit accruals pursuant to Section 3.02(p) shall be discontinued. Pension Benefits may be commenced on the first day of any month following election by the Employee to recommence Benefits. Not more than one suspension nor more than one recommencement may be elected by an Employee during any one Plan Year.

(2) The amount of the recommenced Benefits shall be the same amount previously paid plus the additional accrued Benefits. In the event that the recommencement date precedes the Normal Retirement Date, then the additional accrued benefits shall be reduced by one-half percent of one percent (.5%) per month for every month that the recommencement date precedes the Normal Retirement Date.

Section 3.13 Voluntary Retirement. Retirement under this Plan shall be voluntary.

Section 3.14 Pro Rata Pension.

(a) Purpose. Pro Rata Pensions are provided under this Plan for Employees who would otherwise be ineligible for a pension under this Plan because their years of employment would have been divided between employment creditable under this Plan and employment creditable under a Related Plan.

(b) Related Plans. By resolution duly adopted, the Trustees may recognize other pension plans as Related Plans.

(c) Related Hours. The term "Related Hours" means hours of employment which are creditable under a Related Plan.

(d) Related Credit. The term "Related Credit" means years of service, or portions thereof, creditable to an Employee under a Related Plan. Related Credit shall be credited under this Plan for the sole purpose of determining eligibility for a Pro Rata Pension Benefit under the provisions of this Plan. Related Credit shall not be granted if the number of consecutive one-year Breaks in Service incurred by an Employee between the time he or she is covered under this Plan or a Related Plan, and the time he or she again becomes covered under either this Plan or a Related Plan equals or exceeds the greater of: (1) five (5); or (2) the aggregate number of years of Past and Future Service credits under this Plan and years of service under a Related Plan accrued before such breaks.

(e) Combined Pension Credit. The term "Combined Pension Credit" shall mean the total of an Employee's Related Credit, plus the Pension credit accumulated under the San Diego UNITE-HERE Pension Plan (hereinafter referred to as San Diego Pension Credit).

If, in a Plan Year, an Employee had not had a sufficient number of hours of Covered Employment to be credited with five hundred (500) hours of San Diego Pension Credit, but he or she would be so credited if his or her Related Hours were treated as if they were hours of Covered Employment, he or she shall be credited with San Diego Pension Credit as if all hours were worked in Covered Employment. However, any Related Hours so used may not again be used by the Employee for the purpose of calculating his Related Credit in this Plan.

(f) Non-Duplication of Credit. In this Plan, an Employee shall not receive double credit for Benefit or service credit purposes for the same period of employment. No more than one year of Pension Credit or Related Credit shall be given for all employment in any given Plan Year.

(g) Eligibility for a Pro Rata Pension. An Employee who is retired and has terminated employment in accordance with Article III shall be eligible for a Pro Rata Pension if he or she meets the following requirements:

(1) He or she would be eligible for a Normal or Early Retirement Pension under this Plan if his or her Combined Pension Credits were treated as San Diego Pension Credit.

(2) He or she has, after the earliest date for the accumulation of Future

Service credits under this Plan, at least two years of:

(i) San Diego Pension Credit, or

(ii) Related Pension Credit, or

(iii) Combined Pension Credit.

(3) The Pension Benefit payable based upon credits earned under this Plan equals at least twenty percent (20%) of the Pension Benefit payable had all of the service been credited under this Plan.

(h) Amount of Pro Rata Pension.

(1) The amount of the Pro Rata Normal or Early Retirement Pension (including the related optional terms) is determined by the accumulation of Past and/or Future Service Benefits in accordance with Article III of this Plan. The Benefit amount so obtained is reduced in accordance with Section 3.04 if the Employee is qualified for a Pro Rata Early Retirement Pension.

(2) Payment of a Pro Rata Pension Benefit under this Plan shall be determined based upon credits, earned under this Plan; provided, however, that no Pro Rata Pension shall be payable unless the amount of the Pension Benefit payable based upon credits earned under this Plan equals at least twenty percent (20%) of the Pension Benefit payable had all of the service been credited under this Plan.

Section 3.15 Maximum Benefits.

(a) The provisions of IRC Section 415 are incorporated herein by reference. The defined benefit dollar limitation for Plan Years beginning on or after January 1, 2015 is $210,000, as adjusted annually in accordance with IRS rulings and regulations under Code Section 415(d) in such manner as the Secretary shall prescribe and payable in the form of a straight life annuity (any such adjustment to be made effective January 1 of the year for which the adjustment is made). A limitation as adjusted under Section 415(d) of the Code will apply to limitation years ending with or within the calendar year for which the adjustment is made. Benefit increases resulting from an increase in the limitations of Section 415(b) of the Code will be provided to all current and former Participants (with benefits limited by Section 415(b) of the Code) who have an accrued benefit under the Plan immediately prior to the effective date (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under Code Section 415(b).

(b) The following rules apply solely for purposes of applying this Section and the limitations of Code Section 415:

(1) The term “compensation” (within the meaning of Code Section 415) is defined as wages, as defined in Code Section 3401(a), and all other payments of compensation to a Participant by his Employer (in the course of the Employer’s trade or business) for which the Employer is required to furnish the Participant a written statement under Code Sections 6041(d)

and 6051(a)(3) including any amount that is contributed or deferred by the Employer at the election of the Employee by reason of Section 132(f) that are not includible in the gross income of the Employee. Compensation shall also include post-severance compensation (such as overtime, shift differential, commission, bonuses or other similar compensation) paid by the later of 2 ½ month after severance from employment or the end of the Plan year that includes the dates of severance from employment.

"Compensation" must be determined without regard to any rules under Section 3401(a) that limit remuneration included in wages based on the nature or location of employment of the services performed (such as the exception for agricultural labor in Section 3401(a)(2)). The annual compensation of each participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001, shall not exceed $200,000 ($265,000 for Plan Years beginning on or after January 1, 2015, or such other amount as may be announced by the IRS from time to time). Annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the "determination period"). To the extent that the provisions of other sections of the Plan are inconsistent with the provisions of this Section, the provisions of this Section shall govern. The $200,000 limit ($265,000 for Plan Years beginning on or after January 1, 2015) on annual compensation shall be adjusted for cost-of-living-increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for determination period that begins with or within such calendar year. In determining benefit accruals in plan years beginning after December 31, 2001, the annual compensation limit in subsection (a) above, for determination periods beginning before January 1, 2002, shall be $200,000;

(2) The limitation year (within the meaning of Code Section 415) is the calendar year.

(c) Effective for Plan Years beginning after December 31, 2001, this Plan shall not be combined or aggregated with a non-multiemployer plan for purposes of applying the IRC § 415(b)(1)(B) compensation limit to non-multiemployer plan.

Section 3.16 Payments From Outside Plans. The Trustees may not accept any payments, contributions or service credit(s) on behalf of any employee from any outside pension plan. An outside pension plan is any plan not encompassed within the definition of Sections 1.26 of the Restated Pension Plan or one that is not covered by a Collective Bargaining Agreement with the UNITE HERE Local 30.

The Trustees may not accept any payments, contributions or service credit(s) on behalf of a related plan pursuant to Section 3.12 of the Restated Pension Plan absent a reciprocity agreement by and between the Pension Plan and such related Plan.

Section 3.17 Deferred Retirement Date. Deferred Retirement means the Retirement Date of a Participant who delayed his retirement past his Normal Retirement Age.

Section 3.18 Amount of Deferred Retirement Benefit. The monthly amount of the Deferred Retirement Benefit shall be the greater of:

(1) the total credited service accrued at his Deferred Retirement Date multiplied by the applicable amounts in Section 3.02, or

(2) the accrued normal retirement benefit actuarially increased 1% for each month of deferral.

## ARTICLE IV
## DEATH BENEFIT PAYMENTS

Section 4.01 Death Benefit on or Before Eligibility for Early Retirement.

(a) Unmarried Employee. If an unmarried Employee who has been credited with at least one thousand (1,000) Hours of Service in a Plan Year, and whose Credited Service has not been canceled under Section 5.05, dies on or before his or her Early Retirement Date, his or her Beneficiary will be entitled to receive a lump sum death Benefit which shall be equal to seven cents ($0.07) multiplied by the sum of the number of Hours of Service credited to the Employee during each Plan Year between January 1, 1968 and December 31, 1982, plus the sum of contributions made in each subsequent Plan Years on the Employee's behalf, subject to a maximum of $5,000.00.

(b) Married Employee.

(1) Spousal Benefit. If an Employee who is not vested as that term is defined in Section 5.04 of this Plan and dies on or before his or her Early Retirement Date; and the Employee is married on his or her date of death, then such Employee's surviving spouse shall receive the benefit set form in subparagraph (a) above, If an Employee who is vested as that term is defined in Section 5.04 of this Plan and dies on or before his or her Early Retirement Date, and the Employee is married on his on his or her date of death, then such Employee's surviving spouse shall have the option of receiving the benefit set form in paragraph (a) above or subparagraph (2) below, provided the edibility requirements for the elected Benefit are met.

(2) Qualified Pre-Retirement Survivor Annuity.

(i) If an Employee is vested as that term is defined in Section 5.04 of this Plan and is credited with at least one (1) Hour of Service on or after January 1, 1976, and has not retired, died or reached his Pension Benefit Starting Date, then his or her surviving spouse shall be eligible to receive a Qualified Pre-retirement Survivor Annuity, as defined in Section 1.25(b).

(ii) The Qualified Pre-retirement Annuity shall be paid to the surviving spouse beginning on the first day of the month coincident with or immediately following the date on which the Employee would have reached his or her earliest retirement date under the Plan. The factors used by the Plan in the determination of the amount of a Qualified Pre-retirement Survivor Annuity are attached to the Plan as Appendix "A."

(3) Transitional Rule for Participants Who Terminated Prior to August 23, 1984. Any living former Employee who, after August 22, 1984, is not credited with an Hour

of Service shall have the right to elect to have the Qualified Pre-retirement Survivor Annuity provisions of subparagraph (2) above apply if the former Employee is credited with at least one (1) Hour of Service on or after January 1, 1976; the former Employee has received at least ten (10) years of Past and Future Service credits under the Plan and was vested at the time of his or her separation from his or her Employer; and the former Employee's Benefit payments have not commenced. An election under this subparagraph (3) shall be made in the period prescribed by the Secretary of Treasury, during the period beginning on August 23, 1984, and ending on the earlier of the former Employee's Pension Benefit Starting Date or the former Employee's death.

Section 4.02 Death Benefit After Eligibility for Retirement.

(a) Unmarried Employee. If an unmarried Employee dies after his or her Early or Normal Retirement Date but before actual retirement, a death benefit shall be paid equal to the larger of:

(1) The monthly retirement Pension accrued by the Employee at the time of his or her death, which shall be paid to the Employee's duly designated Beneficiary for thirty-six (36) months. In lieu of the thirty-six (36) monthly payments, a lump sum equal to the Actuarial Equivalent value may be paid to the Beneficiary at the election of the Beneficiary as permitted by law; or

(2) Death benefits calculated in accordance with Section 4.01(a).

(b) Married Employee.

(1) If an Employee dies after his or her Early or Normal Retirement Date but before actual retirement, and the Employee is married on his or her date of death, then the Employee's surviving Spouse shall be eligible to receive a Qualified Pre-retirement Survivor Annuity, as defined in Section 1.25(a) above.

(2) If the deceased Employee described in subparagraph (1) above has been credited with at least 1,000 Hours of Service in a Plan Year, his or her surviving Spouse may elect to convert the annuity benefit to a lump sum. The lump sum shall be equal to the Actuarial Equivalent of the Qualified Pre-retirement Survivor Annuity described in subparagraph (1) above.

Section 4.03 Consent for Small Benefit. Notwithstanding anything to the contrary in this Article IV, if the Actuarial Equivalent value of the Benefit provided under the Plan exceeds $5,000.00, no amount shall be paid to an Employee's surviving Spouse prior to the date the Employee would have attained his or her Normal Retirement Date without the consent of such Spouse. If the Actuarial Equivalent value of the Benefit provided under the Plan does not exceed $5,000.00, such benefit shall be paid to the surviving Spouse in a single sum cash payment. Said dollar amounts are determined by adding to the current distribution any prior distribution until March 22, 1999 for lump sum payments and October 17, 2000 for any other form of distribution when the adding back of prior distributions are no longer effective.

Section 4.04 Death Benefit After Retirement. If an unmarried Employee or a married Employee who has waived the Qualified Joint and Survivor Annuity, dies before receiving

thirty-six (36) monthly Benefit Payments, a death benefit equal to the monthly Pension received by the Employee shall be paid monthly to the Employee's designated Beneficiary until the total number of monthly Benefit payments to the Employee added to the number of Benefit payments to the beneficiary shall equal thirty-six (36). In lieu of the remaining monthly Benefit payments, the Beneficiary may elect to receive a lump sum equal to the Actuarial Equivalent of those remaining monthly Benefit payments.

Section 4.05 Designation of Beneficiary.

(a) General Rule. Subject to subparagraph (b) below, an Employee may designate a Beneficiary or Beneficiaries to receive the Death Benefit payable under Sections 4.01, 4.02 and 4.04 of this Article by forwarding such designation on a form acceptable to the Trustees to the Administrative Office. An Employee shall have the right to change his or her Beneficiary designation without the consent of the Beneficiary, but no such change shall be effective or binding on the Trustees unless it is received by the Trustees prior to the time any benefits are paid to the Beneficiary whose designation is on file with the Fund.

(b) Consent of Spouse. In the event an Employee is married and designates an individual other than his Spouse as the Beneficiary, or changes his designation of Beneficiary, spousal consent pursuant to Section 6.03(b)(1) must be on file with the Trustees if such Beneficiary designation is to be honored.

Section 4.06 Failure to Designate a Beneficiary. If no Beneficiary is designated by an Employee or if the designated Beneficiary pre-deceased the Employee and no designated Beneficiary survives the Employee, the death benefit provided under Sections 4.01, 4.02 and 4.04 of this Article shall be paid to the surviving person or persons in the first of the following classes of successive preference beneficiaries in which a member survives the Employee:

1. His or her spouse;
2. His or her children, including legally adopted children;
3. His or her parents;
4. His or her brothers and sisters.

In determining such person or persons, the Trustees may rely upon an affidavit by a member of any of the classes of preference beneficiaries. Payment based upon such affidavit shall constitute a full release of any liability on behalf of the Trustees with respect to the payment of such death benefits, unless, before the payment is made, the Trustees have received written notice of a valid claim by some other person. If two or more persons become entitled to benefits as preference beneficiaries, they shall share the benefits equally. If no preference beneficiaries survive the Participant, then the Trustees will recognize a designation of beneficiary form filed with UNITE HERE Local 30.

## ARTICLE V
## ACCUMULATION OF PENSION CREDIT

Section 5.01 Outline. The purpose of this Article is to define the basis on which Employees accumulate credit towards a Pension. This Article also defines the basis on which

credits once accumulated may be canceled.

Section 5.02 Past Service Credit.

(a) An Employee shall be entitled to credit for Past Service for each of the fifteen (15) calendar years he was regularly employed or available for Employment in the Industry in the geographical jurisdiction of the Union prior to his Initial Date of Coverage. An Employee shall be entitled to one (1) full credit for each Plan Year he or she was so employed.

(b) It is recognized that in many cases it will be difficult, because of changing employment, to produce evidence of past years of Employment in the Industry referred to in Section 5.02(a). A presumption is, therefore, established that an Employee was regularly employed or available for Employment in the Industry for the years prior to his or her Initial Date of Coverage based on his or her membership in the Union and/or his or her having had contributions made on his or her behalf in the San Diego Bartenders and Culinary Insurance Trust prior to his or her Initial Date of Coverage, if there is no evidence to the contrary. Other evidence which may be submitted by an Employee in support of Past Service credit includes, but is not limited to, Social Security contribution records, affidavits of Employer representatives, income tax returns and "W-2" forms. In case of any dispute, the burden is on the Employee to submit evidence of Employment in the Industry satisfactory to the Trustees.

Section 5.03 Future Service Credit.

(a) For the period January 1, 1968 through December 31, 1975: An Employee shall receive one (1) year of Future Service Credit for each Plan Year worked under Covered Employment after his or her Initial Date of Coverage, in which the Employee is credited with at least five hundred (500) Hours of Service. No fractional credit is provided.

(b) For the period January 1, 1976 through December 31, 1995: An Employee shall receive one (1) year of Future Service credit for each Plan Year worked under Covered Employment in which he or she was credited with at least one thousand (1,000) hours, or shall receive one-half (1/2) year of Future Service credit for each Plan Year the Employee worked under Covered Employment in which he or she was credited with at least five hundred (500) Hours of Service but less than one thousand (1,000) Hours of Service.

(c) For the period commencing January 1, 1996: An Employee shall receive on (1) year of Future Service credit for each Plan Year worked under Covered Employment in which he or she was credited with at least one thousand (1,000) hours, or shall receive one-half (1/2) year of Future Service credit for each Plan Year the Employee worked under covered Employment in which he or she was credited with at least three hundred (300) Hours of Service but less than one thousand (1,000) Hours of Service.

Section 5.04 Vesting.

(a) Subject to subparagraph (b) below, an Employee shall be 100 percent (100%) vested in his or her Past and Future Service credits, and the cancellation of such credits under Section 5.05 shall not apply, when an Employee attains his or her Early or Normal Retirement Date, or has ten (10) full years of Past and Future Service credits, which must include

at least two (2) years of Future Service credit. For the period commencing January 1, 1996, an Employee who works at least one hour in Covered Employment on or after January 1, 1996, shall be one hundred percent vested in his or her Past and Future Service credits, and the cancellation of such credits under Section 5.05 shall not apply, when an Employee attains his or her Early or Normal Retirement Date, or has completed five (5) full Vesting Years of Service.

(b) For periods commencing on or after January 1, 1989, each Employee who is not included in a unit of Employees covered by a Collective Bargaining Agreement shall be 100 percent (100%) vested in his or her Past and Future Service credits, and the cancellation of such credits under Section 5.05 shall not apply, when such Employee attains his or her Early or Normal Retirement Date, or has five (5) full years of Past and Future Service credits which must include at least two (2) years of Future Service credit.

Contiguous non-Covered Employment with an Employer shall be counted in determining a full year of service for vesting purposes during periods the Employee is participating in the Plan.

Years of service with the Employer before a participant entered the Plan, including years of service in non-covered employment, will be counted for vesting purposes, unless one of the exceptions noted in IRC Section 411(a)(4) applies.

The exceptions set forth under IRC Section 411(a)(4) are as follows:

(1) years of service before age 18;

(2) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions

(3) years of service with an employer during any period for which the employer did not maintain the Plan or a predecessor plan (as defined under regulations prescribed by the Secretary);

(4) service not required to be taken into account under paragraph (6);

(5) years of service before January 1, 1971, unless the employees has had at least 3 years of service after December 3, 1970;

(6) years of service before the first plan year to which this Section applies, if such service would have been disregarded under the rules of the Plan with regard to breaks in service as in effect on the applicable date; and

(7) with an Employer after -

(A) a complete withdrawal of that employer from the Plan (within the meaning of Section 4203 of the Employee Retirement Income Security Act of 1974, ("ERISA"), or

(B) to the extent permitted in regulations prescribed by the

Secretary, a partial withdrawal described in Section 4205(b)(2)(A)(i) of such act is in conjunction with the decertification of the collective bargaining representative, and

(8) with any employer under the Plan after the termination date of the Plan under Section 4048 of such Act.

For vesting purposes, service with an Employer must include service for certain related Employers for the period in which the Employers are related. These related Employers include members of a controlled group of corporations (within the meaning of IRC Section 1563(a), determined without regard to subsections (a)(4) and (e)(3)(c) thereof) and trades or businesses (whether or not incorporated) which are under common control. Service must also be counted for organizations that are part of an affiliated service group under IRC Section 414(m).

Service of any Employee who is a Leased Employee to any Employer aggregated under Section 414(b), (c) or (m) must be credited for vesting purposes whether or not such individual is eligible to participate in the plan.

Section 5.05 Break in Service and Cancellation of Pension Credit. Years of service (a Plan Year in which five hundred Hours of Service are credited) may be disregarded only for purposes of benefit accruals, and only to the extent a participant has received a distribution of his or her entire nonforfeitable interest in the Plan. Prior to January 1, 1996, if an Employee is credited with less than 500 Hours of Service in a Plan Year, this service shall be considered outside of creditable employment, and such Plan Year shall be considered a Break in Service. On or after January 1, 1996, if an Employee is credited with less than 300 Hours of Service, this service shall be considered outside of creditable employment, and such Plan Year shall be considered a Break-in-Service. Benefits shall accrue for a Plan Year that is considered outside of creditable employment. Prior to being vested, pension credit and benefit accruals for previous service shall be canceled if the number of consecutive Breaks in Service incurred by an Employee equals or exceeds the greater of: (a) five (5); or (b) the aggregate number of years of Past and Future Service credits accrued before such breaks.

(a) Disability Exception. An Employee shall not incur a Break in Service because he was not credited with 500 Hours of Service in any one Plan Year in Covered Employment due to disability.

(b) Armed Forces Exception.

(1) An Employee whose failure to earn 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 shalt be allowed a grace period for the period that he retains reemployment rights under Federal law, provided he makes himself available for Covered Employment within ninety (90) days after release from active duty, or within ninety (90) days after recovery from a disability continuing after his release from active duty, or as otherwise required by law.

(2) In order to secure a grace period for required service in the Armed Forces of the United States, the Employee must give written notice to the Trustees of his or her availability for Covered Employment and must furnish in writing such information and proof

concerning such service as the Trustees may in their sole discretion determine. An Employee must file the written notice and proof required by this Section within ninety (90) days after release from active duty or ninety (90) days after recovery from a disability continuing after his release from active duty, unless the Trustees find that there were extenuating circumstances which prevented a timely filing.

(c) Exception for Periods of Unemployment if Available for Work. An Employee whose failure to earn Future Service credit is due to involuntary unemployment during a period when he or she was available for work, shall be allowed a grace period not to exceed twelve (12) months for any one period. Such employment and availability for work shall be determined to the satisfaction of the Trustees. In order to be granted this grace period, an Employee must give written notice to the Trustees and must present such evidence as the Trustees may, in their sole discretion, require unless the Trustees find that there were extenuating circumstances which prevented a timely filing.

(d) Exception for Periods of Maternity or Paternity Leave or Periods allowed under the Family Medical Leave Act. An Employee whose failure to earn Future Service credit is due to leave taken for maternity or paternity leave or under the Family Medical Leave Act of 1993 shall be allowed a grace period as follows:

(1) For periods on or before December 31, 1986, an Employee whose failure to earn Future Service credit is due to maternity or paternity leave shall be allowed a grace period not to exceed twelve (12) months.

(2) For periods on or after January 1, 1987, an Employee whose failure to earn Future Service credit is due to the birth of a child of such Employee, adoption of a child by such Employee, or for purposes of caring for such a child during the period immediately following childbirth or placement for adoption, or leave taken under the Family Medical Leave Act of 1993, shall be allowed a grace period. During such grace period, the Employee shall be credited with the Future Service credit he or she would normally have received had he or she not been absent for one of the reasons described above. If hours cannot be determined, the Employee shall be credited with eight (8) Hours of Service per day of absence. The Hours of Service credited under this Section shall be credited in the Plan Year in which the absence begins if the crediting is necessary to prevent a Break in Service in that period or, in all other cases, in the following Plan Year, up to a maximum of 501 Hours of Service.

(3) Such Employee requesting a grace period under this subparagraph must give written notice to the Trustees and must present such evidence as the Trustees may, in their sole discretion, require, unless the Trustees find that there were extenuating circumstances which prevented a timely filing.

(e) Exception for Other Authorized Leaves of Absence. An Employee whose failure to earn Future Service credit is due to an authorized leave of absence granted by the 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 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 Trustees within thirty (30) days from the date of commencement of such leave of absence; and

(3) The Trustees, in their sole discretion and in a non-discriminatory 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.

(f) Noble House Koni Kai, LLC Employee Exception. An Employee who was an Employee of the Noble House Koni Kai LLC anytime during 2005 shall not incur a Break in Service with respect to the cancellation of his Vesting Years of Service because he was not credited with 300 Hours of Service in any one Plan Year during January 1, 2005 through December 31, 2012. However, Past Service Credit and Future Service Credit earned prior to January 1, 2006 shall be cancelled in accordance with this Section 5.05 to the extent the Employee was not 100% vested as of Noble House Kona Kai, LLC's withdrawal from the Plan in 2005.

Effective February 1, 2013, Employees of the Nobel House Kona Kai, LLC shall be eligible to recommence the accumulation of Pension Credit in accordance with Article V.

(g) Grace Period. The Grace Periods referred to in subparagraphs (a) through (e) are not intended to add to the Pension credit of the Employee. Rather, they are periods which are to be disregarded in determining whether there has been a Break in Service under Section 5.05.

(h) Cancellation of Past Service Credit. The Trustees in their discretion may cancel all or part of an Employee's Past Service credit for purposes of determining an Employee's Pension Benefit as a result of the permanent cessation of the Employer's Contributions to the Plan.

For the purpose of determining whether a Break in Service has occurred, the above rules apply except for the first 12 month period of eligibility beginning on the Initial Date of Coverage.

Section 5.06 Deemed Distribution.

(a) For Plan Years commencing on and after January 1, 1991, if an Employee who is not employed in Covered Employment on the last day of a Plan Year has incurred a Break in Service in that Plan Year, and the Actuarial Equivalent value of such Employee's vested accrued Benefit is zero (0), the Employee shall be deemed to have received a distribution of such vested accrued Benefit.

(b) If an Employee who is deemed to receive a distribution pursuant to subparagraph (a), above, returns to Covered Employment and accrued at least 500 Hours of Service in a Plan Year prior to January 1, 1996 or 300 Hours of Service on or after January 1,

1996 after such deemed distribution, his or her accrued Benefit shall be restored to the amount of such accrued Benefit on the date of the deemed distribution if the number of consecutive Breaks in Service incurred by the Employee does not equal or exceed the greater of: (i) five (5); or (ii) the aggregate number of years of Past and Future Service credits accrued before such Breaks.

Section 5.07 Military Service. Effective December 12, 1994, 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 §414(u) of the Internal Revenue Code. The Fund will pay for all benefits accrued while an Employee is engaged in qualifying military service as required under Section 414(u) of the Code. Such benefits will be accrued in accordance with the Employee's average hours of employment during the twelve months immediately prior to the Employee's qualified military service. The Fund will pay for such benefits provided that the Employee is engaged in covered employment immediately prior to his or her qualified military service and returns to covered employment by registering for employment with the Union within ninety days following his or her qualified military service.

## ARTICLE VI
## BENEFIT PAYMENTS

Section 6.01 Benefit Payments.

(a) In general, an Employee who makes application in accordance with this Plan and the rules and regulations of the Trustees, if any, and whom the Trustees determine to be eligible, shall be entitled upon retirement to receive the monthly Benefits provided in accordance with the provisions of this Plan. Benefits shall be payable commencing with the first day of the first month following the month in which the Employee becomes entitled to a Benefit in accordance with Article III.

(b) Benefit Waiver and Notice Requirements. The Trustees shall provide the Employee with a distribution notice no less than thirty (30) days and no more than one hundred eighty (180) days before the Employee's Pension Benefit Starting Date. Such notice shall be in writing and shall set forth the following information:

(1) an explanation of the eligibility requirements for, the material features of, and the relative values of the forms of Benefits available under this Article VI; and

(2) the Employee's right to defer receipt of a Plan distribution as set forth in this Article VI. This notice shall include an explanation of

(i) the terms and conditions of the Qualified Joint and Survivor Annuity and Life Annuity;

(ii) the Employee's right to make, and the effect of, an election to waive the Qualified Joint and Survivor Annuity;

(iv) the rights of an Employee's Spouse; and

(v) the right to make, and the effect of, a revocation of an election

to waive the Qualified Joint and Survivor Annuity.

Section 6.02 Incompetence or Incapacity of Pensioner. In the event that it is determined to the satisfaction of the Trustees that a Retired Employee is unable to care for his or her affairs because of mental or physical incapacity, any payment due may be applied in the discretion of the Trustees to the maintenance and support of such Retired Employee in the manner decided by the Trustees (except that no payment shall be made to a governmental institution or facility if the Retired Employee is not legally required to pay for his or her care and maintenance), unless prior to such payment, a claim shall have been made for such payment by a legally appointed guardian, committee or other legally appointed representative.

Section 6.03 Forms of Pension Benefits.

(a) Normal Form of Benefit. Subject to subparagraphs (b) and (c) below, the Benefits provided by the Plan shall be distributed in the following forms:

(1) Unmarried Employee. The Pension Benefit of an Employee who is not married on his or her Pension Benefit Starting Date, shall be paid in the form of a Life Annuity.

(2) Married Employee. The Pension Benefit of an Employee who is married on his or her Pension Benefit Starting Date shall be paid in the form of a 50% Qualified Joint and Survivor Annuity. The factors used in the determination of the amount of a 50% Qualified Joint and Survivor Annuity are attached to the Plan as Appendix 'A.'

For Pension Benefits with effective dates on or after January 1, 2007, an Employee and his or her Spouse may elect a 75% Qualified Joint and Survivor Annuity. The factors used in the determination of the amount of a 75% Qualified Joint and Survivor Annuity are attached to the Plan as Appendix 'B.'

(b) Waiver of Qualified Joint and Survivor Annuity.

(1) Waiver. A married Employee may elect to waive the Qualified Joint and Survivor Annuity. Upon such election, the Employee's pension Benefit shall be paid in the form of a Life Annuity. An Employee's election to waive the Qualified Joint and Survivor Annuity shall not take effect unless: (i) the Employee's Spouse consents in writing to the election; (ii) the election designates the specific nonspouse Beneficiary (including any class of Beneficiaries or any contingent Beneficiaries) who shall receive a survivor benefit, if any, in the event of the Employee's death; (iii) the election designates that the Benefit shall be paid in the form of a Life Annuity; (iv) the Spouse's consent acknowledges the effect of the election; and (v) the Spouse's consent is witnessed by a Plan representative or a notary public. Any consent obtained from a Spouse to an election to waive an annuity shall be effective only with respect to such Spouse. An Employee may not change the Beneficiary designation without spousal consent unless such change is to revoke the Employee's waiver election. If the waiver election is revoked, benefits shall be distributed in the form of a Qualified Joint and Survivor Annuity. Notwithstanding the foregoing, an Employee's waiver election shall take effect without spousal consent if it is established to the satisfaction of the Trustees that the required consent cannot be obtained because there is no Spouse, because the Spouse cannot be located, or because of such

other circumstances as the Secretary of Treasury may prescribe by regulations.

(2) Timing. An Employee's waiver may be made at any time during the one hundred and eighty day period ending on his or her Pension Benefit Starting Date. The Employee may revoke such election and, subject to the spousal consent requirements of subparagraph (1) above, elect again to waive such benefit at any time and any number of times during such one hundred and eighty day period.

(c) Small Amounts. Notwithstanding anything to the contrary in this Article VI, if the Benefit provided under the Plan has an Actuarial Equivalent value not in excess of $5,000, such benefit shall be paid to the Retired Employee or Beneficiary in a single sum cash payment. Notwithstanding the foregoing, if the Actuarial Equivalent value of the Benefit exceeds $5,000 at the time of any distribution, the Actuarial Equivalent value of the Benefit at any subsequent time shall be deemed to exceed $5,000.

Section 6.04 Commencement of Benefit Payments. Upon attaining his or her Early, Service Pension or Normal Retirement Date, the Employee shall elect when to receive his or her Benefit payments, which shall be paid as soon as administratively feasible, subject to the following provisions.

(a) Earliest Commencement Date. No Benefit Payments to an Employee shall be made or commence prior to the earliest of:

(1) the Employee's termination of employment on or after attaining his or her Early Retirement Date, however an Employee who is age 62 can commence receiving an Early Pension without a termination of employment where termination of employment is defined in accordance with Department of Labor and IRS regulations;

(2) the Employee's Normal Retirement Date;

(3) the Employee's Service Pension Date;

(4) the Employee's disability or if later, the date the Employee applied for a Disability Pension.

(5) the termination of the Plan.

(b) Latest Commencement Date. Unless elected by the Employee, no Benefit Payments to the Employee shall be made or commenced later than sixty (60) days after the close of the Plan Year in which the latest of the following dates occurs:

(1) the Employee's Normal Retirement Date;

(2) the tenth (10th) anniversary of the date on which the Employee commenced participation in the Plan; or

(3) the date on which the Employee terminates his or her service with the Employer.

Any election of a later date for Benefit payments to be made or commenced must be made in writing, must be received by the Fund Administrative Office no later than sixty (60) days prior to the date Benefit Payments would be made or commenced in the absence of such election and must conform to Section 6.04(d) below. Any such election shall be of no effect if, as of the retirement of the Employee, the actuarially computed value of the payments to be made to the Employee during his or her expected lifetime is fifty percent (50%) or less than the actuarially computed value of the total payments to be made to the Employee and his or her Beneficiaries.

(c) Accrued Benefit Greater than $5,000. If the Actuarial Equivalent Value of an Employee's Benefit exceeds (or at the time of any prior distribution exceeded) $5,000, no distribution prior to the Employee's Normal Retirement Date may be made without the written consent of the Employee and the Employee's Spouse, if any. If the Benefit is to be paid in a form other than a Qualified Joint and Survivor Annuity, the written consent of the Employee's Spouse (or if the Employee has died, of the surviving Spouse) shall also be required. If the Actuarial Equivalent value of the Benefit of an Employee does not exceed $5,000, such amount shall be paid as soon as administratively feasible in a single lump-sum payment.

(d) Mandatory Distributions. Regardless of any Late Retirement election by the Employee or the Employee's actual date of retirement, distribution shall be made or commence under this Plan in accordance with the following requirements:

(1) Subject to subparagraph (2) below, distributions shall be made or commence no later than April 1 of the calendar year following the calendar year in which the Employee attains age seventy and one-half (70-1/2).

(2) Distributions to an Employee who attained age seventy and one-half (70-1/2) prior to January 1, 1988 (other than an Employee who was a five percent (5%) owner, as defined in Section 416(i) of the Code, at any time during the Plan Year ending with the calendar year in which such owner attained age sixty-six and one-half (66-1/2) and any subsequent Plan Year) shall be made or commence no later than April 1 of the calendar year following the later of the calendar year in which such Employee attained age seventy and one-half (70-1/2) or retires.

(3) Distributions made pursuant to subparagraphs (1) and (2) above, if not paid in a lump sum, shall be payable over a period certain not to exceed the life or life expectancy of the Employee or the joint life or life expectancy of the Employee and his or her designated Beneficiary. For purposes of this calculation, if the designated Beneficiary is the Employee's Spouse, the life expectancy of such Employee and his or her Spouse may be recalculated annually to the extent permitted by applicable law and regulations.

(4) Effective January 1, 1999, at the option of the Participant, distribution of benefits will commence upon the later of April 1 of the calendar year following actual retirement or attainment of age 70-1/2, if the Participant is not a 5% owner of an Employer. If the Participant opts to defer commencement of benefits under this Section until after actual retirement, the Participant shall file an election form with the Administrative Office of the Fund and the Participant will be entitled to an actuarial adjustment in his benefits resulting

from the delay in commencement of benefits.

(e) Death.

(1) Death Before Benefits Commence.

(i) Five-Year Rule. If the Employee dies before his or her Benefits payments have begun, all benefits shall be paid to the Employee's Beneficiary by December 31 of the calendar year which contains the fifth anniversary of the Employee's death.

(ii) Exception. If the designated Beneficiary so elects, Benefits shall be paid over a period certain not to exceed the life or life expectancy of such Beneficiary beginning no later than December 31 of the calendar year immediately following the calendar year in which the Employee dies unless the designated Beneficiary is the Employee's Spouse. In that event, distributions are not required to begin earlier than the later of: (i) December 31 of the calendar year immediately following the calendar year in which the Employee dies; or (ii) December 31 of the calendar year in which the Employee would have attained seventy and one-half (70-1/2). Should the Employee's Spouse die before distributions begin to the Spouse as the Beneficiary, the Benefit commencement period shall be applied as if the Spouse were the Employee. If the election described in this subparagraph (ii) is not made by November 1 of the calendar year following the calendar year of the Employee's death, Benefits shall be distributed in accordance with the five-year rule.

(2) Death After Benefits Commence. If the Retired Employee dies after Benefit payments have begun, all remaining Benefit payments shall be distributed to his Beneficiary at least as rapidly as the method of Benefit payment in effect on the day of the Retired Employee's death.

(f) Notwithstanding any Plan provision to the contrary, Plan distributions shall be made in accordance with Section 401(a)(9) of the Code and the regulations thereunder, including Treasury Regulation Section 1.401(a)(9)-2.

Section 6.05 Duplication of Pensions. A Retired Employee who is receiving or has received Benefits under the Plan shall not be entitled to payment under the Plan of more than one type of Pension at any one time. A Retired Employee may, however, receive a Benefit as a Retired Employee and as the annuitant under the Qualified Joint and Survivor Annuity Benefit.

Section 6.06 Non-Assignment of Benefits. Each Employee or Retired Employee under the Plan is hereby restrained from selling, transferring, assigning, hypothecating or otherwise disposing of his or her Pension, prospective Pension or any other rights or interest under the Plan, and the Trustees shall not recognize, or be required to recognize, any such sale, transfer, assignment, hypothecation or any other disposition. Any such Pension, prospective Pension, right or interest shall not be subject in any manner to voluntary transfer or 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 of proceedings to the fullest extent permissible by law. The foregoing shall not be applicable to payments that are made pursuant to a Qualified Domestic Relations Order, as defined by Section 414(p) of the Code.

Section 6.07 Trust Assets. Neither an individual Employer, the Union, any Employee, Retired Employee, or Beneficiary under the Plan nor any other person shall have the right, title or interest in or to the Fund other than as specifically provided in the Trust Agreement or in the Plan. Neither the Trust nor any contributions made to the Trust shall be in any manner liable for or subject to the debts, contracts, or liabilities of any of the individual Employers, the Union or any Employee, Retired Employee, or Beneficiary.

Section 6.08 Eligible Rollover Distributions. For distributions in excess of $200.00 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 Article, a distributee may elect, at the time and in the manner prescribed by the Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

The definitions are as follows:

Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any of the 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 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; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

"Eligible Retirement Plan" shall mean an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual annuity described in Section 408(b) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts an 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. An eligible retirement plan shall also include an annuity contract described in IRC section 403(b) and an eligible plan under IRC section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. This definition of eligible retirement plan also shall apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in IRC section 414(p).

For Distributions made on or after January 1, 2008, an Eligible Retirement Plan shall also include a Roth IRA as defined in section 408A of the Code.

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 Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Effective January 1, 2007, a non-spouse beneficiary may receive

a distribution in the form of a direct transfer to a Section 408(a) individual retirement account or a Section 408(b) individual retirement annuity but only to the extent permitted by all applicable provisions of the Code and all related regulations.

Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

Section 6.09 Qualified Domestic Relations Order. Notwithstanding the provisions of this Plan to the contrary, normal and early retirement pension benefits which are payable to an Employee may be paid instead to an Alternate Payee if such payments are made pursuant to the terms of a Qualified Domestic Relations Order.

(a) Definitions. For the purpose of this Section, the following definitions shall apply:

(1) "Domestic Relations Order" - means a judgment, decree or order issued by a court of competent jurisdiction that relates to child and/or spousal support, marital property rights of a Spouse or former spouse, child or other dependent of an Employee.

(2) "Qualified Domestic Relations Order" - means a Domestic Relations Order which specifies:

(A) The names and addresses of each Alternate Payee;

(B) The amount or percentage of the Participant's normal or early retirement pension benefit to be paid to the Alternate Payee; and

(C) The number of payments or period to which the Order applies; provided, however, that no Domestic Relations Order shall be considered a Qualified Domestic Relations Order which requires this Pension Plan to provide:

(i) Any type, form or option of benefit not otherwise provided by this Pension Plan;

(ii) Any increased benefits not otherwise provided by this Pension Plan; or

(iii) Any benefits to be paid to an Alternate Payee which are already required to be paid to another Alternate Payee.

(3) "Alternate Payee" - means the Spouse, former spouse, child or other dependent of an Employee.

(b) Administrative Notice. The Administrative Manager shall promptly notify the Employee and any other Alternate Payee upon receipt of a Domestic Relations Order. The Trustees shall, within a reasonable time thereafter, make a determination as to whether such Domestic Relations Order is a qualified Domestic Relations Order and thereafter the

Administrative Manager shall notify the Employee and each Alternate Payee of that determination.

(1) Review of Determination. If an Employee or any Alternate Payee disputes the Trustees' determination that the Domestic Relations Order is or is not a Qualified Domestic Relations Order, that Employee or Alternate Payee shall immediately notify the Administrative Manager in writing of such dispute. The Administrative Manager shall then notify each party of their rights to seek a review of the determination under Article X of the Trust Agreement.

(2) Disputed Benefits. If there is a dispute on the issue of whether a Domestic Relations Order is a Qualified Domestic Relations Order, the Administrative Manager shall defer payments and shall separately account for such disputed benefits.

(A) If the Domestic Relations Order is determined to be a Qualified Domestic Relations Order, within 18 months after such deferral, the Administrative Manager shall pay the disputed benefits to the person entitled to receive them. If no determination is made within the 18 month period, or if a Domestic Relations Order is determined not to be a Qualified Domestic Relations Order, the Administrative Manager shall pay the disputed benefits, as if no Domestic Relations Order had been issued.

(B) If the Domestic Relations Order is determined to be a Qualified Domestic Relations Order after the expiration of the 18 month period, it shall be applied prospectively only and the Fund shall not be liable for payments to the Alternate Payee for any payments made prior to such determination.

(3) Pending Order. The Administrative Manager may also defer payment of any benefits for a reasonable time if the Administrative Manager has received notice that an Employee's Spouse is seeking a Domestic Relations Order.

(c) Commencement of Benefits. Payments under a Qualified Domestic Relations Order shall commence on the latter of:

(1) The date specified in the Qualified Domestic Relations Order; or

(2) The earlier of the date upon which the Employee files an application and becomes eligible to receive either a normal, early or disability retirement pension regardless of whether the Employee may be presently receiving a disability retirement pension.

(d) Computation of Benefits. If the Qualified Domestic Relations Order requires benefits to be paid to the Alternate Payee after the Employee becomes eligible to receive either a normal or early retirement pension, but prior to the date the Employee actually commences to receive either a normal or early retirement pension, the payments to the Alternate Payee shall be computed by taking into account only the amount of normal or early retirement benefits which the Employee had accrued to that date. No consideration shall be allowed for the amount of disability subsidy which an Employee, who is disabled and receiving a disability retirement pension, receives over and above the amount of normal or early retirement pension benefits which the Employee would otherwise be eligible to receive.

(e) Survivor Benefits. If the Employee dies before becoming eligible to receive either a normal or early retirement pension, the Alternate Payee shall be entitled to receive survivor benefits only if the Qualified Domestic Relations Order requires survivor benefits to be paid to the Alternate Payee and if the Employee and the Alternate Payee had been married for a least one (1) full year as of the date of death. Such survivor benefits shall not commence until the first day of the month upon which the Employee would have first been eligible to receive either a normal or early retirement pension provided application for benefit is made by the Alternate Payee.

(f) Form of Payment. The amount payable to the Alternate Payee may be payable in any form permitted, or not prohibited by, the Qualified Domestic Relations Order.

(1) No payment shall be made in the form of a Joint and Survivor Annuity with respect to the Alternate Payee and the Alternate Payee's Spouse;

(2) The total amount of the payments of the Alternate Payee, any other Alternate Payees, and the Employee shall not exceed the actuarial equivalent of a single life annuity for the life of the Employee; and

(3) With the written consent of the Alternate Payee, the Trustees shall make a lump-sum disbursement to the Alternate Payee of the actuarial value of the Alternate Payee's survivor benefit if the actuarial value of the survivor benefit is less than $5,000.00.

Section 6.10 Change in Pension Benefits. Once an Employee commences to receive a Pension Benefit, his election as to the form of Pension Benefit shall not be changed even though any of the following contingencies should occur:

(a) The marriage of the Employee and his or her Spouse is legally terminated;

(b) The Spouse, Alternate Payee or Beneficiary, under a Qualified Domestic Relations Order, predeceases the Employee.

Section 6.11 Overpayments and Underpayments of Benefits

(a) Recoupment of Overpayments.

If the Pension Fund discovers that a Participant, Beneficiary, Alternate Payee or any other person has erroneously received an overpayment of pension benefits to which the person was not entitled in accordance with the provisions of this Plan, the Trustees shall recover the overpayments in the following order of priority:

(1) The Trustees shall first seek recoupment of the overpayment in one lump sum payment with interest. Interest shall be based on the One year T-Bill rate, as of the December prior to the date of determination of recoupment. Interest shall be applied from the date of the overpayment to the date of repayment;

(2) If lump sum recoupment is not agreed to by the recipient, the Trustees shall seek recoupment of the overpayment in the form of a partial lump sum payment

plus a level installment repayment agreement. The maximum installment repayment period shall be sixty months and interest on the partial lump sum and installment repayment shall be based on the One-year T-Bill, as of the December prior to the date of determination of recoupment. Interest shall be applied from the date of the overpayment to the date of repayment;

(3) If lump sum recoupment or a partial lump sum payment plus a level installment repayment agreement is not agreed to by the recipient, the Trustees shall seek recoupment of the overpayment in a level installment repayment agreement. The maximum installment repayment period shall be sixty months and interest on the installment repayment shall be based on the One-year T-Bill rate, as of the December prior to the date of determination of recoupment. Interest shall be applied from the date of the overpayment to the date of repayment;

(4) If a lump sum, partial lump sum plus an installment repayment agreement or an installment repayment agreement is not agreed to by the recipient within thirty days of notification by the Pension Fund to the Participant, Beneficiary, Alternate Payee or other persons of the overpayment, or if the Participant, Beneficiary, Alternate Payee or other person fails to abide by the lump sum or partial lump sum plus installment repayment agreement or the installment repayment agreement, the Trustees shall obtain recoupment of the overpayment by reducing future benefit payments so that the actuarial present value of the reduction is equal to the amount of the overpayment accumulated with interest from the date of the overpayment to the date of the first reduced annuity payment. For the purpose of accumulating the overpayment with interest, the interest rate used shall be the One year T-Bill rate as of the December prior to the date of the first reduced annuity payment. The actuarial present value of the reduction shall be based on the Applicable Mortality Table and Applicable Interest Rate provided for in Article I Section 1.01 as of the December prior to the date of determination of recoupment.

Nothing in this provision shall prohibit the Trustees from taking additional action related to the recovery of overpayments from a Participant, Beneficiary, Alternate Payee or any other person who erroneously received pension benefits, including but not limited to, reserving the right to file suit or the pursuit of other legal action for the recovery of such overpayments. Additionally, nothing in this provision shall prohibit the Trustees from taking into consideration the facts and circumstances involved, such as the hardship to the Participant, Beneficiary, or Alternate Payee resulting from such recovery of overpayment or the cost to the Pension Fund of collection efforts may be such that it would be prudent, within the meaning of ERISA Section 404(a)(l)(B) for the Pension Fund not to seek recovery from the Participant, Beneficiary or Alternate Payee of an overpayment.

(b) Underpayment

In the event that the Trustees determine that the payment of benefits has resulted in an underpayment, future payments shall be increased to the correct periodic amount while the amount of past underpayments shall be paid in a lump sum with appropriate interest to the extent required by law. For purposes of interest to be added to the remedial payment under this Subsection, the rate of interest shall be the One year rate as of the December prior to the date of determination of the underpayment. Interest shall be applied from the annuity starting date to the date of payment.

## ARTICLE VII
## APPLICATIONS FOR PENSIONS

Section 7.01 Advance Written Applications Required. A written application for a Pension shall be filed with the Trustees prior to the Employee's Pension Benefit Starting Date on a form and in the manner prescribed by the Trustees. However, if an application for a Pension on account of disability is filed within sixty (60) days of the determination by the Social Security Administration of entitlement to a Social Security Disability Benefit, it shall not be subject to the advance filing requirement.

Section 7.02 Information Required. Each Employee and Retired Employee shall furnish to the Trustees any information or proof requested by them and which is reasonably required to administer the Plan. If an Employee or Retired Employee or other claimant to Benefits hereunder makes a false statement material to his or her claim for Benefits, the Trustees shall recoup, offset or recover any amount paid to such Employee or Retired Employee or other claimant to which he or she was not rightfully entitled under the provisions of this Plan.

## ARTICLE VIII
## MISCELLANEOUS PROVISIONS

Section 8.01 Limitation of Liability. This Plan has been adopted on the basis of an actuarial calculation which has established, to the extent possible, that the Employer Contributions will, if continued, be sufficient to maintain the Plan on a permanent basis. However, it is recognized that the Benefits provided by this Plan can be paid only to the extent that the Plan has available adequate resources for those payments. No Employer has any liability, directly or indirectly, to provide the Benefits established by this Plan beyond the obligation of the Employer to make contributions as stipulated in its Collective Bargaining Agreement. In the event that at any time the Fund does not have sufficient assets to permit continued payments on a sound actuarial basis under this Plan, nothing contained in this Plan and the Trust Agreement shall be construed as obligating any Employer to make Benefit payments or Employer Contributions (other than the Employer Contributions for which the Employer may be obligated by its Collective Bargaining Agreement) in order to provide for the Benefits established by the Plan. Likewise, there shall be no liability upon the Trustees, individually or collectively, or upon the Employer or the Union to provide the Benefits established by this Plan if the Fund does not have the assets to make such Benefit payments.

Section 8.02 Construction of the Plan. The titles or headings of the Sections and Articles in this Plan are placed for convenience of reference only and in case of conflict between such titles or headings and the content of this Plan, the content, rather than such titles or headings, shall govern.

The singular pronoun, wherever used in this Plan, shall include, where applicable, the plural pronouns.

The terms "herein", "hereto", "hereunder" and "hereinafter" wherever used in the Plan, shall refer to the whole Plan and not to any particular Article or Section in this Plan.

## ARTICLE IX
## AMENDMENT, TERMINATION AND MERGER

Section 9.01 Amendment. The Plan has been established with the bona fide intention and expectation that the Plan shall continue indefinitely, and every effort has been made to arrange the Plan so that it shall meet future conditions. Changes or amendments to the Plan, or termination of the Plan, shall be subject to the collective bargaining process; provided, however, that the Trustees may amend the Plan so long as any amendment does not enlarge the obligations undertaken by the parties to a Collective Bargaining Agreement, except to the extent required by law. 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(d)(2) of the Code or Section 4281 of ERISA. For purposes of this paragraph, an amendment which has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or of 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.

Each Employee whose nonforfeitable percentage of his or her benefits derived from employer contributions is determined under the amended schedule, and who has completed at least three years of service with the employer, may elect, during the election period, to have the nonforfeitable percentage of his or her accrued benefit derived from employer contributions determined without regard to such amendment if his/her nonforfeitable percentage under the plan as amended is, at any time, less than such percentage determined without regard to such amendment.

Section 9.02 Plan Termination.

(a) Notwithstanding any other provision of this Plan to the contrary, upon the date of either full or partial termination of the Plan, or, if applicable, upon the date of complete discontinuance of contributions to the Plan, an affected Employee's right to his accrued Benefit shall be nonforfeitable.

(b) In the event of termination, the assets then remaining in the Plan, after providing for any administrative expenses attributable to the Plan, shall be allocated to the Employee, Retired Employees or other beneficiaries and shall be used to provide for each Employee's accrued Benefit. The Trustees may provide additional forms of Benefits which are either the Actuarial Equivalent of the forms of Benefits provided herein, or, to the extent that the assets of the Plan are sufficient, which are in addition to such forms of Benefits.

(c) If there are assets remaining attributable to the Plan after payment of all accrued Benefits referred to above, such assets shall be allocated to Employees in accordance with the determination of the Trustees.

Section 9.03 Mergers. To the extent required by the Pension Benefit Guaranty Corporation, in the case of any merger or consolidation of the Plan with, or transfer, in whole or in part, of the assets and liabilities of the Fund to any other Fund, after September 2, 1974, each Employee, Retired Employee or other beneficiary shall (if the Plan then terminated) receive a Benefit immediately after the merger, consolidation or transfer which is at least equal to the Benefit he or she would be entitled to receive immediately before such merger, consolidation or transfer as if the Plan had then terminated.

Section 9.04 Non-Reversion.

(a) Except as provided in subparagraph (b) below, it is expressly understood that in no event shall any portion of the Fund revert to, or be recovered by the Employers or the Union, or be used for or diverted to any purpose other than the exclusive benefit of Employees, Retired Employees, or their Beneficiaries under the Plan and the payment of the administrative expenses of the Fund and the Plan.

(b) If a contribution is made by a mistake or law or fact, such contribution may be returned to such employer within six months after the plan administrator determines that the contribution was made by a mistake of fact or law. If any withdrawal liability payment is determined to be an overpayment such overpayment may be returned to such employer within six months after the plan administrator determines an overpayment was made.

## ARTICLE X
## APPEALS PROCEDURE

Section 10.01 Determination of Disputes.

(a) No Employee, Retired Employee, or other Beneficiary or claimant shall have any right or claim to Benefits under the Plan, other than as specified herein. Any dispute as to eligibility, type, amount or duration of Benefits shall be resolved by the Trustees under and pursuant to the Plan, and the Trustees' decision shall be final and binding upon all parties.

(b) Any person whose application for Benefits under the Plan has been denied in whole or in part by the Trustees, or whose claim to Benefits is otherwise denied by the Trustees, shall receive a notice of denial by the Trustees which contains the following, written in a manner calculated to be understood by the claimant:

(1) The specific reason or reasons for the denial;

(2) Specific reference to pertinent Plan provisions on which the denial is based;

(3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is

necessary; and

(4) Appropriate information as to the steps to be taken if the claimant wishes to submit the claim for review.

The notice of denial shall be given within ninety (90) days after a claim is filed for a non-disability claim and forty-five (45) days for disability claim. If an extension is required, written notice shall be furnished to the claimant within ninety (90) days after a claim is filed for a non-disability claim and forty-five (45) days for a disability claim, stating the special circumstances requiring an extension of time and the date by which a decision on the claim can be expected. For disability claims, the time limited may be extended for up to another 30 days (for a total of 105 days). If such notice of denial is not given within the time required, the claimant may proceed to the review stage described below as though the claim has been denied.

The claimant or the claimant's duly authorized representative may petition the Trustees to reconsider its decision. A petition for reconsideration shall be in writing, shall state in clear and concise terms the reason or reasons for disagreement with the decision of the Trustees and shall be filed with or received by the Administrative Office within sixty (60) days after receipt of written notification of denial for non-disability claims, and within one-hundred and eighty (180) days after receipt of written notification of denial for disability claims.

(c) Review Procedure.

(1) Application for Review. The claimant, or the claimant's duly authorized representative, may request a review of the claim denial by filing a written application for such review within sixty (60) days after receipt of the written notification of the denial. The Trustees may consider a late application if they conclude the delay in filing was for reasonable cause.

(2) Review Procedure. When any such application is received, the claim and its denial shall receive a full and fair review by the Trustees or any subcommittee to which it delegates this function. As part of the review procedure, the claimant, or the claimant's duly authorized representative, may review pertinent documents and submit issues and comments in writing, but 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.

(d) Notice of Decision on Review.

(1) Contents of Notice. The notice of decision on the appeal of a claim denial shall be furnished to the claimant in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent Plan provisions on which the decision is based. The decision shall be furnished to the claimant as promptly as possible after a decision is reached within the time period described below, and if not so furnished, the claimant may consider it to have been denied.

(2) Time of Notice. If the decision on review is to be made by the

Trustees or a subcommittee of Trustees which is holding regularly scheduled meetings at least quarterly, the decisions shall be made no later than the date of the first such meeting which occurs at least thirty (30) days following receipt of the request for review. However, if special circumstances require an extension of time for processing, the decision shall be rendered not later than the third meeting following receipt of the request.

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.

The decision of the Trustees, is final and binding on all parties, subject only to any civil action the participant or beneficiary may bring under §502(a) of ERISA.

Section 10.02 Arbitration

The decision of the Trustees, if the Employee, Retiree, Spouse, Alternate Payee or Beneficiary elects such further consideration, shall be final and binding upon all parties. However, if the Employee, Retiree, Spouse, Alternate Payee or Beneficiary is dissatisfied with the written decision of the Trustees, he or she shall have the right to appeal the matter to arbitration in accordance with the labor arbitration rules of the American Arbitration Association, provided that he or she submit a request for arbitration to the Trustees, in writing, within sixty (60) days of receipt of the written decision. If an appeal to arbitration is requested, the Trustees shall submit to the arbitrator a copy of the record upon which the Trustees' decision was made. The Trustees shall bear the costs of the arbitration. Each party will be responsible for their own attorney's fees incurred in such arbitration. The questions for the arbitrator shall be (1) whether the Trustees were in error upon an issue of law; (2) whether the Trustees acted arbitrarily or capriciously in the exercise of their discretion; and (3) whether the Trustees' findings of fact were supported by substantial evidence. The decision of the arbitrator shall be final and binding upon all parties whose interests are affected thereby. However, the claimant shall have the right to bring an action in court against the Fund after having first exhausted all administrative remedies under the Plan.

Notwithstanding any provision in the Plan to the contrary, the Plan shall specifically prohibit class arbitration. Additionally under no circumstances shall any arbitrator have the authority to determine the issue of whether class arbitration is permitted under the Plan.

Notwithstanding any provision in the Plan to the contrary, there shall be no right of appeal to arbitration in claims and appeals pertaining to a denial of a Service Pension for any reason other than denial of application based on failure to accrue 30 Past and Future Service Credits.

## ARTICLE XI
## RULES FOR WITHDRAWAL LIABILITY

Section 11.01 Calculating Withdrawal Liability.

(a) Method.

(1) Effective for Plan Years commencing prior to January 1, 1990, upon an Employer's withdrawal from the Plan within the meaning of ERISA Section 4201, the withdrawal liability of such Employer shall be calculated by using the direct attribution method specified in ERISA Section 4211(c)(4).

(1) Effective for Plan Years commencing on and after January 1, 1990, upon an Employer's withdrawal from the Plan within the meaning of ERISA Section 4201, the withdrawal liability of such Employer shall be calculated by using the rolling-5 method specified in ERISA Section 4211(c)(3).

(b) The determination of whether a withdrawal from the Plan has occurred and the assessment of withdrawal liability against any employer shall be determined in accordance with the terms of the Multiemployer Pension Plan Amendments Act of 1980 (ERISA Section 4201 *et seq.*) and appropriate Pension Benefit Guarantee Corporation regulations promulgated thereunder.

(c) For purposes of determining unfunded vested benefits in accordance with ERISA Section 4211 effective for Employer withdrawals occurring on or after January 1, 2014, the calculation of the Plan's vested benefits shall be based on the actuarial assumptions in effect for the ERISA funding valuation on the date of determination except with respect to the interest rate assumption.

Vested benefits shall be determined using a blend of the ERISA funding interest rate assumption and the PBGC annuity rates for terminating pension plans based on the following formula:

$$[((C - A)/C) \times B] + A$$

A = Fair market value of assets.
B = Vested benefits based on the ERISA funding interest rate assumption.
C = Vested benefits based on the PBGC select and ultimate annuity interest rates for terminating pension plans in effect on the January 1st immediately following the date of determination.

Unfunded vested benefits shall be determined by subtracting the fair market value of Plan assets from the Plan's vested benefits on the date of determination. The date of determination shall be the last day of the Plan Year (December 31st) for purposes of determining Employer withdrawal liability in the subsequent Plan Year.

## ARTICLE XII
## TOP HEAVY PROVISIONS

Section 12.01 Rule of Application. If the Plan is determined to be Top-Heavy (as defined in Section 12.02(g)) for any Plan Year, then the provisions of this Article shall apply to any Employee not included in a unit of Employees covered by a Collective Bargaining Agreement between the Union and one or more Employees.

Section 12.02 Top-Heavy Definitions. For purposes of Article XII, the terms used herein shall be defined as follows:

(a) "Determination Date" shall mean for any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan the Determination Date shall be the last day of that year.

(b) "Determination Period" shall mean the Plan Year containing the Determination Date and the four (4) preceding Plan years.

(c) "Employer" shall mean the Employer and any affiliated company which is a member of a controlled group, as defined in Section 414(b) or 414(c) of the Code, or a member of an affiliated service group as defined in Section 414(m) of the Code with the Employer, or aggregated with the Employer pursuant to Section 414(o) of the Code and any final regulations thereunder except in determining ownership under subparagraphs (d)(2),(3) and (4), the Employer and any affiliated company shall be treated as a separate employer.

(d) "Key Employee" shall mean any employee, or former employee (and the Beneficiaries of such) who at any time during the Determination Period is:

(1) An officer of the Employer with compensation greater than fifty percent (50%) of the limitation in effect under Section 415(b)(1)(A) of the Code for such Plan Year. For purposes of subparagraph (d)(1), no more than fifty (50) individuals (or, if lesser the greater of three (3) or ten percent (10%) of the Employees) shall be treated as officers;

(2) An employee having annual compensation greater than the dollar limitation under Section 415(c)(1)(A) of the Code and owning (or considered to own) one of the ten (10) largest interests in the Employer;

(3) A five percent (5%) owner of the Employer within the meaning of Section 416(i)(1)(B)(i) and (iii) of the Code; and

(4) A one percent (1%) owner of the Employer within the meaning of Sections 416(i)(1)(B)(ii) and (iii) of the Code and having annual compensation of more than One Hundred Fifty Thousand Dollars ($150,000).

Notwithstanding anything contained herein to the contrary, the determination of who is a Key Employee will be made in accordance with Section 416(i)(1) of the Code and the regulations thereunder.

(e) "Permissive Aggregation Group" shall mean the Required Aggregation Group of plans plus any other plan or plans of the Employer which, when considered as a group with the Required Aggregation Group, would continue to satisfy the requirements of Sections 401(a)(4) and 410 of the Code.

(f) "Required Aggregation Group" shall mean each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Determination Period (regardless of whether the plan has terminated) and any other qualified

plan of the Employer which enables any of the foregoing to meet the requirements of Sections 401(a)(4) or 410 of the Code.

(g) "Top-Heavy Plan" shall mean a plan under which any of the following conditions exist:

(1) If the Top-Heavy Ratio for the Plan exceeds sixty percent (60%) and the plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans;

(2) If the Plan is a part of a Required Aggregation Group of plans but not a part of a Permissive Aggregation Group and the Top-Heavy Ratio for the group of plans exceeds sixty percent (60%); or

(3) If the Plan is a part of a Required Aggregation Group and part of a Permissive Aggregation Group of plans and the Top-Heavy Ratio for the Permissive Aggregation Group exceeds sixty percent (60%).

(h) "Top-Heavy Ratio" shall mean:

(1) If the Employer maintains one or more defined benefit plans (including any simplified employee pension plan) and has not maintained any defined contribution plan (including any simplified employee pension plan) which during the five (5) year period ending on the Determination Date(s), has or has had account balances, the Top-Heavy Ratio for this Plan alone or for the Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits of all Key Employees as of the Determination Date(s) (including any part of the accrued benefit distributed in the five (5) year period ending on the Determination Date(s)), and the denominator of which is the sum of the present value of all accrued benefits (including any part of the accrued benefits distributed in the five (5) year period ending on the Determination Date(s)), both computed in accordance with Section 415 of the Code and the regulations promulgated thereunder. Both the numerator and denominator of the Top-Heavy Ratio shall be adjusted to reflect any contribution not actually made as of the Determination Date, but which is required to be taken into account on that date under Section 416 of the Code and the regulations promulgated thereunder. Accrual rates for the defined benefit plans that are aggregated for this purpose shall be the same. If such accrual rates are not the same, the fractional rule will be used to determine the benefit. The Determination Date refers to the date of the actuarial valuation of any defined benefit plan for the year prior to the year in which the determination of top heavy status is made.

(2) If the Employer maintains one or more defined benefit plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined contribution plans (including any simplified employee pension plan) which during the five (5) year period ending on the Determination Date(s) has or has had any account balances, the Top-Heavy Ratio for any Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits under the aggregated defined benefit plan or plans of all Key Employees, determined in

accordance with subparagraph (1) above and the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees as of the Determination Date(s), and the denominator of which is the sum of the present value of accrued benefits under the aggregated defined benefit plan or plans for all participants, determined in accordance with subparagraph (1) above, and the sum of account balances under the contribution plan or plans for all participants as of the Determination Date(s), all determined in accordance with Section 416 of the Code and the regulations promulgated thereunder. The account balances under a defined contribution plan in both the numerator and denominator of Top-Heavy Ratio shall be adjusted for any distribution of an account balance made in the five (5) year period ending on the Determination Date.

(3) For purposes of subparagraphs (1) and (2) above, the value of account balances and the present value of accrued benefits will be determined as of the most recent Valuation Date that falls within or ends with the twelve-month period ending on the Determination Date, except as provided in Section 416 of the Code and the Regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of an Employee who is not a Key Employee but who was a Key Employee in a prior year, or who has not been credited with at least one (1) Hour of Service with any Employer maintaining the Plan at any time during the five (5) year period ending on the Determination Date shall be disregarded. The calculation of Top-Heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Section 416 of the Code and the regulations promulgated thereunder. When aggregating plans, the value of the account balances and the accrued benefits will be calculated with reference to the Determination Dates that all fall within the same calendar year. Such value shall be determined using the Actuarial Equivalent value as set forth in Section 1.01 above and such value shall uniformly apply for accrual purposes under all defined benefit plans included in an aggregation group.

Section 12.03 Compensation Definition and Limitation. "Compensation" shall mean compensation as defined under Section 3.13(b)(1). In any Plan Year in which the Plan is Top-Heavy, in no event shall Compensation in excess of Two Hundred Thousand Dollars ($200,000.00) (as adjusted by the Secretary of Treasury at the same time and in the same manner as under Section 415(d) of the Code) be taken into account in determining the calculation.

Section 12.04 Minimum Benefit. A Non-Key Employee means any Employee who is not a Key Employee. In any Plan Year in which this Plan is Top-Heavy, in no event shall a Non-Key Employee and who has been credited with one thousand (1,000) Hours of Service during the applicable Plan Year be less than two percent (2%) of the Participant's Final Average Compensation for each year of credited service beginning after December 31, 1983 during which the Plan was Top-Heavy, up to a maximum of ten (10) years. In the event an employer maintains more than one plan, the top-heavy minimums must be properly coordinated by a specified approach. If both defined contribution and defined benefit plans exist, the top-heavy minimums may be coordinated by providing a defined benefit minimum in the defined benefit plan, which is offset by the benefits provided under the defined contribution plan.

Section 12.05 Final Average Compensation. "Final Average Compensation" shall mean for purposes of Section 12.04 the average Compensation for work performed while a participant

in this Plan for the period of consecutive Top-Heavy Years, not exceeding five (5) years, during which the participant had the greatest aggregate Compensation. Top Heavy Years are those Plan Years beginning on or after January 1, 1984 for which the Plan is determined to be Top-Heavy.

Section 12.06 Special Vesting Schedule. If the Plan becomes Top-Heavy, the following vesting schedule shall apply instead of the Plan's regular vesting schedule as set forth in Section 5.04:

| Years of Vesting Service | Percentage |
|---|---|
| 2 | 20 |
| 3 | 40 |
| 4 | 60 |
| 5 | 100 |

Section 12.07 Maximum Limitation Under Top Heavy Plan. With respect to any Plan Year for which the Plan is determined to be a Top-Heavy Plan, a 1.0 limitation shall be substituted for the 1.25 limitations in Plan Section 3.13. This subsection shall not be in effect on or after January 1, 2000.

Section 12.08 Modification of Top Heavy Rules.

(a) Effective Date. This Section 12.08 shall apply for purposes of determining whether the Plan is a top-heavy plan under Section 416(g) of the Code for Plan Years beginning after December 31, 2001, and whether the Plan satisfies the minimum benefits requirements of Section 416(c) of the code for such years. This Section amends Section 12.01 of the Plan.

(b) (1) Key Employee. Key Employee means any employee or former employee (including any deceased employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having annual compensation greater than $130,000 (as adjusted under Section 416(i)(1) of the Code for Plan Years beginning after December 31, 2002) a 5% owner of the Employer, or a 1% owner of the Employer having annual compensation of more than $150,000. For this purpose, annual compensation means compensation within the meaning of Section 415(c)(3) of the Code. The determination of who is a key employee will be made in accordance with Section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

(2) Determination of Present Values and Amounts. This Section shall apply for purposes of determining the present values of accrued benefits and the amounts of account balances of employees as of the determination date.

(A) Distributions During Year Ending on the Determination Date. The present values of accrued benefits and the amounts of account balances of an employee as of the determination date shall be increased by the distributions made with respect to the employee

under the Plan and any plan aggregated with the Plan under Section 416(g)(2) of the Code during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than severance of employment, death, or disability, this provision shall be applied by substituting "5-year period" for "1-year period."

(B) Employees Not Performing Services During Year Ending on the Determination Date. The accrued benefits and accounts of any individual who has not performed services for the Employer during the 1-year period ending on the determination date shall not be taken into account.

(C) For purpose of satisfying the minimum benefit requirement of section 416(c)(1) of the Code and the Plan, in determining years of services with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a Plan year when the Plan benefits (within the meaning of section 410(b) of the Code) no key employee or former key employee.

[Signature Page to Follow]

# Certificate of Adoption

IN WITNESS WHEREOF, the Trustees of the SAN DIEGO UNITE-HERE PENSION PLAN do hereby adopt the 2015 Restatement effective January 1, 2015. This Certificate of Adoption may be signed in counterparts.

EMPLOYER TRUSTEES

| Signature: | Date: |
| --- | --- |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

UNION TRUSTEES

| Signature: | Date: |
| --- | --- |
| Darcy L Brosery | 1-13-2015 |
| _____ | _____ |
| _____ | _____ |

## Certificate of Adoption

IN WITNESS WHEREOF, the Trustees of the SAN DIEGO UNITE-HERE PENSION PLAN do hereby adopt the 2015 Restatement effective January 1, 2015. This Certificate of Adoption may be signed in counterparts.

EMPLOYER TRUSTEES

| Signature: | Date: |
| --- | --- |
| Karen Baker | 1-10-15 |
| | |
| | |

UNION TRUSTEES

| Signature: | Date: |
| --- | --- |
| | |
| | |
| | |

# Certificate of Adoption

IN WITNESS WHEREOF, the Trustees of the SAN DIEGO UNITE-HERE PENSION PLAN do hereby adopt the 2015 Restatement effective January 1, 2015. This Certificate of Adoption may be signed in counterparts.

EMPLOYER TRUSTEES

| Signature: | Date: |
| --- | --- |
| _____ | 12/29/14 |
| _____ | _____ |
| _____ | _____ |

UNION TRUSTEES

| Signature: | Date: |
| --- | --- |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

## Certificate of Adoption

IN WITNESS WHEREOF, the Trustees of the SAN DIEGO UNITE-HERE PENSION PLAN do hereby adopt the 2015 Restatement effective January 1, 2015. This Certificate of Adoption may be signed in counterparts.

EMPLOYER TRUSTEES

| Signature: | Date: |
| --- | --- |
|  | 1/15/15 |
| | |
| | |

UNION TRUSTEES

| Signature: | Date: |
| --- | --- |
| | |
| | |
| | |

# Certificate of Adoption

IN WITNESS WHEREOF, the Trustees of the SAN DIEGO UNITE-HERE PENSION PLAN do hereby adopt the 2015 Restatement effective January 1, 2015. This Certificate of Adoption may be signed in counterparts.

EMPLOYER TRUSTEES

| Signature: | Date: |
| --- | --- |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

UNION TRUSTEES

| Signature: | Date: |
| --- | --- |
| Brigitte R | 1/27/15 |
| _____ | _____ |
| _____ | _____ |

IN WITNESS WHEREOF, the Trustees have adopted this Amendment 16 to the San Diego UNITE HERE Pension Plan. This Amendment may be signed in counterparts.

EMPLOYER TRUSTEES

| Signature: | Date: |
| --- | --- |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

UNION TRUSTEES

| Signature: | Date: |
| --- | --- |
| Brigitte Ramos | 1/27/15 |
| _____ | _____ |
| _____ | _____ |