

**NEW YORK HOTEL TRADES COUNCIL
AND HOTEL ASSOCIATION
OF NEW YORK CITY, INC. PENSION FUND**

PLAN RULES AND REGULATIONS

(Amended and Restated as of January 1, 2014)

The Board of Trustees of the New York Hotel Trades Council and Hotel Association of New York City, Inc. Pension Fund, acting pursuant to the Trust Agreement and pursuant to the Collective Bargaining Agreement between each Employer and the Union, adopt the following amended and restated Pension Plan, effective January 1, 2014, unless otherwise expressly provided. As such, effective as of January 1, 2014 (unless otherwise stated herein for specified provisions), the Plan is hereby amended and restated in its entirety to: (i) incorporate the regulatory changes required by the Pension Protection Act of 2006 ("PPA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"), the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), and other applicable legislation and published Treasury and IRS guidance through October 1, 2013, (ii) incorporate all previous plan amendments, and (iii) make certain additional changes desired by the Trustees. This restatement of the Plan shall not effect or constitute a termination of the Plan, it being expressly understood that the "2014 Plan Restatement", as hereby amended, constitutes a continuation of the Plan in effect immediately prior to its restatement.

No amendment or restatement of the Plan is intended to, nor shall it be interpreted or applied in any manner to cause a reduction in benefits which have accrued prior to January 1, 2014. Furthermore, except as may be otherwise specifically provided herein, the rights, benefits and obligations of participants (including pensioners and beneficiaries) who retired, died or terminated their participation under the Plan prior to January 1, 2014, shall be determined under the terms and conditions of the Plan as it existed at the time of his or her termination of employment, death or retirement (as the case may be).

TABLE OF CONTENTS

ARTICLE I - DEFINITIONS	1
ARTICLE II - PARTICIPATION	8
2.1 PURPOSE	8
2.2 PARTICIPATION	8
2.3 TERMINATION OF PARTICIPATION	8
2.4 REINSTATEMENT OF PARTICIPATION	8
ARTICLE III - PENSION ELIGIBILITY AND AMOUNTS.....	9
3.1 GENERAL	9
3.2 REGULAR PENSION ELIGIBILITY	9
3.3 REGULAR PENSION - AMOUNT	10
3.4 APPLICATION OF BENEFIT INCREASES	11
3.5 EARLY RETIREMENT PENSION - ELIGIBILITY	11
3.6 EARLY RETIREMENT PENSION - AMOUNT	11
3.7 DISABILITY PENSION - ELIGIBILITY	11
3.8 PROOF OF CONTINUING ELIGIBILITY FOR DISABILITY PENSION	12
3.9 DISABILITY PENSION - AMOUNT	12
3.10 AGE AND SERVICE PENSION – ELIGIBILITY	12
3.11 AGE AND SERVICE PENSION – AMOUNT	13
3.12 NON-DUPPLICATION OF PENSIONS	13
3.13 REDETERMINATION OF BENEFITS	13
3.14 SPECIAL DEATH BENEFIT	14
ARTICLE IV - PENSION CREDITS AND YEARS OF VESTING SERVICE.....	15
4.1 GENERAL	15
4.2 PENSION CREDITS	15
4.3 YEARS OF VESTING SERVICE	18
4.4 BREAKS IN SERVICE	19
4.5 VESTED STATUS AND NONFORFEITABILITY	22
ARTICLE V – FORMS OF PAYMENT	24
5.1 GENERAL	24
5.2 EFFECTIVE DATE AND CONDITIONS	24
5.3 UPON RETIREMENT	25
5.4 PRERETIREMENT SURVIVING SPOUSE PENSION	26
5.5 ADJUSTMENT OF PENSION AMOUNT	27
5.6 INACTIVE VESTED PARTICIPANTS	29
5.7 ADDITIONAL CONDITIONS	29
ARTICLE VI - APPLICATIONS, BENEFIT PAYMENTS AND RETIREMENT	31
6.1 APPLICATIONS	31
6.2 INFORMATION AND PROOF	31
6.3 ACTION OF TRUSTEES AND TRUSTEES’ RELIANCE	31
6.4 DENIAL OF CLAIM, RIGHT OF APPEAL AND DETERMINATION OF DISPUTES	31
6.5 BENEFIT PAYMENTS GENERALLY	33
6.6 RETIRED STATUS	35
6.7 SUSPENSION OF BENEFITS	35
6.8 BENEFIT PAYMENTS FOLLOWING SUSPENSION	38
6.9 INCOMPETENCE OR INCAPACITY OF A PENSIONER OR BENEFICIARY	39
6.10 NON-ASSIGNMENT OF BENEFITS	39
6.11 NO RIGHT TO ASSETS	40
6.12 LIMITATIONS ON BENEFITS UNDER CODE SECTION 415	41
6.13 MERGERS	43

ARTICLE VII - MISCELLANEOUS	48
7.1 NON-REVERSION	48
7.2 LIMITATION OF LIABILITY	48
7.3 NEW EMPLOYERS	48
7.4 TERMINATION.....	48
7.5 UNAUTHORIZED REPRESENTATIONS	48
7.6 RECOVERY OF BENEFIT OVERPAYMENT	49
7.7 SITUS AND AGENT FOR SERVICE OF LEGAL PROCESS	49
7.8 AUTHORIZED APPOINTMENTS.....	49
7.9 SETTLEMENT OF CONTROVERSIES	49
7.10 SEVERABILITY	50
7.11 TITLES; AND PLURALS	50
7.12 NON-DISCRIMINATION	50
7.13 NO RIGHT TO EMPLOYMENT.....	50
7.14 CHOICE OF LAW.....	50
7.15 COUNTERPARTS	50
7.16 DEFINITIONS	50
7.17 SUCCESSOR PROVISIONS OF LAW	51
7.18 CONSTRUCTION	51
7.19 PROVISIONS INCONSISTENT WITH QUALIFIED STATUS.....	51
7.20 SCRIVENER'S ERROR	51
7.21 COMPLIANCE WITH CODE SECTION 432.....	51
ARTICLE VIII - AMENDMENTS.....	52
8.1 AMENDMENT	52
ARTICLE IX - RECIPROCAL PENSIONS	53
9.1 GENERAL.....	53
9.2 DEFINITIONS	53
9.3 ELIGIBILITY	53
9.4 BREAKS IN SERVICE.....	54
9.5 PAYMENT OF RECIPROCAL PENSIONS	54
ARTICLE X - ROLLOVERS	55
10.1 GENERAL.....	55
10.2 DEFINITIONS	55
ARTICLE XI - MINIMUM DISTRIBUTION REQUIREMENTS.....	57
11.1 GENERAL RULES.....	57
11.2 TIME AND MANNER OF DISTRIBUTION.....	57
11.3 DETERMINATION OF AMOUNT TO BE DISTRIBUTED EACH YEAR	58
11.4 REQUIREMENTS FOR ANNUITY DISTRIBUTIONS THAT COMMENCE DURING PARTICIPANT'S LIFETIME ..	59
11.5 REQUIREMENTS FOR MINIMUM DISTRIBUTIONS WHERE PARTICIPANT DIES BEFORE DATE DISTRIBUTIONS BEGIN.....	60
11.6 DEFINITIONS	61
APPENDIX A	63

ARTICLE I - DEFINITIONS

1.1. "Active Participant" means an Employee who meets the requirements for participation in the Plan as set forth in Section 2.2.

1.2 "Actuarial Present Value"

Unless otherwise specified in the Plan, the "Actuarial Present Value" of a benefit shall mean:

(a) For determinations subject to Code Section 417(e) for Annuity Starting Dates on or after January 1, 2008, a benefit determined on the basis of the "applicable mortality table" and the "applicable interest rate." For this purpose:

(1) For distributions with an Annuity Starting Date on or after January 1, 2008, the "applicable mortality table" is the mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the Plan Year under subparagraph (A) of Code Section 430(h)(3) (without regard to subparagraph (C) or (D) of such section.

(2) For any Annuity Starting Date that is on or after January 1, 2008, any Plan provision prescribing the use of the annual rate of interest on 30-year Treasury securities shall be implemented by instead using the rate of interest determined by applicable interest rate described by Code Section 417(e), specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) as published in December immediately preceding the Plan Year that contains the Annuity Starting Date.

(b) For determinations subject to Code Section 417(e) for Annuity Starting Dates on or after January 1, 2001 and before January 1, 2008, a benefit determined on the basis of the "applicable mortality table" and the "applicable interest rate." For this purpose:

(1) The "applicable mortality table," as of any Annuity Starting Date that is on or after January 1, 2001 but before January 1, 2008 is, for a Plan Year, the table prescribed for use in that year in Regulations under Code Section 417(e), and which until modified or superseded, is the table set forth in Revenue Ruling 95-6, and for distributions with Annuity Starting Dates on or after December 31, 2002, the applicable mortality table shall be the mortality table prescribed in Revenue Ruling 2001-62.

- (2) The “applicable interest rate,” as of any Annuity Starting Date that is on or after January 1, 2001 but before January 1, 2008 is, for a Plan Year, the annual rate of interest on 30-year Treasury securities as specified by the Commissioner of Internal Revenue for the month of November (as published in December) immediately preceding the Plan Year that contains the Annuity Starting Date.
- (c) For determinations subject to Code Section 417(e)(3), for Annuity Starting Dates before January 1, 2001, a benefit of equal actuarial value determined in accordance with the interest rate prescribed by the Pension Benefit Guaranty Corporation for valuing annuities under single employer plans that terminate after November 30, 1980, without Notice of Sufficiency during the first day of the Calendar Year in which the benefit is valued, and 1971 Group Annuity Mortality table, weighted as follows:
 - (1) for a Participant’s spouse or former spouse, 60% male and 40% female;
 - (2) for the benefit of a Participant’s spouse or former spouse, 40% male and 60% female; and
 - (3) in any other case, 50% male and 50% female.

1.3 “Annuity Starting Date”

A Participant’s “Annuity Starting Date” is the first day of the first calendar month starting after the Participant has fulfilled all of the conditions for entitlement to benefits and after the later of:

- (a) 6 weeks after submission by the Participant of a completed application for benefits (conditional upon receipt of all supporting documentation and verification needed by the Fund), or
- (b) 30 days after the Plan advises the Participant of the available benefit payment options, unless
 - (i) the benefit is being paid as a Joint and Survivor Pension at or after the Participant’s Normal Retirement Age
 - (ii) the benefit is being paid out automatically as a lump sum under Article VI, Section 6.5(e), or
 - (iii) a Participant and Spouse (if any) have jointly consented in writing to the commencement of payments before the end of that 30-day period if a completed application for benefits has been received and distribution of the Pension begins more than seven days after the written explanation was provided to the Participant and Spouse.

The Annuity Starting Date will not be later than the Participant's Required Beginning Date as defined in Section 6.5(c).

- 1.4 "Beneficiary" means a person (other than a Pensioner) who is receiving benefits under this Plan because of his or her designation for such benefits by a Participant. A Participant may designate a Beneficiary on a form provided by and delivered to the Plan Administrator before the Participant's death. A Participant may, with the consent of his Spouse in accordance with the terms of this Plan, change his or her Beneficiary in the same manner. If no Beneficiary has been designated, or no Beneficiary has survived the Participant, payment shall be made to the deceased Participant's surviving Spouse, if any. If there is no surviving Spouse, payment shall be made to the following persons, if then living, in the following order of priority: (1) Participant's child or children, in equal shares, (2) Participant's parents, in equal shares, (3) Participant's brothers and sisters, in equal shares, or (4) the executor or administrator of the Participant's estate.
- 1.5 "Calendar Year" means the period from January 1 to the next December 31. For purposes of the Code and ERISA requirements, the Calendar Year shall serve as the vesting computation period and benefit accrual computation period.
- 1.6 "Code" means the Internal Revenue Code of 1986, as amended from time to time.
- 1.7 "Collective Bargaining Agreement" or "Agreement" means an agreement between the Union and an Employer or between the Trustees and an Employer which requires contributions to the Fund.
- 1.8 "Contribution Period" means, with respect to a category of employment, the period during which the Employer is obligated by its Collective Bargaining Agreement to contribute to the Fund with respect to a category of employment. Notwithstanding the foregoing, if a group of employees within a category of employment may elect, in accordance with the terms of a Collective Bargaining Agreement, not to be Participants in the Plan, the Contribution Period with respect to any employee who is a member of such group and makes such an election shall not commence until the date on which the Employer subsequently becomes obligated to contribute to the Fund on behalf of such employee as a result of an amendment to, or extension or renewal of, such Collective Bargaining Agreement.
- 1.9 "Covered Employment" means employment of an Employee by an Employer for which the Employer is obligated to contribute to the Fund. In the case of an Employee at the start of the Contribution Period, employment prior to the Contribution Period (but not prior to June 1, 1952) in a job category for which the Employer later becomes obligated to contribute, other than a period of prior employment with respect to which the Employee made an election in accordance with the terms of a Collective Bargaining Agreement not to be a Participant in the Plan, shall also be considered as "Covered Employment".

- 1.10 "Employee" means an employee covered by a Collective Bargaining Agreement or an employee of the New York Hotel Trades Council and Hotel Association of New York City, Inc. Employee Benefits Funds or the Union on whose behalf the Employer is obligated to contribute to the Fund. "Employee" shall also include any employee whose Employer is obligated to contribute to the Fund on his behalf under the terms of a participation agreement between his Employer and the Trustees.

For purposes of participation, nondiscrimination, vesting and benefit limits, all leased employees as defined in Code Section 414(n) or 414(o) who have performed services for an Employer on a substantially full-time basis for a period of at least one year shall be treated as employed by an Employer except to the extent such leased employees are excluded under the safe harbor exemption of Code Section 414(n)(5).

- 1.11 "Employer" means an employer signatory or otherwise bound to a Collective Bargaining Agreement with the Union and shall also include the Union and the New York Hotel Trades Council and Hotel Association of New York City, Inc. Employee Benefits Funds with respect to those of its employees for whom the Union or such Funds, as the case may be, is obligated to contribute to the Fund. "Employer" shall also include an employer who has entered into a participation agreement with the Trustees that obligates the employer to contribute to the Fund on behalf of employees specified in such agreement.

For purposes of identifying Highly Compensated Employees and applying the rules on participation, vesting and statutory limits on benefits under the Fund but not for determining Covered Employment, the term "Employer" includes any entity to be aggregated with the Employer under Code §414(b), (c), (m) and (o).

- 1.12. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.
- 1.13. "Highly Compensated Employee" means an Employee described in Code Section 414(q) and the regulations thereunder, and shall mean an Employee who either earned more than \$80,000 (as adjusted) in the prior year and, if the Employer elects, was in the top-paid group for such prior year as set forth in Code Section 414(q) or was a 5% owner of the Employer in the current or prior year. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Employer, based solely on that individual's compensation from or status with respect to that Employer.

The term "compensation" for this purpose shall include wages within the meaning of section 3401(a) of the Codes (for purposes of income tax withholding at the source), plus amounts that would be included in wages but for an election under sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Code; provided, however, that any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2) of the Code) are disregarded for purposes of this definition. Effective for years beginning after December 31, 2008, "compensation" shall include military differential wage payments (as defined in section 3401(h) of the Code).

1.14 "Hotel Industry" shall mean all hotels in New York City, including concessions operating in such hotels, and shall also include the Union and any related employment requiring contributions to the Fund.

1.15 "Hour of Service"

- (a) An "Hour of Service" is each hour for which an Employee is paid, or entitled to payment, by the Employer(s), directly or indirectly, including payments for disability under the New York Hotel Trades Council and Hotel Association of New York City, Inc. Health Benefits Fund and any time compensated under a Worker's Compensation Plan not in excess of the period covered by New York State Disability Benefits Law payments but excluding any time compensated under an unemployment compensation law and any hours of non-work time in excess of 500 hours in any one continuous period, except as set forth above. Two periods of paid non-work time shall be deemed continuous if they are compensated for the same reason (e.g., disability) and are not separated by at least ninety days; and
- (b) Each hour for which an Employee is directly or indirectly 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, duty, military duty or leave of absence. These hours shall be credited to the Employee for the computation period or periods in which duties were to be performed; and
- (c) Each hour for which back pay irrespective of mitigation of damages has been either awarded or agreed to by the Employer. The same Hours of Service shall not be credited to the Employee under paragraph (a) or paragraph (b) above, as the case may be, and under this paragraph (c). The Hours of Service under this paragraph (c) shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment was made.
- (d) Hours of Service shall be computed and credited in accordance with paragraphs (b) and (c) of Section 2530.200b-2 of the Department of Labor Regulations.

1.16 "Non-Bargained Employee"

A "Non-Bargained Employee" is a Participant whose participation is not covered by a Collective Bargaining Agreement.

1.17. "Normal Retirement Age"

Effective January 1, 1988, the term "Normal Retirement Age" means the later of:

- (a) age 65, or

- (b) the earlier of:
 - (i) the fifth anniversary of the Participant's Plan participation, disregarding participation before the effective date of this section, or
 - (ii) the tenth anniversary of the Participant's Plan participation.

Participation before an Extended Break in Service, and participation before a temporary Break in Service in the case of a former Participant who has not returned to Covered Employment and reestablished participation in accordance with Section 2.4 are disregarded in applying this Section.

1.18 "Other terms" are specifically defined as follows:

	<u>Term</u>	<u>Section(s)</u>
(a)	Regular Pension	3.2
(b)	Early Retirement Pension	3.5
(c)	Disability Pension	3.7
(d)	Pension Credits	4.2
(e)	Years of Vesting Service	4.3
(f)	Breaks in Service (One Year and Extended Breaks in Service)	4.4
(g)	Joint and Survivor Pension	5.1
(h)	Retired	6.6
(i)	Vested Status	4.5

- 1.19 "Participant" means an Active Participant, a Pensioner or a former Active Participant who has acquired a right to a pension under this Plan.
- 1.20 "Pension Fund" or "Fund" means the New York Hotel Trades Council and Hotel Association of New York City, Inc. AFL-CIO and its affiliated Unions.
- 1.21 "Pension Plan" or "Plan" means this document as adopted and amended by the Trustees.
- 1.22 "Pensioner" means a person to whom a pension under this Plan is being paid or to whom a pension would be paid but for administrative processing.
- 1.22A "Plan Administrator" means the Trustees (or any committee(s) or person(s) duly appointed by them) to administer the Plan and Trust.
- 1.23 "Related Plans" means the pension plans of any other pension funds which execute a reciprocal agreement with this Fund.

- 1.24 “Spouse” means the person to whom a Participant is married within the meaning of the laws of the jurisdiction in which the marriage was performed, provided that marriage is recognized as valid under the applicable laws of the United States. Unless otherwise specified herein, a couple is ‘married’ if their relationship is recognized as a marriage under the laws of the jurisdiction in which the marriage was entered into and the applicable laws of the United States. “Spouse” shall also include a former Spouse, if and to the extent provided in a qualified domestic relations order as defined in Code Section 414(p).

A “Qualified Spouse” for purposes of a Joint and Survivor Pension or Preretirement Surviving Spouse Pension as set forth in Article V, must be married to the Participant on the date of the Participant’s death and for the six-month period immediately preceding the Participant’s death.

- 1.25 “Totally Disabled”

An Employee shall be deemed “Totally Disabled” hereunder if he is eligible for and receiving a Social Security Disability Income Award as determined by the Social Security Administration. However, the requirement for receipt of a Social Security Disability Income Award shall be waived for individuals who become totally disabled on or after reaching age 64 years and seven months and qualify for a Social Security Old Age Pension as determined by the Social Security Administration.

- 1.26 “Trust Agreement” means the Agreement and Declaration of Trust establishing the New York Hotel Trades Council and Hotel Association of New York City, Inc. Pension Fund entered into as of December 17, 1952, and as thereafter amended.

- 1.27 “Trustees” means, collectively, the Board of Trustees of the Plan designated pursuant to and acting under the Trust Agreement, together with their alternates, successors and assigns designated in the manner provided therein.

- 1.28 “Union” means the New York Hotel and Motel Trades Council, AFL-CIO and its affiliated local Unions.

Gender. Except as the context may specifically require otherwise, use of the masculine gender shall be understood to include both masculine and feminine genders.

ARTICLE II - PARTICIPATION

2.1 PURPOSE

This Article contains definitions to meet certain requirements of ERISA. Once an Employee has become an Active Participant, the provisions of this Plan give him credit in accordance with the rules of the Plan for some or all of his service with an Employer before he became an Active Participant. Participants, however, are not permitted to make contributions to the Plan.

2.2 PARTICIPATION

An Employee other than a banquet waiter, checkroom or washroom attendant who is engaged in Covered Employment during the Contribution Period shall become an Active Participant in the Plan on the earliest January 1 or July 1 following completion of a 12-consecutive month period during which he performed at least 1,000 hours in such Covered Employment. Banquet waiters must be employed in 100 functions and checkroom and washroom attendants for at least 700 Hours in lieu of the 1,000 Hours of Service requirement for all other Employees. Once Covered Employment has begun, the participation requirement may also be completed with any other employment with an Employer continuous with the Employee's Covered Employment with that Employer.

2.3 TERMINATION OF PARTICIPATION

An Active Participant who incurs a One-Year Break in Service (defined in Section 4.4) shall cease to be an Active Participant as of the last day of the Calendar Year which constituted the One-Year Break in Service.

2.4 REINSTATEMENT OF PARTICIPATION

An Employee who has lost his status as an Active Participant in accordance with Section 2.3 shall again become an Active Participant by meeting the requirements of Section 2.2 in any Calendar Year which begins after the Calendar Year during which his participation terminated if he has incurred an Extended Break in Service.

ARTICLE III - PENSION ELIGIBILITY AND AMOUNTS

3.1 GENERAL

The accumulation and retention of Pension Credits and years of Vesting Service for eligibility are subject to the provisions of Article IV. The benefit amounts described in this Article are subject to reduction if a Joint and Survivor Pension (Article V) is payable. Entitlement of an eligible Participant to receive pension benefits is subject to his retirement and his application for benefits as provided in Article VI.

To be eligible for Regular, Early or Disability Retirement benefits an Employee must have retired on or after June 1, 1952 and must meet the following tests in addition to other requirements of the Plan:

- (a) If the Annuity Starting Date is before January 1, 1976, the Participant must have Pension Credits in at least 15 years, and
 - (i) Have been employed in Covered Employment from any date prior to December 31, 1952 to the date of retirement, or
 - (ii) Have earned Pension Credits in 1949, 1950, or 1951 and 1952, 1953 or 1954, and have been in Covered Employment from before September 1, 1954 to the date of retirement, or
 - (iii) Be employed in Covered Employment from the date the Employer first became obligated to contribute to the Fund to the date of retirement (but if retirement takes place after September 1, 1954, in no event shall such Employment have been for less than 24 months), or
 - (iv) Have been employed in Covered Employment with respect to which contributions were made in ten (10) Calendar Years uninterrupted by an Extended Break in Service and earned Pension Credits in each of said years.
- (b) If the Annuity Starting Date is on or after January 1, 1976, the Participant must have attained Vested Status, as defined in Section 4.5 of the Plan.

3.2 REGULAR PENSION ELIGIBILITY

A Participant is eligible to retire on a Regular Pension if he has attained Normal Retirement Age or if he meets the requirements of Section 3.1 and has attained age 65.

3.3 REGULAR PENSION - AMOUNT

The following table shows the monthly amount of the Regular Pension payable during the Pensioner's retired lifetime alone, for each of his Pension Credits to a maximum of 25.

Annuity Starting Date	Amount Per Pension Credit (up to 25)
Before June 1, 1968	\$2.20
From June 1, 1968 through May 31, 1973	2.40
From June 1, 1973 through September 30, 1974	3.20
From October 1, 1974 through November 30, 1978	4.00
From December 1, 1978 through May 31, 1979	4.60
From June 1, 1979 through May 31, 1980	5.40
From June 1, 1980 through May 31, 1981	6.00
From June 1, 1981 through May 31, 1982	7.20
From June 1, 1982 through May 31, 1983	8.60
From June 1, 1983 through May 31, 1985	10.00
From June 1, 1985 through May 31, 1986	10.50
From June 1, 1986 through May 31, 1987	11.00
From June 1, 1987 through May 31, 1988	11.50
From June 1, 1988 through July 31, 1990	12.00
From August 1, 1990 through July 31, 1991	14.00
From August 1, 1991 through July 31, 1992	16.00
From August 1, 1992 through July 31, 1993	18.00
From August 1, 1993 through July 31, 1994	20.00
From August 1, 1994 through January 31, 1995	22.00
From February 1, 1995 through June 30, 1995	24.00
From July 1, 1995 through June 30, 2003	30.00
From July 1, 2003 through June 30, 2004	34.00
From July 1, 2004 through June 30, 2005	38.00
On or after July 1, 2005	40.00

Provided, however, that the increased benefit rates are available only to Employees who are in Covered Employment at those effective dates, and have not yet separated from Covered Employment in accordance with the provisions of Section 3.4.

Effective October 1, 1976 and thereafter, however, all Regular Pensions shall be no less than the payment which would have been awarded based on the monthly amount per Pension Credit applicable to pensions effective from June 1, 1973 through September 2, 1974.

Effective July 1, 2001, Participants in Covered Employment on or after June 30, 2001 whose Annuity Starting Date occurs thereafter shall accrue an additional Regular Pension benefit of \$20 per Pension Credit for each Pension Credit in excess of 25, up to a maximum of 40 Pension Credits. This additional accrual does not apply to

Participants retiring on an Age and Service Pension pursuant to Section 3.10 of the Plan.

3.4 APPLICATION OF BENEFIT INCREASES

The pension to which a Participant is entitled shall be determined under terms of the Plan in effect when the Participant separates from Covered Employment.

A Participant shall be deemed to have separated from Covered Employment on the last day he completes an Hour of Service which is followed by a One-Year Break in Service except if he subsequently earns at least three Pension Credits.

However, notwithstanding the above, once such a Participant becomes a Pensioner, any redetermination of benefits shall be made pursuant to Section 3.13. Such redetermination will be the same whether or not the Pensioner left Covered Employment.

3.5 EARLY RETIREMENT PENSION - ELIGIBILITY

A Participant is eligible to retire on an Early Retirement Pension if he meets the requirements of Section 3.1 and has attained age 62.

3.6 EARLY RETIREMENT PENSION - AMOUNT

The monthly amount of the Early Retirement Pension payable during the Pensioner's retired lifetime equals the Regular Pension based on the Participant's Pension Credits reduced by 5/9 of 1% for each month by which the Annuity Starting Date precedes the Participant's Normal Retirement Age.

Notwithstanding the foregoing, effective July 1, 2000, Participants in Covered Employment on or after June 30, 2001 who subsequently retire after becoming eligible to receive an Early Retirement Pension and accruing more than 25 Pension Credits shall be entitled to receive the greater of the Early Retirement Pension, determined in accordance with this Section 3.6 or the Age and Service Pension, determined in accordance with Section 3.11.

3.7 DISABILITY PENSION - ELIGIBILITY

A Participant may retire on a Disability Pension if he:

- (a) becomes Totally Disabled between January 1, 1967 and June 1, 1973 and has earned Pension Credits in at least 15 Calendar Years, or
- (b) becomes Totally Disabled between June 1, 1973 and January 1, 1976 and has earned Pension Credits in at least 10 Calendar Years, or
- (c) becomes Totally Disabled on or after January 1, 1976, has ten (10) years of Vesting Service and has worked in Covered Employment for at least 500 Hours of Service in the combined period consisting of the Calendar Year in which he became Totally Disabled and the previous Calendar Year.

- (d) No Disability Pension payments shall be made, however, for any period during which the applicant receives disability benefits under the New York State Disability Benefits law or under a plan of benefits relating to employment in the Hotel Industry which qualified in lieu thereof.
- (e) A Participant who applies for a Disability Pension and, as of the date such application is filed, (1) has applied for but has not yet received a Social Security Disability Income Award as determined by the Social Security Administration and (2) is eligible to receive an Early Retirement Pension under Section 3.5, shall automatically have his Pension application processed as an Early Retirement Pension, pending receipt of such Social Security Disability Income Award as determined by the Social Security Administration. In the event such award is granted, the disabled Participant's Early Retirement Pension shall be converted to a Disability Pension as of the first day of the first month covered by such Award.

3.8 PROOF OF CONTINUING ELIGIBILITY FOR DISABILITY PENSION

A Disability Pensioner's continuing eligibility to receive payment of his Disability Pension is expressly conditioned upon his continuing entitlement to receive monthly Social Security Disability Income Award payments. The Trustees may, from time to time, require Disability Pensioners hereunder to furnish proof of their continued receipt of such payments. The eligibility of a Disability Pensioner for payment of his Disability Pension shall immediately terminate upon his failure, refusal or inability to furnish any proof that may be requested by the Trustees of his continuing entitlement to and receipt of monthly payments under a Social Security Disability Income Award as determined by the Social Security Administration.

3.9 DISABILITY PENSION - AMOUNT

The monthly amount of the Disability Pension payable during a Pensioner's retired lifetime, so long as he continues to be Totally Disabled and meets the requirements set forth in Section 3.8, equals the Regular Pension payable based on his actual Pension Credits.

For the Joint and Survivor Pension conversion factors to be used when the Participant is retiring with a Disability Pension, see Section 5.5.

3.10 AGE AND SERVICE PENSION – ELIGIBILITY

A Participant is eligible to retire on an Age and Service Pension on or after July 1, 1995 if he meets the following requirements:

- (a) attainment of age 55; and
- (b) at least 25 Pension Credits earned in Covered Employment; and
- (c) at least 1,000 Hours of Service in Covered Employment in the Calendar Year prior to the year of the Annuity Starting Date.

Notwithstanding the foregoing, a Participant who has attained age 55 and accumulated at least 23 Pension Credits may retire on a Age and Service Pension on or after April 1, 1997, provided that his Employer and the Union agree in writing that the Employer will make a lump sum contribution to the Fund equal to the contributions that would be due the Fund on behalf of the Participant under the terms of the Collective Bargaining Agreement for the period which, when added to his accumulated Pension Credits, would total 25 Pension Credits. Such one-time contribution by the Employer shall be based on the contribution rate required by the Collective Bargaining Agreement, based on the regular wages that would be paid to the Participant had he continued to be actively employed in Covered Employment. The period of time covered by the Employer's one-time contribution shall be considered a period of Covered Employment for all purposes under the Plan upon the Fund's receipt of such contribution from the Employer.

3.11 AGE AND SERVICE PENSION – AMOUNT

For Participants whose Annuity Starting Date is prior to July 1, 2003, the monthly amount of the Age and Service Pension is \$750.00. Effective July 1, 2003, for Participants in Covered Employment on or after June 30, 2003, whose Annuity Starting Date occurs thereafter, the Age and Service Pension will be in the following amounts:

<u>Annuity Starting Date</u>	<u>Amount of Pension</u>
From July, 2003 through June 30, 2004	\$800.00
From July 1, 2004 through June 30, 2005	\$850.00
On or after July 1, 2005	\$875.00

Notwithstanding the foregoing, effective July 1, 2001, Participants in Covered Employment on or after June 30, 2001 who subsequently retire after attaining age 62 and accruing more than 25 Pension Credits shall be entitled to receive the greater of the Age and Service Pension, determined in accordance with this Section 3.11 or the Early Retirement Pension, determined in accordance with Section 3.6.

3.12 NON-DUPLICATION OF PENSIONS

No Person shall be entitled to receive more than one type of pension under this Plan, as a retired Employee, at any time, except that a Pensioner may receive a pension as the Spouse of a deceased Pensioner pursuant to Section 5.3.

3.13 REDETERMINATION OF BENEFITS

If a Pensioner returns to Covered Employment and earns additional Pension Credits the benefit payable will be redetermined subject to the following provisions.

- (a) Additional Pension Credits, up to a total of 25, will be multiplied by the benefit rate or rates in effect for Active Participants during the period of additional Covered Employment.

For Participants in Covered Employment on or after June 30, 2001, whose Annuity Starting Date occurs thereafter, additional Pension Credits, up to a total of 40, will be multiplied by the benefit rate or rates in effect for Active Participants during the period of additional Covered Employment.

- (b) Where additional Pension Credits bring the total beyond 25, or 40, if applicable, the excess added credits will replace previously recognized Credits if eligible for a higher monthly benefit rate.
- (c) Additional benefits will be determined on the basis of the original type of retirement (except in the case of a recovered Disability Pensioner who subsequently earns at least one Pension Credit) and attained age as of the subsequent retirement date.
- (d) If the Pensioner is receiving benefits in the form of a Joint and Survivor Pension, the additional benefit payable is adjusted in accordance with the provisions of Section 5.5, based on the attained ages when the additional benefit becomes payable, but only if the Pensioner's Spouse is then alive.

3.14 SPECIAL DEATH BENEFIT

Effective December 1, 1978 a benefit of \$1,000 will be paid to a designated Beneficiary in the event of the death of a Participant who leaves the Hotel Industry after attaining age 62 and completing 20 years of service and is employed in Covered Employment on or after December 1, 1978. In no event, however, will this benefit be paid if, upon such death, a life insurance benefit is payable under the group life policies held by either the New York Hotel Trades Council and Hotel Association of New York City, Inc. Health Benefits Fund and/or the New York Hotel Trades Council and Affiliated Locals Staff Insurance Fund. For purposes of this section years of service will be determined without application of the Break-In-Service rule set forth in Section 4.4 and in accordance with the provisions of Section 4.2 applicable to the calculation of Pension Credits, except that the provisions in paragraph (c) requiring employment during a minimum number of weeks or months of a Calendar Year and the provisions of paragraph (f) will not be applicable.

ARTICLE IV - PENSION CREDITS AND YEARS OF VESTING SERVICE

4.1 GENERAL

Pension Credits and years of Vesting Service are determined in accordance with the provisions of Section 4.2 and 4.3 respectively, subject to the Break in Service Rules of Section 4.4.

4.2 PENSION CREDITS

(a) For Calendar Years Before 1938

An Employee shall get one Pension Credit for each Calendar Year in which he was employed in the Hotel Industry.

(b) For Calendar Years 1938 Through 1951

An Employee shall receive Pension Credits in accordance with the following table:

Employment During a Calendar Year	<u>Pension Credits</u>
In 3 or 4 calendar quarters	1
In 2 calendar quarters	3/4
In 1 calendar quarter	1/2

(c) For Calendar Years 1952 through 1975

- (i) All Employees, except banquet waiters, extra painters and checkroom and washroom attendants who become eligible for pension benefits on or after June 1, 1970 shall receive Pension Credits in accordance with the following table:

Covered Employment During at Least 35 Weeks of a Calendar Year <u>Totalling at Least</u>	<u>Pension Credits</u>
1,050 Hours of Service	1
700 but less than 1,050 hours	3/4
420 but less than 700 hours	1/2

- (ii) Extra painters shall receive Pension Credits on the basis of the number of hours worked as set forth in paragraph (i) above but shall not be required to work in any minimum number of weeks in a Calendar Year.

- (iii) Banquet waiters shall receive Pension Credits in accordance with the following table provided they are employed in one or more functions in each of at least six months during the Calendar Year:

<u>Covered Employment During a Calendar Year</u>	<u>Pension Credits</u>
In 210 or more functions	1
In at least 110 but less than 210 functions	3/4
In at least 50 but less than 110 functions	1/2

- (iv) Checkroom and washroom attendants who become eligible for pension benefits on or after June 1, 1970 shall receive Pension Credits for Calendar Years after 1968 in accordance with the following table:

<u>Covered Employment During at Least 20 Weeks of a Calendar Year Totalling at Least</u>	<u>Pension Credit</u>
700 Hours of Service	1
525 but less than 700 hours	3/4
350 but less than 525 hours	1/2

- (d) For Calendar Years 1976 and Thereafter

- (i) All Employees, other than banquet waiters and checkroom and washroom attendants, and member of the Hotel Trades Council Executive Board, shall receive Pension Credits on the basis of their Hours of Service in covered Employment in accordance with the following schedule:

<u>Hours of Service During a Calendar Year of at Least</u>	<u>Pension Credits</u>
1,000 hours	1
750 but less than 1,000 hours	3/4
500 but less than 750 hours	1/2

If, in a Calendar Year, a Participant completes a year of Vesting Service but less than 500 Hours of Service in Covered Employment, he shall be credited with a prorated portion of a full Pension Credit in the ratio of Hours of Service in Covered Employment to 2,000.

- (ii) Banquet waiters shall receive Pension Credit in accordance with the following table:

<u>Service in Covered Employment During a Calendar Year</u>	<u>Pension Credits</u>
In 100 or more functions	1
In at least 75 but less than 100 functions	3/4
In at least 50 but less than 75 functions	1/2

- (iii) Checkroom and washroom attendants shall receive Pension Credits in accordance with the following table:

**Service in Covered Employment
During a Calendar Year**

<u>Totalling at Least</u>	<u>Pension Credits</u>
700 Hours of Service	1
525 but less than 700 Hours of Service	3/4
350 but less than 525 Hours of Service	1/2

- (iv) A member of the Hotel Trades Council Executive Board shall receive one Pension Credit for any Calendar Year for which the member receives an IRS Form W-2, Wage and Tax Statement, from the Hotel Trades Council.

(e) Special Credits

An Employee not actually working in Covered Employment is to receive Pension Credits for absences due to the following reasons:

- (i) Service in the armed forces of the United States shall be credited to the extent required by law.

To protect his full rights, an Employee who left Covered Employment to enter such military service must apply for employment with his Employer within the time prescribed by law. Furthermore, he must call his claim for credit for military service to the attention of the Trustees and be prepared to supply the evidence that the Trustees will need in order to determine his rights.

Whether or not he is so entitled under law, if an Employee leaves Covered Employment to enter active service in the Armed Forces of the United States, the period of such military service, for up to five years, shall not be counted toward a Break in Service. Moreover, if he returns to Covered Employment (or makes himself available for Covered Employment) within 90 days after his separation from military service, the period of such military service shall, for up to five years, be credited toward years of Vesting Service. Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u).

- (ii) Disability due to sickness or accident for not more than 12 consecutive months for any one disability.
- (iii) A period of absence from work due to pregnancy of not more than 12 consecutive months for each pregnancy.

(f) Non-Duplication of Pension Credit

In no event, however, may an Employee receive more than one (1) Pension Credit for any Calendar Year.

(g) No Credit for Periods Covered by an Election Not to Participate. Notwithstanding any provision herein to the contrary, in no event may an Employee receive any Pension Credits for a period of employment with a Contributing Employer with respect to which the Employee has, in accordance with the terms of a Collective Bargaining Agreement, elected not to be a Participant in the Plan.

(h) Credit for Periods Covered by a Separation Agreement. Notwithstanding any provision herein to the contrary, effective July 1, 1998, a Participant who is eligible for the immediate payment of a Regular Pension and who has accumulated at least 22 Pension Credits but less than 25 Pension Credits may retire with the maximum monthly Pension benefit of \$750 (\$30.00 x 25 Pension Credits), provided that his Employer and the Union agree in writing that the Employer will make a lump sum contribution to the Fund equal to the contributions that would be due the Fund on behalf of the Participant under the terms of the Collective Bargaining Agreement for a period which, when added to his accumulated Pension Credits, would total 25 Pension Credits. Such one-time contribution by the Employer shall be based on the contribution rate required by the Collective Bargaining Agreement and based on the regular wages that would be paid to the Participant had he continued to be actively employed in Covered Employment. The period of time covered by the Employer's one-time contribution shall be considered a period of Covered Employment for all purposes under the Plan upon the Fund's receipt of such contribution from the Employer.

4.3 YEARS OF VESTING SERVICE

(a) General Rule

A Participant shall be credited with one year of Vesting Service for each Pension Credit earned, subject to the following conditions and adjustments.

(b) If a Participant works for a Contributing Employer in a job not covered by this Plan and such work immediately precedes or follows his employment with that Employer in Covered Employment, his hours of continuous non-covered employment during the Contribution Period and after December 31, 1975 shall be counted in determining Vesting Service, except that such periods of non-covered employment before 1971 shall not be counted unless three years of Vesting Service are subsequently earned. For purposes of the foregoing, work in a "job not covered by this Plan" includes a period of employment with respect to which an Employee has, in accordance with the terms of a Collective Bargaining Agreement, elected not to be a Participant in the Plan.

- (c) A Participant shall in any event be credited with a year of Vesting Service for the Calendar Year in which he became a Participant if he completes 9 consecutive months of Covered Employment. This shall apply upon initial participation, and, if there has been a Break in Service, upon subsequent re-entry into participation.
- (d) Vesting Service accumulated and maintained by an Employee under Related Plans shall be recognized under this Plan if the combined Vesting Service under all such Related Plans and this Plan satisfies the service requirement for a pension from this Plan and one or more of the Related Plans.
- (e) If a Participant worked for a Contributing Employer for 1,000 Hours of Service or more in a Calendar Year during the Employer's Contribution Period and the Participant did not earn a year of Vesting Service under Section 4.3(a), he will, nonetheless be credited with one year of Vesting Service.
- (f) If a Participant dies on or after January 1, 2007 while performing qualified military service (as defined in Code §414(u)(5)), the period of such Participant's qualified military service shall be treated as Vesting Service under the Plan. In addition, the survivors of such Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the Plan had the Participant resumed Covered Employment with the Employer, and then terminated Covered Employment with the Employer on account of death.

4.4 BREAKS IN SERVICE

- (a) General

If, before attaining Vested Status, a Participant has an Extended Break in Service, or a One-Year Break in Service after 1974, his participation, previously credited years of Vesting Service and Pension Credits are cancelled, subject to reinstatement by subsequent service in accordance with the provisions of this Section.

- (b) One-Year Break in Service

- (i) General Rule – A Participant has a One-Year Break in Service in any Calendar Year in which he fails to meet the requirements of Section 4.3, except that 1975 shall not be a break year where the failure to meet such requirements is attributable to a cessation of operations by the Participant's Employer of a department or entire facility in which the Participant was employed.

- (ii) Reinstatement of a One-Year Break in Service – The effects of a One-Year Break in Service after 1974 are eliminated if, before incurring an Extended Break in Service, the Employee subsequently earns a Year of Vesting Service in a Calendar Year. More specifically:
 - (A) Participation is restored in accordance with the provisions of Section 2.3; and
 - (B) Previously earned years of Vesting Service and Pension Credits are restored.
- (iii) Solely for the purpose of determining whether a One-Year Break in Service has occurred, the absence of a Participant from Service by reason of (a) her pregnancy, (b) birth of a child of the Participant, (c) placement of a child with the Participant in connection with his or her adoption of the child, (d) care for such child for a period beginning immediately after such birth or placement shall be credited as Service to the extent that Service would have been credited but for such absence to a maximum of:
 - (A) 350 Hours of Service for checkroom and washroom attendants;
 - (B) 50 functions for banquet waiters;
 - (C) 500 Hours of Service for all other Employees;

for each such pregnancy, childbirth, or placement. The Hours of Service so credited shall be applied to the Calendar Year in which such absence begins, if doing so will prevent the Participant from incurring a One-Year Break in Service in that Calendar Year, otherwise they shall be applied to the next Calendar Year. The Trustees may require, as a condition for granting such credit, that the Participant establish in a timely fashion and to the satisfaction of the Trustees that the Participant is entitled to such credit. This subparagraph (C) shall apply only to absences that begin after December 31, 1984.

Solely for the purpose of determining whether a Participant has incurred a One-Year Break in Service, any leave of absence granted by an Employer, up to 12 weeks, that qualifies under the Family and Medical Leave Act (FMLA) shall not be counted as a Break in Service for the purpose of determining eligibility and vesting.

- (iv) Nothing contained in the above paragraphs (ii) or (iii), however, shall change the effect of an Extended Break in Service before 1974.

(v) Extended Break in Service

- (A) Prior to 1952 – Since credited years of employment prior to January 1, 1952 need not be consecutive but shall be cumulative, an unlimited break in employment is allowed without cancellation of Pension Credits or years of Vesting Service.
- (B) From 1952 through 1975 – An Extended Break in Service will occur if an Employee fails to earn Pension Credits in:
 - (I) 3 or more Calendar Years for reasons other than involuntary layoff or illness.
 - (II) 4 or more consecutive Calendar Years regardless of cause, or
 - (III) 5 or more years regardless of cause.
- (C)
 - (I) For 1976 and thereafter – A Participant incurs an Extended Break in Service after 1975 if he has consecutive One-Year Breaks in Service, including at least one after 1974, which equal or exceed the number of years of Vesting Service with which he had been credited. In any event, however, a Participant shall not incur an Extended Break in Service after December 31, 1984 until his consecutive One –Year Breaks in Service equal at least five. Participants who have at least one Hour of Service on or after January 1, 1999 and Non-Bargained Participants who have at least one Hour of Service after December 31, 1988 will not incur an Extended Break in Service once five years of Vesting Service have been credited.
 - (II) For those individuals who experience an Extended Break in Service prior to 1975 and who have not subsequently reinstated the lost service credit, their pension shall be based upon one half of the years of service credit earned.

The rate per pension credit will be that in effect at the time the individual last worked. This is effective the later of the attainment of age 62 or July 1, 1980.
- (D) Reinstatement After an Extended Break in Service – The effects of an Extended Break in Service are eliminated if the Employee subsequently earns Pension Credits in ten (10) consecutive Calendar Years.

- (E) Special Break in Service Rules for Participants Who Ceased to be Active Participants prior to January 1, 1976 – Notwithstanding anything contained in the Plan to the contrary, solely for purposes of determining whether an Extended Break in Service has occurred, and not for the purpose of determining the amount of a Participant's benefit:
 - (I) If a Participant has earned at least 10, but not more than 20 Pension Credits, such Participant shall be deemed to have earned one Pension Credit in each of as many as four Calendar Years preceding January 1, 1976 in which the Participant otherwise failed to earn Pension Credit;
 - (II) If a Participant has earned at least 20, but not more than 25 Pension Credits, such Participant shall be deemed to have earned one Pension Credit in each of as many as five Calendar Years preceding January 1, 1976 in which the Participant otherwise failed to earn Pension Credit.

4.5 VESTED STATUS AND NONFORFEITABILITY

- (a) Attainment of Vested Status
 - (1) Between January 1, 1970 and January 1, 1976, a Participant attained Vested Status if he met all of the then applicable requirements for a pension, other than the age requirement and;
 - (A) Had attained age 55 or older, or
 - (B) On or after June 1, 1973, had 25 Pension Credits.
 - (2) On or after June 1, 1976, a Participant attains Vested Status when he has 10 years of Vesting Service or (5 years of Vesting Service for Participants who have at least one Hour of Service on or after January 1, 1999 or 5 years of Vesting Service for Non-Bargained Participants who have at least one Hour of Service after December 31, 1988, excluding any years not taken into account because of a Break in Service).
- (b) ERISA provides certain limitations on any plan amendment that may change the plan's vesting schedule. In accordance with those legal limitations, no amendment of this Plan may take away a Participant's Vested Status if he has already earned it at the time of the amendment. Also, an amendment may not change the schedule on the basis of which a Participant acquires Vested Status, unless each Participant with one Hour of Service after December 31, 1988 who has credit for at least three years of Vesting Service at the time the amendment is adopted or effective (whichever is later) is given the option of

achieving Vested Status on the basis of the pre-amendment schedule. That option may be exercised within 60 days after the latest of the following dates:

- (i) when the amendment was adopted,
 - (ii) when the amendment became effective, or
 - (iii) when the Participant was given written notice of the amendment.
- (c) For purposes of applying the provisions of this Section and of determining when a Participant has acquired nonforfeitable rights, as defined under the law, the vesting schedule of this Plan consists of 100 percent nonforfeitability for a Participant who has completed at least 10 years of Vesting Service (5 years of Vesting Service for Participants who have at least one Hour of Service on or after January 1, 1999 or 5 years of Vesting Service for Non-Bargained Participants who have at least one Hour of Service after December 31, 1988). While this Plan may provide Early Retirement and Disability Pensions on the basis of requirements that may be met by some Participants who have not completed 10 Years of Vesting Service (5 years of Vesting Service for Participants who have at least one Hour of Service on or after January 1, 1999 or 5 Years of Vesting Service for Non-Bargained Participants who have at least one Hour of Service on or after December 31, 1988), such eligibility rules represent provisions of the Plan above and beyond its vesting schedule.

(d) Nonforfeitability

The benefits to which a Participant is entitled under this Plan upon his attainment of Normal Retirement Age are nonforfeitable, subject to Section 6.2, with respect to willful misrepresentation. Anything to the contrary notwithstanding, the Trustees shall have the right to suspend benefits in accordance with the provisions of Section 6.7. The Trustees may make retroactive amendments within the limitations of Section 411(a)(3)(C) of the Code and Section 302(c)(8) of ERISA. Participants and Beneficiaries shall be entitled to any of the other benefits of this Plan subject to all of the applicable terms and conditions.

ARTICLE V – FORMS OF PAYMENT

5.1 GENERAL

- (a) The normal form of payment for a Participant who is not married is a single-life annuity.
- (b) The normal form of payment for a Participant who is married is a 50% Joint and Survivor Pension. A 50% Joint and Survivor Pension provides a lifetime benefit for the Participant and a lifetime benefit for his or her surviving Spouse, starting with the month of the Participant's death. The monthly amount to be paid to the surviving Spouse is one-half the monthly amount paid to the Participant. When a 50% Joint and Survivor Pension is in effect, the monthly amount of the Participant's pension is reduced from the full amount otherwise payable in accordance with the provisions of Section 5.5.
- (c) Effective January 1, 2008, a Participant and Spouse who have rejected the 50% Joint and Survivor Pension in accordance with this Article V may elect a Qualified Optional Joint and Survivor Pension. A Qualified Optional Joint and Survivor Pension provides a lifetime benefit for the Participant and a lifetime benefit for his or her surviving Spouse, starting with the month of the Participant's death. The monthly amount to be paid to the surviving Spouse is 75% of the monthly amount paid to the Participant. When a Qualified Optional Joint and Survivor Pension is in effect, the monthly amount of the Participant's pension is reduced from the full amount otherwise payable in accordance with the provisions of Section 5.5. The 75% Qualified Optional Joint and Survivor Pension constitutes a qualified optional survivor annuity within the meaning of Section 417(g) of the Code.

5.2 EFFECTIVE DATE AND CONDITIONS

The provisions of this Article do not apply to a pension, the Annuity Starting Date of which is before 1976, or if the Employee did not earn Pension Credit after January 1, 1975, or the Spouse is not a Qualified Spouse as defined below:

- (a) If a married Participant with a vested right to a pension under the Plan dies after August 22, 1984 but before his pension payments have started, a Preretirement Surviving Spouse Pension shall be payable as described in this Article.
- (b) To be eligible to receive the survivor's pension in accordance with a Joint and Survivor Pension, the Spouse must be a "Qualified Spouse." For purposes of this section, effective August 1, 2007, a Spouse is a "Qualified Spouse" if the Participant and Spouse were married on the date of the Participant's death and for the six (6) month period immediately preceding the Participant's death.

- (c) Notwithstanding any provisions to the contrary in paragraph (a) or (b) above, for the purposes of this Article V a person to whom a Participant was married on the date his pension payments started and for at least six (6) months immediately before that, but who is divorced from the Participant after that date, shall be considered his Qualified Spouse on the date of his death (if she is living at that time) unless a Qualified Domestic Relations Order provides otherwise.

5.3 UPON RETIREMENT

- (a) The Trustees shall furnish to the Participant by first class mail, postage prepaid or personal delivery no less than 30 days and not more than 180 days (90 days for Plan Years beginning before January 1, 2007) before the date as of which the first Pension payment is to commence (and consistent with such regulations as the Secretary of Treasury may prescribe) a written explanation of (i) the terms and conditions of the Joint and Survivor Pension, (ii) the Participant's right to make, and the effect of, an election to waive the Joint and Survivor Pension, (iii) the rights of the Participant's Spouse referred to above, and (iv) the right to make, and the effect of, a revocation of any election not to take a Joint and Survivor Pension. A Participant may waive this 30-day period. Upon retirement, pensions are payable in the form of a Joint and Survivor Pension unless the Participant, with the consent of his Spouse, has filed with the Trustees in writing a timely rejection of that form of Pension, subject to all the conditions of this section.
- (b) A Participant and his Spouse may reject the Joint and Survivor Pension (or revoke a previous rejection) within the time period described in Section 5.5(c)(iii), except that any otherwise proper election made by June 30, 1976, shall be deemed timely. A Participant and Spouse who have rejected the Joint and Survivor Pension may, on or after January 1, 2008, elect a Qualified Optional Joint and Survivor Pension at any time during the election period described in Section 5.3(a) above.
- (c) If a Participant's Disability Pension is effective before January 1, 1978 and before he attains age 55, the Joint and Survivor Pension shall provide payments to the surviving Spouse, if any, starting with the later of:
 - (i) the month in which the Participant died, or
 - (ii) the month following the month in which the Participant would have attained age 55 had he lived.

5.4 PRERETIREMENT SURVIVING SPOUSE PENSION

- (a) If a Participant who has a Qualified Spouse (as defined in Section 5.2(b)) dies before his pension payments start but at a time when he had earned a vested right to a pension, a Preretirement Surviving Spouse Pension shall be paid to his surviving Spouse. A Preretirement Surviving Spouse Pension is a monthly annuity for the life of the surviving Spouse equal to the amount the Spouse would have received if the Participant had retired with a 50% Joint and Survivor Pension and died the next day.
- (b) For purposes of this Section 5.4, if a Participant and his Spouse are divorced after being married for at least one year, the Spouse or former Spouse shall be treated as a Qualified Spouse if and to the extent required under a Qualified Domestic Relations Order.
- (c) If the Participant described in (a) above died on or after age 62, the surviving Qualified Spouse shall be entitled to a Preretirement Surviving Spouse Pension payable immediately. Notwithstanding the foregoing, if the Participant and his or her surviving spouse timely elected to receive a Qualified Optional Joint and Survivor Pension, then the Spouse shall be paid a survivor's annuity as if the Participant had retired on a 75% Qualified Joint and Survivor Pension on the day before his or her death.
- (d) If the Participant described in (a) above died before the earliest age at which he would have been eligible for a pension, the surviving Qualified Spouse shall be entitled to a Preretirement Surviving Spouse pension determined as if the Participant had separated from service under the Plan on the earlier of the date he last worked in Covered Employment or the date of his death, had survived to the earliest age at which he would have been eligible for a pension retired at that age with an immediate Joint and Survivor Pension and died the next day. In other words, the Preretirement Surviving Spouse Pension begins when the Participant would have attained the earliest retirement age for which he would have qualified and the amount is 50% of what the Participant's pension amount would have been, after adjustment, if any, for the early retirement and for the Joint and Survivor Pension form. The amount shall be determined under the terms of the Plan in effect when the Participant last worked in Covered Employment, unless otherwise expressly specified.
- (e) The Qualified Spouse may elect in writing, filed with the Trustees on whatever form they may prescribe, to defer commencement of the Preretirement Surviving Spouse Pension until a specified date that is no later than the first of the month on or immediately before the date on which the Participant would have reached age 70-1/2. The amount payable at that time shall be determined as described in paragraphs (c) and (d) of this Section, except that the benefit shall be paid in accordance with the terms of the Plan in effect when the Active Participant last worked in Covered Employment (unless otherwise specified) as if the Participant had retired with a Joint and Survivor Pension on the day before the Surviving Spouse's payments are

scheduled to start, and died the next day. This will take into account any actuarial adjustments to the Participant's accrued benefit that would have applied as of that date.

- (f) The Qualified Spouse may also elect to have payment made immediately in a single lump sum payment that is of equal Actuarial Present Value to the benefit payable in accordance with Section 5.4(d).

5.5 ADJUSTMENT OF PENSION AMOUNT

- (a) When a Joint and Survivor Pension becomes effective, the amount of the Participant's monthly pension shall be reduced in accordance with a formula or formulas adopted by the Trustees, based on the principles of overall actuarial equivalence and equitable adjustment for the cost of such annuities. The reductions shall be as follows:

- (i) 50% Joint and Survivor Pension

- (A) If the Participant's pension is not a Disability Pension - the percentage of his pension determined under Article III which is payable shall be 90% plus 0.4% for each full year that the Spouse is older than the Participant and minus 0.4% for each full year that the Spouse is younger than the Participant;

- (B) If the Participant's pension is a Disability Pension - the percentage shall of his pension determined under Article III which is payable be 78% plus 0.4% for each full year that the Spouse is older than the Participant and minus 0.4% for each full year that the Spouse is younger than the Participant;

- (i) 75% Joint and Survivor Pension

- (A) If the Participant's pension is not a Disability Pension - the percentage of his pension determined under Article III which is payable shall be 85.5% plus 0.5% for each full year that the Spouse is older than the Participant and minus 0.5% for each full year that the Spouse is younger than the Participant;

- (B) If the Participant's pension is a Disability Pension - the percentage shall of his pension determined under Article III which is payable be 70.8% plus 0.4% for each full year that the Spouse is older than the Participant and minus 0.4% for each full year that the Spouse is younger than the Participant;

- (iii) In no event, shall the percentage adjustment of the Participant's pension determined under Article III which is payable hereunder be greater than 99%.

- (b) A retiring Participant shall be advised by the Trustees of the impact on his monthly benefit of the Joint and Survivor Pension adjustment and, for Plan Years beginning on and after January 1, 2008, the adjustment to be made for the Qualified Optional Joint and Survivor Pension.
- (c) The Joint and Survivor Pension may be waived in favor of a single life pension only as follows:
 - (i) The Participant files the waiver in writing in such form as the Trustees may prescribe, and the Participant's Spouse acknowledges the effect of the waiver and consents to it in writing, witnessed by a notary public.
 - (ii) The Participant establishes to the satisfaction of the Trustees that:
 - (A) he or she is not married;
 - (B) the Spouse whose consent would be required cannot be located; or
 - (C) consent of the Spouse cannot be obtained because of extenuating circumstances, as provided in IRS regulations;
 - (D) the Participant and Spouse are legally separated, unless a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code, provides otherwise, or
 - (E) the Participant has been abandoned by the Spouse as confirmed by court order unless a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code provides otherwise,.

If the Spouse is legally incompetent, consent may be given by his or her legal guardian, including the Participant if authorized to act as the Spouse's legal guardian.

- (iii) To be timely the request for a waiver and any required consent must be filed with the Trustees not more than 180 days (90 days for Plan years beginning before January 1, 2007) after the date that the Participant was notified by the Trustees of the effect of the waiver. At any time during the above-mentioned period, the Participant may file a new waiver or revoke a previous waiver at any time during such period. Notwithstanding the preceding sentence, a Participant may revoke a previous filed waiver of the Joint and Survivor Pension at least until the Annuity Starting Date, or, if later, at any time prior to the expiration of the seven day period that

begins on the day after the explanation of the Joint and Survivor Pension is provided to the Participant.

5.6 INACTIVE VESTED PARTICIPANTS

- (a) A Participant who (1) had at least one Hour of Service for an Employer in the first Calendar Year after 1975, (2) has a vested right to a pension and credit for at least ten years of Vesting Service, (3) was not receiving pension payments under the Plan as of August 23, 1984, and (4) is not otherwise entitled to, or eligible to elect, protection for a surviving Spouse through a "qualified joint and survivor annuity" under this Article as amended on account of the Retirement Equity Act of 1984, shall be entitled to elect coverage for the Preretirement Surviving Spouse Pension under Section 5.4 by written request filed with the Trustees before his death or, if earlier, the date his pension payments start.
- (b) The benefit schedule applied under this subsection shall be that in effect as of the beginning of the Calendar Year immediately after 1975 or, if later, the beginning of the Calendar Year immediately after the Participant last completed a Year of Service, unless otherwise expressly specified.

5.7 ADDITIONAL CONDITIONS

- (a) The Trustees shall be entitled to rely on written representations, consents, and revocations submitted by Participants, Spouses or other parties in making determinations under this Article and, unless such reliance is arbitrary or capricious, the Trustees' determinations shall be final and binding, and shall discharge the Fund and the Trustees from liability to the extent of the payments made. This means that, unless the Plan is administered in a manner determined to be inconsistent with the fiduciary standards of ERISA, neither the Trustees nor, the Fund shall be liable under this Article for duplicate benefits with respect to the same Participant, or for surviving Spouse benefits in excess of the Actuarial Present Value of the benefits described in Article V, determined as of the Annuity Starting Date or, if earlier, the date of the Participant's death.
- (b) An election or rejection of a form of payment may not be made or altered after the Annuity Starting Date nor may the Beneficiary for the benefits under this Section be changed thereafter.
- (c) The monthly amount of the Joint and Survivor Pension shall not be increased if, after the Annuity Starting Date, the Spouse is divorced from the Pensioner or if the Spouse predeceases the Pensioner.
- (d) Any rights of a former Spouse or other alternate payee under a Qualified Domestic Relations Order, with respect to a Participant's pension, shall take precedence over those of any later Spouse of the Participant under this Article.

- (e) If a Pensioner returns to Covered Employment and earns additional pension benefits, no separate election (or rejection) of the Joint and Survivor Pension is available with respect to the additional benefits if the Participant's prior Annuity Starting Date was on or after his Normal Retirement Age. If the Pensioner's prior Annuity Starting Date was before his Normal Retirement Age, he shall be entitled to a new election as to the Joint and Survivor Pension option or any other optional form with respect to the additional accruals he earned upon return to Covered Employment. Notwithstanding the foregoing, if the Spouse has died prior to the date the additional benefits become payable, no adjustment shall be made for the Joint and Survivor Pension form even if earlier elected.
- (f) Notwithstanding any other provision of the Plan, all survivor benefits shall comply with the limits of Code §401(a)(9) and the incidental benefit rule and regulations prescribed under them, including proposed Treas. Reg. §§1.401(a)(9)-1 and 1.401(a)(9)-2.

ARTICLE VI - APPLICATIONS, BENEFIT PAYMENTS AND RETIREMENT

6.1 APPLICATIONS

A pension must be applied for in writing filed with the Trustees in advance of the Annuity Starting Date except as specifically provided in Section 6.5.

6.2 INFORMATION AND PROOF

Every Employee, Participant, Spouse or Beneficiary shall furnish, at the request of the Trustees, any information or proof reasonably required for the administration of the Plan to determine his benefit rights or any other matter that the Trustees may legitimately have before them. If the claimant makes a willfully false statement material to his claim or furnishes fraudulent information or proof material to his claim, benefits not Vested under this Plan in accordance with Section 4.5 may be denied, suspended or discontinued. The Trustees shall have the right to recover including, without limitation, through offset of future benefit payments any benefit payments made in reliance on any false or fraudulent statements, information or proof submitted by an Employee, Participant, Spouse or Beneficiary and may require the payment of interest at the legal rate then prevailing on amounts recoverable and may also seek the payment of any attorney's fees incurred.

6.3 ACTION OF TRUSTEES AND TRUSTEES' RELIANCE

The Trustees shall be entitled to rely on written representations, consents, and revocations submitted by Participants, Spouses and all other parties in making determinations under this Plan and, unless such reliance is arbitrary or capricious, the Trustees' determinations shall be final and binding, and shall discharge the Fund and the Trustees from liability to the extent of the payments made.

6.4 DENIAL OF CLAIM, RIGHT OF APPEAL AND DETERMINATION OF DISPUTES

- (a) No Employee, Participant, Beneficiary or other person or entity shall have any right or claim to benefits under the Plan, or any right or claim to payment from the Plan, except as specified herein. Any dispute as to eligibility, type, amount or duration of benefits or any right or claim to payments from the Plan shall be resolved by the Trustees under and pursuant to the provisions of the Plan, and its decision of the dispute, right, or claim shall be final and binding on all parties thereto, subject only to such judicial review in accordance with applicable law and only after applicable administrative remedies have been exhausted.
- (b) Any person or entity whose application for benefits under the Plan has been denied, in whole or in part, or whose claim to benefits or whose claim against the Fund has otherwise been denied, shall be notified in writing of such denial within 90 days after receipt of such application or claim. An extension of time, not exceeding 90 days, may be required under special circumstances. If such extension is required, notice of such extension, indicating what special

circumstances exist and the date by which a final decision is expected to be rendered, shall be furnished to the claimant or applicant prior to the expiration of the initial 90-day period.

- (c) The notice of denial shall set forth, in a manner reasonably expected to be understood by the claimant or applicant, the following:
 - (1) the specific reason for the denial;
 - (2) specific reference to the pertinent Plan provisions on which the denial is based,
 - (3) a description of any additional material or information necessary for the claimant or applicant to perfect the claim and an explanation as to why such material and information is necessary; and
 - (4) appropriate information as to the procedures to be followed if the claimant wishes to submit the claim for further review, including a statement of the claimant's right to bring a civil action under section 502(a) of the Act following an adverse benefit determination on review.
- (d) Any such person or entity may petition the Trustees for review of the denial. A petition for review shall be in writing, shall state, in clear and concise terms, the reason or reasons for disputing the denial, shall be accompanied by any pertinent or relevant document or material not already furnished to the Plan and shall be filed by the petitioner or the petitioner's duly authorized representative with the Trustees within 60 days after the petitioner receives notice of the initial denial.
- (e) On a showing of good cause, the Trustees shall permit the petition to be amended or supplemented and shall grant a hearing on the petition before a panel consisting of at least one Employer Trustee and One Employee Trustee. The panel shall receive and hear any evidence or argument that cannot be presented satisfactorily by correspondence. The failure to file a petition within such 60-day period or the failure to appear and participate in any timely scheduled hearing, shall constitute a waiver of the claimant's right to a review of the denial. However, the Trustees may relieve a claimant of any such waiver for good cause shown, provided application for such relief is made within one year after the date shown on the notice of denial.
- (f) The Trustees shall make its decision on the review of the denial no later than the meeting of the Trustees that immediately follows the Plan's receipt of a petition for review. However, if such petition is received within 30 days before the date of such meeting, the decision may be made no later than the date of the second meeting following the Plan's receipt of the petition for review. If special circumstances require a further extension of time, a benefit determination shall be made at the following meeting, but in no case later than the third meeting of the Trustees following the Plan's receipt of the petition for

review. If such extension of time is required, the Trustees, before the extension commences, shall notify the petitioner in writing of the extension, describing the special circumstances and the date as of which the benefit determination will be made. The petitioner shall be notified of the decision as soon as possible, but not later than five days after the decision is made. The notice of decision shall include specific reasons for the decision, written in a manner designed to be understood by the petitioner, and with specific references to the particular Plan provisions on which the decision is based.

- (g) The denial of an application or claim as to which the right of review has been waived, as well as any decision of the Trustees with respect to a petition for review, shall be final and binding on all parties, including the applicant, claimant, or petitioner of any person or entity claiming under the application, claim, or petition, subject only to judicial review as provided in subsection (a). The provisions of this Section shall apply to and include any and every claim for benefits from the Plan and any claim or right asserted under or against the Plan, regardless of the basis asserted for the claim or right, regardless of when the act or omission on which the claim or right is based occurred and regardless of whether or not the claimant or applicant is a "Participant" or "Beneficiary" of the Plan within the meaning of those terms as defined in ERISA.
- (h) A claimant must exhaust the claim and appeal procedure provided in this Section before he or she may bring a legal action seeking payment of benefits under the Plan. Under no circumstances may any legal action be commenced or maintained against the Plan, the Fund, the Trustees, or any Employee or representative of the Plan or Fund more than one hundred and eighty (180) days after the Trustees' decision on appeal.

6.5 BENEFIT PAYMENTS GENERALLY

- (a) Commencement of Benefits. Effective January 1, 1976, unless a Participant elects otherwise, the payment of retirement benefits for which the Participant satisfies the eligibility requirements shall not begin later than the 60th day after the later of the close of the Calendar Year in which:
 - (i) The Participant attains Normal Retirement Age, or
 - (ii) The Participant terminates his Covered Employment and is Retired as that term is defined in Section 6.6.
- (b) A Participant who is eligible to receive benefits under this Plan and makes application in accordance with its rules shall be entitled upon retirement to receive monthly benefits for the remainder of his retired lifetime, subject to the provisions of the Plan. Pension benefits shall be payable commencing on the Participant's Annuity Starting Date.

- (c) **Required Beginning Date.** A Participant may, however, elect in writing filed with the Trustees to receive benefits first payable for a later month, provided that no such election may postpone commencement of benefits to a date later than his Required Beginning Date, subject to the provisions of Article XI. His Required Beginning Date is the April 1 following the Calendar Year in which the Participant reached age 70-1/2, provided that for a Participant who reaches 70-1/2 before 1988 (other than a 5% owner of an Employer as defined in Section 416 of the Code) the Required Beginning Date is April 1st of the Calendar Year in which the Participant ceases work.
- (d) Pension payments shall not be made for the month in which the death of the Pensioner occurs except as provided in accordance with a Joint and Survivor Pension.
- (e) **Small Amounts.** Notwithstanding any other provisions of this Plan, if the Actuarial Present Value (as defined below) of a benefit payable under the Plan is \$5,000 (\$3,500, effective for distributions made before January 1, 1998) or less as of the date payment would start, the Trustees shall pay it in a single sum equal to that value.

For purposes of this subsection (e), the Actuarial Present Value shall be determined on the basis of the applicable mortality table and applicable interest rate as defined in section 1.2 of this Plan. However, in no event shall the actuarial value be less than that determined based on an interest rate of 7% and the 1971 Group Annuity Mortality Table as described in Section 1.2(c).

This subsection (e) applies to distributions made before March 28, 2005. After such date, the Trustees shall only pay small benefits in a single sum if the Participant affirmatively elects to receive it.

- (f) **Delayed Retirement.** Effective January 1, 2004, if the Annuity Starting Date is after the Participant's Normal Retirement Age for reasons other than "administrative delay," the monthly benefit shall be the greater of:
 - (A) the benefit payable at his Annuity Starting Date in accordance with Section 3.3 based on all Pension Credit earned; or
 - (B) the accrued benefit at Normal Retirement Age actuarially increased for each complete calendar month between Normal Retirement Age and the Annuity Starting Date for which benefits were not suspended in accordance with Section 6.7(b).

The actuarial increase described in subparagraph (B) shall be 1% per month for the first 60 months after Normal Retirement Age and 1.5% per month for each month thereafter.

- (g) Benefits Earned after Normal Retirement Age. Any additional benefits earned by a Participant in Covered Employment after Normal Retirement Age will be determined at the end of each Calendar Year and will be payable as of February 1 following the end of the Calendar Year in which it accrued, provided payment of benefits at that time is not suspended pursuant to Section 6.7 or postponed due to the Participant's continued employment.

6.6 RETIRED STATUS

To be considered retired, a Participant may not be employed in the Hotel Industry or under any Related Plan. At ages prior to Normal Retirement Age, a Participant will not be considered Retired if he has earnings from any employment or self-employment which disqualify him for Social Security, Old Age or Disability Benefits. The Trustees, however, shall have the right to adopt a uniform rule applicable to all Pensioners waiving these prohibitions.

6.7 SUSPENSION OF BENEFITS

(a) Before Normal Retirement Age

The monthly benefit shall be suspended for any month in which the Participant is employed in Disqualifying Employment before he has attained Normal Retirement Age. "Disqualifying Employment", for the period before Normal Retirement Age, is any employment covered by any Collective Bargaining Agreement whether or not such work is performed by a Participant who works for a Union or non-Union employer.

The Trustees shall have the right to adopt a uniform rule applicable to all Participants waiving this prohibition under specified circumstances.

(b) After Normal Retirement Age

- (i) Once the Participant has attained Normal Retirement Age, his monthly benefit shall be suspended for any month in which he worked or was paid for at least 40 hours in Disqualifying Employment. After attainment of Normal Retirement Age, "Disqualifying Employment" means employment or self-employment that is (a) in the Hotel Industry, or under a Related Plan, (b) in the geographic area covered by the Plan when the Participant's pension payments began, and (c) in any occupation in which the Participant worked under the Plan at any time or any occupation covered by the Plan at the time the Participant's pension payments began. However, if a Participant worked in Covered Employment only in a skilled trade or craft, employment or self-employment shall be Disqualifying only if it is in work in the Hotel Industry that involves the skill or skills of that trade or craft directly or, as in the case of supervisory work, indirectly. However, in any event, any work for at least 40 hours in a month for which contributions are required to be made to the Plan shall be Disqualifying.

No benefits will be suspended under this Article for months starting on and after a Participant's Required Beginning Date, as defined in Section 6.5(c).

- (ii) The geographic area covered by the Plan is the City of New York and any other area covered by the Plan when the Participant's pension payments began or, but for suspension under this Article, would have begun.
- (iii) If a retired Participant reenters Covered Employment to an extent sufficient to cause a suspension of benefits, and his pension payments are subsequently resumed, the industry and geographic area covered by the Plan "when the Participant's pension payments began" shall be the industry and geographic area covered by the Plan when his pension payments resumed.
- (iv) Paid non-work time shall be counted toward the measure of 40 hours if paid for vacation, holiday, illness or other incapacity, layoff, jury duty, or other leave of absence. A Participant shall be considered as paid for a day if he is paid for at least one hour of work or non-work time, as described in the preceding sentence, performed on or attributed to that day.

(c) Definition of Suspension

"Suspension of benefits" for a month means non-entitlement to benefits for the month. If benefits were paid for a month for which benefits were later determined to be suspended, the overpayment shall be recoverable through deductions from future pension payments, pursuant to Section 6.7(g), and in accordance with Section 6.3.

(d) Notices

- (i) Upon commencement of pension payments, the Trustees shall notify the Pensioner of the Fund rules governing suspension of benefits, including the identity of the industries and the geographic area covered by the Fund. If benefits have been suspended and payment resumed, new notification shall, upon resumption, be given to the Participant, if there has been any material change in the suspension rules or the identity of the industries or geographic area covered by the Fund.
- (ii) A Pensioner shall notify the Fund in writing within 30 days after starting any work of a type that is or may be Disqualifying under the provisions of the Plan and without regard to the number of hours of such work (that is, whether or not less than 40 hours in a month). If a Pensioner has worked in Disqualifying Employment in any month and has failed to give timely notice to the Plan of such employment, the Trustees shall presume that he worked for at least 40 hours in such month and any subsequent month before the Participant gives notice

that he has ceased Disqualifying Employment. The Participant shall have the right to overcome such presumption by establishing that his work was not in fact an appropriate basis, under the Plan, for suspension of his benefits.

The Trustees shall inform all retirees at least once every 12 months of the re-employment notification requirements and the presumptions set forth in this paragraph.

- (iii) A Pensioner whose pension has been suspended shall notify the Fund when Disqualifying Employment has ended. The Trustees shall have the right to hold back benefit payments until such notice is filed with the Plan.
- (iv) A Participant may ask the Plan whether a particular employment will be disqualifying. The Plan shall provide the Participant with its determination.
- (v) The Plan shall inform a Participant of any suspension of his benefits by notice given by personal delivery or first class mail during the first calendar month in which his benefits are withheld. Such notice shall include a description of the specific reasons for the suspension, copy of the relevant provisions of the Plan, reference to the applicable regulation of the U.S. Department of Labor, and a statement of the procedure for securing a review of the suspension. In addition, the notice shall describe the procedure for the Participant to notify the Plan when his Disqualifying Employment ends. If the Plan intends to recover prior overpayments by offset under Section 6.7(g), the suspension notice shall explain the offset procedure and identify the amount expected to be recovered, and the periods of employment to which they relate.

(e) Review

A Participant shall be entitled to a review of a determination suspending his benefits by written request filed with the Trustees within 180 days of the notice of suspension.

The same right of review shall apply, under the same terms, to a determination by or on behalf of the Trustees that contemplated employment will be Disqualifying.

(f) Waiver of Suspension

The Trustees may, upon their own motion or on request of a Participant, waive suspension of benefits subject to such limitations as the Trustees, using objective standards adopted by resolution, may determine, including any limitations based on the Participant's previous record of benefit suspensions or noncompliance with reporting requirements under this Article.

(g) Resumption of Benefit Payments

- (i) Benefits shall be resumed for months after the last month for which benefits were suspended, with payments beginning for Participants who have attained Normal Retirement Age no later than the third month after the last calendar month for which the Participant's benefit was suspended, provided the Participant had complied with the notification requirements in Section 6.7(d)(iii).
- (ii) Overpayments attributable to payments for any month or months for which the Participant engaged in Disqualifying Employment shall be deducted from pension payments otherwise paid or payable subsequent to the period of suspension. A deduction from a monthly benefit for a month after the Participant attained Normal Retirement Age shall not exceed 25 percent of the pension amount (before deduction), except for the first pension payment made upon resumption after a suspension, which may be suspended in its entirety. If a Pensioner dies before recoupment of overpayments has been completed, deductions shall be made from the benefits payable to the surviving Spouse, subject to the 25 percent limitation on the rate of reduction. This provision shall not limit the right of the Trustees to recover an overpayment by means other than deductions from the pensions.

6.8 BENEFIT PAYMENTS FOLLOWING SUSPENSION

(a) Return to Covered Employment

A Pensioner who returns to Covered Employment, shall, upon subsequent termination of such employment, be entitled to recomputation of his pension amount, based on any additional Pension Credits and on his then attained age, except that where the previous benefit was a Disability Pension, the benefit payable after recovery and subsequent qualification for Regular or Early Pension benefits shall be based on the Annuity Starting Date of the subsequent Pension.

(b) Exception to Preserve Nonforfeitable Benefits

Suspension before Normal Retirement Age in accordance with Section 6.7(a) because of employment of a type for which benefits could not be suspended after Normal Retirement Age shall not have the effect of reducing the value of the Participant's pension below the actuarial equivalent of his pension as accrued for payment at his Normal Retirement Age and, to the extent necessary to avoid such reduction, the monthly amount of the pension shall be adjusted so as not to deprive the Pensioner of the value of his benefit as payable from his Normal Retirement Age.

- (c) A Joint and Survivor Pension in effect immediately prior to suspension of benefits and any other benefit following the death of the Pensioner shall remain effective if the Pensioner's death occurs while his benefits are in suspension. If a Pensioner has returned to Covered Employment, he shall not be entitled to a new election as to the Joint and Survivor Option or any other optional form of benefit if the Participant's prior Annuity Starting Date was on or after his Normal Retirement Age. If the Pensioner's prior Annuity Starting Date was before his Normal Retirement Age, he shall be entitled to a new election as to the Joint and Survivor Pension option or any other optional form with respect to the additional accruals he earned upon return to Covered Employment. Notwithstanding the foregoing, if the Spouse has died prior to the date the additional benefits become payable, no adjustment shall be made for the Joint and Survivor Pension form even if earlier elected.

6.9 INCOMPETENCE OR INCAPACITY OF A PENSIONER OR BENEFICIARY

In the event it is determined to the satisfaction of the Trustees that a Pensioner or Beneficiary is unable to care for his affairs because of mental or physical incapacity, any payment due may be made to the legally-appointed guardian, committee, or other legal representative appropriate to receive such payments on behalf of the Pensioner or Beneficiary.

6.10 NON-ASSIGNMENT OF BENEFITS

- (a) No Participant, Pensioner or Beneficiary entitled to any benefits under this Pension Plan shall have the right to assign, alienate, transfer, encumber, pledge, mortgage, hypothecate, anticipate, or impair in any manner his legal or beneficial interest, or any interest in the assets of the Pension Fund, or benefits of this Pension Plan. Neither the Pension Fund nor any of the assets thereof shall be liable for the debts of any Participant, Pensioner or Beneficiary entitled to any benefits under this Plan nor be subject to attachment or execution or process in any court, action or proceeding.
- (b) Notwithstanding paragraph (a) above or any other provisions of the Plan, benefits shall be paid in accordance with a Qualified Domestic Relations Order as defined in Section 206(d)(3) of ERISA and Section 414(p) of the Code, and with written procedures adopted by the Trustees in connection with such Orders, which shall be binding on all Participants, Beneficiaries and other parties. In no event shall the existence or enforcement of a Qualified Domestic Relations Order cause the Fund to pay benefits with respect to a Participant in excess of the Actuarial Present Value of the Participant's benefits without regard to the Qualified Domestic Relations Order, and benefits otherwise payable under the Plan shall be reduced by the Actuarial Present Value of any payment ordered to be made under a Qualified Domestic Relations Order.

(c) Notwithstanding the foregoing, paragraph (a) shall not preclude any offset of a Participant's benefits as provided under Code §401(a)(13) with respect to:

- (i) a judgment of conviction for a crime involving the Plan;
- (ii) a civil judgment, consent order or decree in an action for breach or alleged breach of fiduciary duty under ERISA involving the Plan; or
- (iii) a settlement agreement between the Participant and either the Secretary of Labor or the Pension Benefit Guaranty Corporation in connection with a breach of fiduciary duty under ERISA by a fiduciary or any other person, which court order, judgment, decree or agreement is issued or entered into on or after August 5, 1997 and specifically requires the Plan to offset against a Participant's benefits.

However, an offset, an offset under §401(a)(13) of the Internal Revenue Code against a married Participant's benefit shall be valid only if one of the following conditions is satisfied.

- (i) if written spousal consent is obtained;
- (ii) the Spouse is required by a judgment, order, decree or agreement to pay the Plan any amount, or
- (iii) a judgment, order decree or agreement provides that the Spouse shall receive a survivor annuity, as required by §401(a)(11) of the Internal Revenue Code, determined as if the Participant terminated employment on the offset date (with no offset to his benefits), to begin on or after Normal Retirement Age, and providing a 50% qualified joint and survivor annuity and a qualified pre-retirement survivor annuity based on the 50% qualified joint and survivor annuity.

6.11 NO RIGHT TO ASSETS

No person other than the Trustees of the Pension Fund shall have the right, title or interest in any of the income, or property of any funds received or held by or for the account of the Pension Fund, and no person shall have any right to benefits provided by the Pension Plan except as expressly provided herein.

6.12 LIMITATIONS ON BENEFITS UNDER CODE SECTION 415

In addition to any other limitations set forth in the Plan and notwithstanding any other provisions of the Plan, effective for Limitation Years beginning on and after January 1, 2008, benefits under the Plan shall be limited in accordance with section 415 of the Code and the Treasury Regulations thereunder, in accordance with this Section. This Section 6.12 is intended to incorporate the requirements of section 415 of the Code by reference except as otherwise specified herein.

- (a) Definitions. For purposes of this Section 6.12, the following terms shall have the following meanings:

- (i) Limitation Year.

“Limitation Year” means the calendar year.

- (ii) Plan Benefit.

“Plan Benefit” means, as of any date, the amount of a Participant’s benefit as determined under the applicable provisions of the Plan before the application of the limits in this Section 6.12.

- (b) Limit on Accrued Benefits.

For Limitation Years beginning on or after January 1, 2008, in no event shall a Participant’s benefit accrued under the Plan for a Limitation Year exceed the annual dollar limit determined in accordance with section 415 of the Code and the Treasury Regulations thereunder (the “annual dollar limit”) for that Limitation Year. If a Participant’s Plan Benefit for a Limitation Year beginning on or after January 1, 2008 would exceed the annual dollar limit for that Limitation Year, the accrued benefit, but not the Plan Benefit, shall be frozen or reduced so that the accrued benefit does not exceed the annual dollar limit for that Limitation Year.

- (c) Limits on Benefits Distributed or Paid.

For Limitation Years beginning on or after January 1, 2008, in no event shall the annual amount of the benefit distributed or otherwise payable to or with respect to a Participant under the Plan in a Limitation Year exceed the annual dollar limit for that Limitation Year. If the benefit distributable or otherwise payable in a Limitation Year would exceed the annual dollar limit for that Limitation Year, the benefit shall be reduced so that the benefit distributed or otherwise payable does not exceed the annual dollar limit for that Limitation Year.

(d) Protection of Prior Benefits.

To the extent permitted by law, the application of the provisions of this Section 6.12 shall not cause the benefit that is accrued, distributed or otherwise payable for any Participant to be less than the Participant's accrued benefit as of December 31, 2007 under the provisions of the Plan that were both adopted and in effect before April 5, 2007 and that satisfied the limitations under section 415 of the Code and the Treasury Regulations thereunder as in effect as of January 1, 2008.

(e) Aggregation of Plans.

In the event that the aggregate benefit accrued in any Plan Year by a Participant exceeds the limits under section 415 of the Code and the Treasury Regulations thereunder as a result of the mandatory aggregation of the benefits under this Plan with the benefits under another plan maintained by an Employer, the benefits of the other plan shall be reduced to the extent necessary to comply with section 415 of the Code and the Treasury Regulations thereunder.

(f) General.

- (i) To the extent that a Participant's benefit is subject to provisions of section 415 of the Code and the Treasury Regulations thereunder that have not been set forth in the Plan, such provisions are hereby incorporated by reference into this plan and for all purposes shall be deemed a part of the Plan.
- (ii) This 6.12 is intended to satisfy the requirements imposed by section 415 of the Code and the Treasury Regulations thereunder and shall be construed in a manner that will effectuate this intent. This Section 6.12 shall not be construed in a manner that would impose limitations that are more stringent than those required by section 415 of the Code and the Treasury Regulations thereunder.
- (iii) If and to the extent that the rules set forth in this Section 6.12 are no longer required for qualification of the Plan under section 401(a) and related provisions of the Code and the Treasury Regulations thereunder, they shall cease to apply without the necessity of an amendment to the Plan.

(g) Interpretation or Definition of Other Terms

The terms used in this Section that are not otherwise expressly defined in the Plan, shall be defined, interpreted and applied for purposes of this Section 6.12 as prescribed in section 415 of the Code and the Treasury Regulations thereunder.

6.13 MERGERS

In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan each Participant shall (if the Plan then terminates) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if this Plan had then terminated). This section shall apply only to the extent determined by the Pension Benefit Guaranty Corporation.

6.14 APPLICATION OF TOP HEAVY PROVISIONS

- (a) On each Determination Date, the Trustees shall determine whether the Plan is Top Heavy, as defined in Section 416(g) of the Internal Revenue Code and the regulations promulgated thereunder. In the event that the Plan is found to be Top-Heavy, the provisions of this Article shall apply to the Plan during the following Plan Year, to the exclusion of all other inconsistent provisions contained herein.
- (b) For purposes of this Section 6.14, the following special definitions shall apply:
 - (i) A “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 an Employer having annual compensation greater than \$130,000 (as adjusted under IRC §416(i)(1) for Plan Years beginning after December 31, 2002), a 5-percent owner of an Employer, or a 1-percent owner of an Employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of IRC §415(c)(3). The determination of who is a Key Employee will be made in accordance with IRC §416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.
 - (ii) “Determination Date” shall mean the last day of the immediately preceding Plan year or, in the case of the first Plan year of any plan, the last day of such year.
 - (iii) “Employee” shall mean Employee as defined in Section 1.11 and also includes any Beneficiary of such Employee.
 - (iv) “Required Aggregation Group” shall mean a group of plans maintained by the Employers in which a Key Employee is a Participant or which is combined with this Plan in order to meet the coverage and nondiscrimination requirements of IRC Sections 410(b) and 401(a)(4).

- (v) "Selective Aggregation Group" shall mean a group of plans consisting of a Required Aggregation Group along with other plans which need not be aggregated with this Plan to meet Code requirements, but which are selected by the Employers as the employer to be a part of a Selective Aggregation Group which includes this Plan and which, as a group, continues to meet the requirements of Code Sections 410(b) and 401(a)(4).
- (vi) "Non-Key Employee" shall mean any person who is employed by any of the Employers in any Plan Year, but who is not a Key Employee as to that Plan Year.
- (vii) "Top-Heavy Plan" shall mean to the extent it is not a plan required to be aggregated and with respect to any Plan Year, any qualified retirement plan, including this Plan if applicable, under which the present value of the cumulative accrued benefits for "Key Employees" exceeds 60 percent of the present value of the cumulative accrued benefits for all Employees under such plan. "Top-Heavy Plan" also shall mean any qualified retirement plan, including this Plan if applicable, which is part of a Required Aggregation Group that is a Top-Heavy Group and is not made part of a Selective Aggregation Group which is not a Top-Heavy Group. The value of an Employee's accrued cumulative benefit distributed during the five-year period ending on the Determination Date shall be included in determining whether a plan is a Top-Heavy Plan within the meaning of the first sentence of this Section. Notwithstanding the foregoing, if a former Employee has received no compensation from any Employer during the five-year period ending on the Determination Date, or if an Employee is not a Key Employee on the Determination Date but was a Key Employee for any Plan year prior to the Determination Date, the value of his or her accrued benefit shall not be included in determining whether a plan is a Top Heavy Plan within the meaning of the first sentence of this Section.

Notwithstanding the foregoing, effective for Plan Years on or after January 1, 2002, the present values of accrued benefits and the amounts of account balances (if applicable) 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 IRC §416(g)(2) during the one-year period ending on the determination date. The preceding sentence also shall apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under IRC §416(g)(2)(A)(i). In the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting "five-year period" for "one-year period." In addition, the accrued benefits and accounts of any individual who has not

performed services for an Employer during the one-year period ending on the determination date shall not be taken into account.

- (viii) "Top-Heavy Group" shall mean a Required or Selective Aggregation Group in which, as of the Determination Date, the sum of the present value of cumulative accrued benefits for Key Employees under all defined benefit plans which are part of such Group and the aggregated value of account balances of Key Employees under all defined contribution Plans which are part of such Group, exceeds 60 percent of a similar sum determined for all employees under all plans which are part of such Group. The value of an Employee's accrued benefit or account balance distributed during the five-year period ending on the Determination Date shall be included in determining whether such Group is a Top Heavy Group. Notwithstanding the foregoing, if a former Employee has received no compensation from an Employer during the five-year period ending on the Determination Date or if an Employee is not a Key Employee on the Determination Date but was a Key Employee for any Plan year prior to the Determination Date, the value of the accrued benefits or account balances shall not be included in determining whether such Group is a Top Heavy Group.

Notwithstanding the foregoing, effective for Plan Years on or after January 1, 2002, the present values of accrued benefits and the amounts of account balances (if applicable) 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 IRC §416(g)(2) during the one-year period ending on the determination date. The preceding sentence also shall apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under IRC §416(g)(2)(A)(i). In the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting "five-year period" for "one-year period." In addition, the accrued benefits and accounts of any individual who has not performed services for an Employer during the one-year period ending on the determination date shall not be taken into account.

(c) Top Heavy Minimum Benefits

- (i) General Rule. In any Plan year in which this Plan is a Top-Heavy Plan, the Plan shall provide a minimum benefit to each Non-Key Employee of not less than the Non-Key Employee's "Testing Period Compensation" multiplied by the lesser of:
 - (A) two percent multiplied by the number of Years of Vesting Service with the Employer; or
 - (B) 20 percent.

- (ii) **Testing Period Compensation.** For purposes of subparagraph (i), "Testing Period Compensation" shall mean the period of consecutive years, not exceeding five (5), during which the Non-Key Employee had the greatest aggregate compensation from an Employer. Years of Vesting Service shall exclude any Years of Vesting Service earned prior to January 1, 1984, and any Plan year beginning after January 1, 1984, if the Plan was not a Top Heavy Plan during such Plan year; and, the required minimum benefit shall refer to a benefit payable at the Non-Key Employee's Normal Retirement Age in the form of a single life annuity. A Non-Key Employee shall not fail to accrue a minimum benefit because such Non-Key Employee:
- (A) was not employed on a specified day; or
 - (B) received compensation less than a stated amount; or
 - (C) failed to make a mandatory employee contribution.
- (iii) **Vesting.** If the Plan is determined to be Top Heavy with respect to any Plan Year, a Non-Key Employee's nonforfeitable portion of his or her accrued benefit derived from contributions by an Employer shall be determined under the following vesting schedule in lieu of any other vesting schedule provided herein:

Years of Vesting Service	___ Vesting %
___ Less than 2 years	-0-
2 years	20%
3 years	40%
4 years	80%
5 years or more	100%

If, on the Determination Date, the Plan is found not to be Top Heavy, all the other Articles of the Plan herein shall prevail; provided, however, that if the Plan was Top Heavy, any portion of the accrued benefit that was nonforfeitable before the Plan ceased to be Top Heavy must remain nonforfeitable, and any Employee with five or more Years of Vesting Service must be given the option of remaining under the Top Heavy vesting schedule.

(iv) Exception to Minimum Benefits.

For purposes of satisfying the minimum benefit requirements of IRC §416(c)(1) and in determining years of service with an Employer, any service with an Employer shall be disregarded to the extent that such service occurs during a Plan Year when the Plan benefits (within the meaning of IRC §410(b)) no Key Employee or former Key Employee. In addition, the minimum benefit shall not be provided to Employees or Former Employees who are collectively bargained or in another category of Employee or Former Employee that is not required to receive a IRC §416(c) minimum benefit under this Plan because it is a multiemployer plan.

ARTICLE VII - MISCELLANEOUS

7.1 NON-REVERSION

It is expressly understood that in no event shall any of the corpus or assets of the Pension Fund revert to the Employers or be subject to any claims of any kind or nature by the Employers, except for the return of an erroneous contribution within the time limits prescribed by law.

7.2 LIMITATION OF LIABILITY

This Pension Plan has been established on the basis of an actuarial calculation which has established, to the extent possible, that the contributions will, if continued, be sufficient to maintain the Plan on a permanent basis, fulfilling the funding requirements of ERISA. Except for liabilities which may result from provisions of ERISA, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions as stipulated in its Collective Bargaining Agreement with the Union.

There shall be no liability upon the Trustees individually, or collectively, or upon the Union to provide the benefits established by this Pension Plan, if the Pension Fund does not have assets to make such payments.

7.3 NEW EMPLOYERS

If an Employer is sold, merged or otherwise undergoes a change of company identity, the successor company shall participate as to the Employees therefore covered in the Pension Plan just as if it were the original company, provided it remains an Employer as defined in Section 1.11.

7.4 TERMINATION

The Trustees shall have the right to discontinue or terminate this Plan in whole or in part. In the event of a termination or partial termination of this Plan, the rights of all affected Participants to benefits then accrued to the extent then funded, shall thereupon become fully vested and nonforfeitable. Upon a termination of the Plan, the Trustees shall take such steps as they deem necessary or desirable to comply with Section 4041A and 4281 of ERISA.

7.5 UNAUTHORIZED REPRESENTATIONS

The Fund shall not be bound by the representations of any person, other than the Trustees or those specifically designated by them, regarding participation in and eligibility for benefits under this Plan, status of Employer and Employee(s) or any other matter relating to the Fund.

7.6 RECOVERY OF BENEFIT OVERPAYMENT

If for any reason benefit payments are made to any person from the Plan in excess of the amount which is due and payable under the Plan for any reason (including, without limitation, mistake of fact or law, reliance on any false or fraudulent statements, information or proof submitted by a claimant, or the continuation of payments after the death of a Participant or Beneficiary entitled to the them), the Trustees (or the Plan Administrator or any other designee duly authorized by the Trustees) shall have full authority, in their sole and absolute discretion, to recover the amount of any overpayment (plus interest and costs). That authority shall include, but shall not be limited to: (i) the right to reduce benefits payable in the future to the person who received the overpayment; (ii) the right to reduce benefits payable to a surviving Spouse or other Beneficiary who is, or may become, entitled to receive payments under the Plan following the death of that person; and/or (iii) the right to initiate a lawsuit or to take such other legal action as may be necessary to recover any overpayment (plus interest and costs) against the person who received the overpayment, or such person's estate.

7.7 SITUS AND AGENT FOR SERVICE OF LEGAL PROCESS

The Trustees shall be deemed to be the agent designated for the service of legal process. The Trustees are located at: 305 West 44th Street, New York, NY 10036. The Plan Administrator maintains an office at the same address.

7.8 AUTHORIZED APPOINTMENTS

The Trustees may appoint, wherever required by the Act and the regulations thereto, an enrolled actuary who shall be responsible for the preparation of any actuarial statement required under the Act. The Trustees may appoint advisers and other persons as they may deem necessary or desirable in order to properly administer the Plan.

7.9 SETTLEMENT OF CONTROVERSIES

All questions or controversies, of whatever character, arising in connection with this Plan or its operation, whether as to any claim for any benefits by any Participant or Beneficiary or whether as to the construction of the language or meaning of this Plan or of any by-laws, rules and regulations adopted by the Trustees (or their designees), and the decision of the Trustees (or their designee) shall be within their discretion and shall be binding upon all persons dealing with the Plan or claiming benefits thereunder. Any judicial review shall be in accordance with the "arbitrary and capricious" standard permitted under *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989).

7.10 SEVERABILITY

Should any provision of the Plan or any regulation adopted thereunder be deemed to be unlawful or invalid for any reason, such fact shall not adversely affect the other provisions or regulations, unless such invalidity shall render impossible or impractical the functioning of the Plan and, in such case, the Trustees shall immediately adopt a new provision or regulation to take the place of the one held illegal or invalid.

7.11 TITLES; AND PLURALS

Titles, headings, and subheadings for sections and paragraphs are inserted for the convenience of reference only, and this Plan shall not be construed by reference to them. Wherever required by context, the singular of any word used in this Plan shall include the plural and the plural may be read in the singular.

7.12 NON-DISCRIMINATION

In no event shall any of the provisions of this Plan discriminate in favor of any Highly Compensated Employees in violation of the nondiscrimination requirements relating to the amounts of contributions and benefits under Code Section 401(a)(4), to the extent that such non-discrimination requirements may apply to non-collectively bargained Participants.

7.13 NO RIGHT TO EMPLOYMENT

Nothing in this Plan shall be interpreted as giving any Employee the right to be retained as an Employee by an Employer, or as limiting or affecting the rights of an Employer to control its Employees or to terminate the employment of any Employee at any time and for any reason, subject to any Collective Bargaining Agreement.

7.14 CHOICE OF LAW

The Plan shall be construed, regulated, enforced and administered in accordance with the internal laws of the State of New York applicable to contracts made and to be performed within New York (without regard to any conflict of law provisions), to the extent that such laws are not preempted by the provisions of ERISA (or any other applicable laws of the United States).

7.15 COUNTERPARTS

This Plan may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall be considered the same instrument. The signature of any party on any counterpart of this Plan shall be sufficient evidence of his execution thereof.

7.16 DEFINITIONS

All words and phrases defined in the Plan shall have the same meaning as in the Trust Agreement, except as otherwise expressly provided herein.

7.17 SUCCESSOR PROVISIONS OF LAW

Any references to a section of ERISA or the Code, or to any regulations or administrative pronouncements thereunder, shall be inserted for the convenience of reference only, and this Plan shall not be construed by reference to them.

7.18 CONSTRUCTION

Anything in this Plan, or any amendment hereof, to the contrary notwithstanding, no provision of this Plan shall be construed so as to violate the requirements of ERISA, the Code, or other applicable law. provisions inconsistent with qualified status.

7.19 PROVISIONS INCONSISTENT WITH QUALIFIED STATUS

This Plan is intended to be a qualified plan under the Code. Any provision of this Plan that would cause the Plan to fail to comply with the requirements for qualified plans under the Code shall, to the extent necessary to maintain the qualified status of the Plan, be null and void ab initio, and of no force and effect, and the Plan shall be construed as if the provision had never been inserted in the Plan.

7.20 SCRIVENER'S ERROR

The Trustees have discretion and authority to interpret Plan terms to reflect the intended meaning of any Plan provision. In the event of a scrivener's error that renders a Plan term inconsistent with the intended meaning of such provision, the intended meaning controls, and any inconsistent Plan term is made expressly subject to this requirement. The Trustees have the authority to review objective evidence to conform the Plan term to be consistent with the intended meaning of such provision. Any determination made by the Trustees shall be given deference in the event it is subject to judicial review and shall be overturned only if it is arbitrary and capricious.

7.21 COMPLIANCE WITH CODE SECTION 432

Notwithstanding any provision of the Plan to the contrary, effective for Plan Years beginning after December 31, 2007, all benefits, benefit accruals, and distributions of benefits under the Plan shall be subject to the rules contained in Section 432 of the Code (for plans in endangered or critical status), to the extent those rules apply, and the actions of the Trustees to comply with those rules.

ARTICLE VIII - AMENDMENTS

8.1 AMENDMENT

This Plan may be amended by the Trustees, consistent with the provisions of the Trust Agreement. However, no amendment may decrease the accrued benefit of any Participant, except:

- (a) As necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Code and to maintain compliance of the Plan with the requirements of ERISA, or
- (b) If the amendment meets the requirements of Section 302(c)(8) of ERISA and Section 412(c)(8) of the Code, and the Secretary of Labor has been notified of such amendment and has either approved of it or, within 90 days after the date on which such notice was filed, he failed to disapprove.

ARTICLE IX - RECIPROCAL PENSIONS

9.1 GENERAL

The purpose of this Article is to provide pensions for Employees whose years of employment were divided between different plans which have signed a Reciprocal Agreement and (a) who would otherwise lack sufficient Vesting Service to be eligible for any retirement benefit, or (b) who are eligible to receive a pension from a Related Plan but would otherwise lack sufficient Vesting Service to receive a pension from this Plan, or (c) whose pensions would be less than the full amount because of such division of employment.

9.2 DEFINITIONS

The following definitions will govern this Article:

- (a) **Related Plan.** "Related Plan" means one or more pension plans which have executed a Reciprocal Agreement to which this Plan is a party.
- (b) **Related Service Credits.** "Related Service Credits" means shall service credits accumulated by an Employee under a Related Plan shall be recognized under this Plan as Related Service Credits. The Trustees shall compute Related Service Credits on the basis on which such credits have been earned and credited under the Related Plan and certified by the Related Plan to this Plan.
- (c) **Employer.** "Employer" means an employer, which pursuant to a Collective Bargaining Agreement is required to contribute to any of the Plans for its employees.
- (d) **Recognized Vesting Service.** "Recognized Vesting Service" means this Plan shall credit an Employee with the largest amount of Vesting Service to which he is entitled under this Plan or any Related Plan after taking into account all hours of Related Service Credits. Recognized Vesting Service for each Calendar Year shall be used for the purpose of determining Vesting Service under this Plan.
- (e) **Combined Service Credits.** "Combined Service Credits" means the total of an Employee's Pension Credits under this Plan and his Related Service Credits. Not more than one year of Combined Service Credit shall be recognized in any Calendar Year.

9.3 ELIGIBILITY

An Employee shall be eligible for a Reciprocal Pension under this Plan if (a) he would be eligible for any type of pension under this Plan (other than a Reciprocal Pension) if his Combined Service Credits were treated as Pension Credits under this Plan, (b) he is found to be eligible for a Reciprocal Pension under this Plan and a Related Plan and (c) a pension is not payable to him from a Related Plan

independently of its provisions for a Reciprocal Pension, provided, however, that if an Employee who is entitled to a pension other than a Reciprocal Pension from a Related Plan elects in writing to waive such other pension, then this clause (c) shall not be condition of eligibility.

9.4 BREAKS IN SERVICE

In applying the rules of this Plan with respect to cancellation of service credit on account of any period in which an Employee has earned Related Service shall not be counted in determining whether there has been a period of no Covered Employment sufficient to constitute one or more One-Year Breaks in Service or an Extended Break in Service.

9.5 PAYMENT OF RECIPROCAL PENSIONS

A Participant's monthly Reciprocal Pension under this Plan shall be determined by applying the benefit formula of this Plan in effect when the Participant separates from Covered Employment under the Plan or otherwise ceases accruing any related Service Credits, whichever occurs later to that portion of his Combined Service Credits which have been treated as Pension Credits under this Plan. The payment of a Reciprocal Pension shall be subject to all of the conditions contained in this Plan applicable to other types of pensions including, but not limited to, retirement as herein defined and timely application. In order to permit a Pensioner who is receiving a Reciprocal Pension to receive his aggregate pension payments in one monthly pension check, the Trustees may agree with the Trustees of one or more Related Plans to authorize a third party (such as a bank or trust company) to make one consolidated payment of the various Reciprocal Pensions and each of the Trustees shall remit the appropriate Reciprocal Pension amount to such third party.

ARTICLE X - ROLLOVERS

10.1 GENERAL

This Article applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

10.2 DEFINITIONS

- (a) **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee and the lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- (b) **Eligible Retirement Plan.** "Eligible Retirement Plan" means an individual retirement account described in Section 403(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code or a qualified trust described in Section 401(a) of the Code, and (effective for distributions made after December 31, 2001) an annuity contract described in Section 403(b) of the Code, that accepts the distributee's eligible rollover distribution. Effective for distributions made after December 31, 2001 an eligible retirement plan shall also include an eligible plan under Section 457(b) of the Code, 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. Effective for distributions made after December 31, 2007, an eligible retirement plan shall also include a Roth individual retirement account or Roth individual retirement annuity described in Section 408A of the Code.

Effective for distributions made after December 31, 2001, the definition of eligible retirement plan shall also 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 relations order, as defined in Section 414(p) of the Code.

In the case of a non-spouse beneficiary, an eligible retirement plan is an individual retirement account or annuity described in Section 408(a) of the Code, or Section 408(b) of the Code ("IRA") or, for distributions made after December 31, 2007, a Roth individual retirement account or annuity described in Section 408A of the Code, that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of section 401(c)(11) of the Code.

- (c) **Distributee.** A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Spouse or former Spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the Spouse or former Spouse. With respect to distributions made on or after January 1, 2008, the term 'Distributee' shall include an Employee's or former Employee's Beneficiary.
- (d) **Direct Rollover.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

ARTICLE XI - MINIMUM DISTRIBUTION REQUIREMENTS

11.1 GENERAL RULES

- (a) **Effective Date.** The provisions of this Article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (b) **Precedence.**
 - (i) The requirements of this Article will take precedence over any inconsistent provisions of the Plan.
 - (ii) Except to the extent inconsistent with this Article, all distribution options provided under the Plan are preserved.
 - (iii) This Article does not authorize any distribution options not otherwise provided under the Plan.
- (c) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Code.
- (d) **TEFRA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this Article, other than this Subsection (d), distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to section 242(b)(2) of TEFRA.

11.2 TIME AND MANNER OF DISTRIBUTION

- (a) **Required Beginning Date.** The participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (b) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (i) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

- (ii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (iii) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (iv) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 11.2, other than Section 11.2(b)(i), will apply as if the surviving spouse were the Participant.

For purposes of this Section 11.2 and Section 11.5, distributions are considered to begin on the Participant's Required Beginning Date (or, if Section 11.2(b)(iv) applies, the date distributions are required to begin to the surviving spouse under Section 11.2(b)(i)). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 11.2(b)(i), the date distributions are considered to begin is the date distributions actually commence.

(c) Form of Distribution.

Unless the Participant's interest is distributed in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Section 11.3, 11.4 and 11.5 of this Article.

11.3 DETERMINATION OF AMOUNT TO BE DISTRIBUTED EACH YEAR

- (a) General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
 - (i) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
 - (ii) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 11.4 or 11.5,
 - (iii) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

- (iv) payments will either be nonincreasing or increase only as follows:
 - (A) by an annual percentage that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - (B) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Section 11.4 dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);
 - (C) to provide cash refunds of employee contributions upon the Participant's death; or
 - (D) to pay increased benefits that result from a Plan amendment.
- (b) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 11.2(b)(i) or (ii)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.
- (c) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

11.4 REQUIREMENTS FOR ANNUITY DISTRIBUTIONS THAT COMMENCE DURING PARTICIPANT'S LIFETIME

- (a) Joint Life Annuities. Where the Beneficiary is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the Designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the Treasury regulations as adjusted in the manner set forth in Q&A-2(c) of that regulation.

If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-spouse beneficiary and period certain annuity, the preceding sentence will apply to annuity payments to be made to the Designated Beneficiary after the expiration of the period certain.

- (b) **Period Certain Annuities.** Unless the Participant's spouse is the sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the Annuity Starting Date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date. If the Participant's spouse is the Participant's sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Section 11.4.(b), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the Annuity Starting Date.

11.5 REQUIREMENTS FOR MINIMUM DISTRIBUTIONS WHERE PARTICIPANT DIES BEFORE DATE DISTRIBUTIONS BEGIN

- (a) **Participant Survived by Designated Beneficiary.** If the Participant dies before the date distribution of his or her interest begins and there is a Designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section 11.2(b) (i) or (ii), over the life of the Designated Beneficiary or over a period certain not exceeding:
 - (i) unless the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the Designated Beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
 - (ii) if the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the Designated Beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the Annuity Starting Date.

- (b) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (c) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Subsection 11.5 will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 11.2(b)(i).

11.6 DEFINITIONS

- (a) Designated Beneficiary. The individual who is designated as the beneficiary under Sections 1.4 and 3.14 of the Plan and is the Designated Beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-4, Q&A-14, of the Treasury regulations.
- (b) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 11.2(b).
- (c) Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
- (d) Required Beginning Date. The date specified in Section 6.6(e) of the Plan.

* * * * *

IN WITNESS WHEREOF, the Trustees have executed this amended and restated Plan on
this _____ day of _____, 201__.

UNION TRUSTEES

EMPLOYER TRUSTEES

Peter Ward, President, New York Hotel
Trades Council. AFI.-CIO

Joseph E. Spinnato, President, Hotel
Association of New York City, Inc.

APPENDIX A
Provisions Applicable to Former Participants of the
Hotel Association of New York City “A” Division Pension Fund

1. INTRODUCTION

This Appendix sets forth certain special rules applicable to former participants in the Hotel Association of New York City “A” Division Pension Fund (the “A Division Plan”), that was merged into the New York Hotel Trades Council and Hotel Association of New York City, Inc. Pension Fund (“the Hotel Plan”) effective January 1, 2013. The provisions of this Appendix shall apply to a Former A Division Participant who is credited with one or more Hours of Service on or after the Merger Date (an “Active Participant”). Former A Division Participants who do not have one or more Hours of Service after the Merger Date shall be subject to the terms of the A Division Plan without regard to this Appendix. Internal references to section numbers of the A Division Plan shall refer to such Plan as written and in effect immediately prior to the Merger Date, unless stated otherwise.

2. DEFINITIONS

Unless otherwise specified herein, for purposes of this Appendix A, the following terms shall have the meanings set forth below, and all other capitalized terms used in this Appendix A shall have the meanings currently set forth in the Hotel Plan or the A Division Plan, as applicable.

(a) Active Participant.

An “Active Participant” means an Employee as defined in Section 1.06 of the A Division Plan as of the date immediately prior to the Merger Date who works and is credited with at least one Hour of Service after the Merger Date.

(b) Inactive Nonvested Participant.

An “Inactive Nonvested Participant” means a nonvested Participant in the A Division Plan who, as of the date immediately prior to the Merger Date, had incurred a One-Year Break in Service as defined in Section 2.04(b) of the A Division Plan and had not met the reinstatement requirements under Section 2.04(b)(2) of the A Division Plan. Vesting Service credited under Section 4.3 of the Hotel Plan after the Merger Date will be counted for purposes of determining whether a nonvested Participant has met the reinstatement requirements under Section 2.04(b)(2) of the A Division Plan or Section 4.4(b)(ii) of the Hotel Plan.

In addition, if a former Participant had incurred an Extended Break in Service under Section 2.04(c) of the A Division Plan, years in which a Participant earns Pension Credits under the A Division Plan prior to the Merger Date or the Hotel Plan after the Merger Date will be counted in determining whether the effects of

the Extended Break in Service will be eliminated under Section 4.4(b)(v)(D) of the Hotel Plan.

(c) Inactive Vested Participant.

An “Inactive Vested Participant” means a Participant who has earned a non-forfeitable benefit under Section 3.04 of the A Division Plan, or met the eligibility requirements for a Vested Pension under Section 3.15 of the A Division Plan and who is not actively working as an Employee as defined in Section 1.06 of the A Division Plan as of the date immediately prior to the Merger Date.

(d) A Division Pensioner.

The term “A Division Pensioner” shall mean a Former A Division Participant who is retired and who is receiving pension benefits under the A Division Plan (or would be but for the time required for administrative processing) and is on the pension rolls of the A Division Plan on the day before the Merger Date.

(e) Former A Division Participant.

A “Former A Division Participant” means an individual who was a Participant in the A Division Plan as of the date immediately prior to the Merger Date. For purposes of this Appendix A, a Former A Division Participant includes an Active Participant, an Inactive Vested Participant, and an A Division Pensioner. It also includes an Inactive Nonvested Participant, at such time as such Participant meets the reinstatement requirements under Section 2.04(b)(2) of the A Division Plan

(f) A Division Plan.

The term “A Division Plan” shall mean the Pension Plan Hotel Association of New York City “A” Division Pension Fund, as restated effective January 1, 2007 and subsequently amended prior to the Merger Date.

(g) Hotel Plan.

The term “Hotel Plan” or “Plan” shall mean the New York Hotel Trades Council and Hotel Association of New York City, Inc. Pension Fund, as restated effective January 1, 2009, and subsequently amended prior to the Merger Date.

(h) Merger Date.

The term “Merger Date” shall mean January 1, 2013.

3. PARTICIPATION

- (a) A Former A Division Participant shall become a Participant in the Hotel Plan effective as of the Merger Date, or, with respect to an Inactive Nonvested Participant, such later date as the Inactive Nonvested Participant meets the reinstatement requirements under Section 2.04(b)(2) of the A Division Plan.

- (b) An individual who became an Employee after the Merger Date shall become a Participant in the Hotel Plan upon completion of the participation requirements set forth in Section 2.2 of the Hotel Plan.

4. YEARS OF VESTING SERVICE AND PENSION CREDITS

(a) Years of Vesting Service.

- (i) A Former A Division Participant shall be credited with Years of Vesting Service credited under Section 2.03 of the A Division Plan with regard to benefits accrued under the A Division Plan prior to January 1, 2013.
- (ii) After December 31, 2012, an Active Participant will earn Years of Vesting Service under Section 4.3 of the Hotel Plan.
- (iii) Vesting Service earned prior to January 1, 2013 under the A Division Plan shall be used to satisfy the vesting conditions for benefits accrued under the Hotel Plan after December 31, 2012. Likewise, Vesting Service earned under the Hotel Plan after December 31, 2012 shall be used to satisfy the vesting conditions for benefits accrued under the A Division Plan before January 1, 2013.

(b) Pension Credits.

- (i) A Former A Division Participant shall be credited with Pension Credits granted under Section 2.02 of the A Division Plan for purposes of determining eligibility for benefits and the amount of the benefit accrued under the A Division Plan prior to January 1, 2013.
- (ii) After December 31, 2012, an Active Participant will earn Pension Credits under Section 4.2 of the Hotel Plan.

(c) Restoration of Pension Credits and Vesting Service.

If a Former A Division Participant has had Pension Credit and Years of Vesting Service cancelled due to an Extended Break in Service under Section 2.04(c) of the A Division Plan that have not been restored under Section 2.04(c)(5) of the A Division Plan prior to the Merger Date, Pension Credit and Years of Vesting Service can be restored under the provisions of 4.4(b)(v)(D) of the Hotel Plan.

5. REGULAR PENSION - ELIGIBILITY.

An Active Participant is eligible to retire on a Regular Pension upon attainment of Normal Retirement Age.

6. REGULAR PENSION – AMOUNT

The monthly amount of a Former A Division Participant's Regular Pension shall be the total of (a) plus (b) below:

- (a) The amount of the Normal Pension or Reduced Pension he had earned under Section 3.03 or 3.05 of the A Division Plan prior to the Merger Date, based on Pension Credits earned under the A Division Plan prior to January 1, 2012.
- (b) The amount of a Regular Pension determined under Section 3.3 of the Hotel Plan, based on Pension Credit earned under the Hotel Plan before or after the Merger Date.

7. EARLY RETIREMENT PENSION - ELIGIBILITY

An Active Participant may retire on an Early Retirement Pension if he meets the following requirements:

- (a) he has attained age 62, and
- (b) he has at least five Years of Vesting Service.

8. EARLY RETIREMENT PENSION – AMOUNT

The monthly amount of the Early Retirement Pension shall be equal to the amount of the Regular Pension determined under Section 6 of this Appendix reduced by 5/9 of 1% for each month by which the Annuity Starting Date precedes the Participant's Normal Retirement Age.

9. VESTED PENSION – ELIGIBILITY

An Active Participant shall be entitled to a Vested Pension payable as early as age 62 if he has completed at least five years of Vesting Service, including Vesting Service earned under the A Division Plan prior to the Merger Date that was not cancelled due to an Extended Break under Section 2.04(c) of the A Division Plan.

10. VESTED PENSION – AMOUNT

- (a) The monthly amount of the Vested Pension payable at age 65 will be the same as the amount of the Regular Pension determined under Section 6 of this Appendix.
- (b) The monthly amount of the Vested Pension payable prior to age 65 shall be equal to the Regular Pension, reduced as set forth in Section 8 of this Appendix.

11. AGE AND SERVICE PENSION – ELIGIBILITY

- (a) An Active Participant will be eligible to receive an Age and Service Pension if he meets the following requirements:
 - (i) he has attained age 55; and

- (ii) he has at least 25 Pension Credits earned in Covered Employment, including Pension Credits earned under both the A Division Plan and the Hotel Plan; and
 - (iii) he completed at least 1,000 Hours of Service in Covered Employment in the Calendar Year prior to the Calendar Year that includes his Annuity Starting Date, including Covered Employment under the A Division Plan.
- (b) Notwithstanding the foregoing, an Active Participant who has attained age 55 and accumulated at least 23 Pension Credits may retire on an Age and Service Pension provided that his Employer agrees in writing to make a lump sum contribution to the Fund equal to the contributions that would be due the Fund on behalf of the Participant under the terms of the Participation Agreement for the period which, when added to his accumulated Pension Credits, would total 25 Pension Credits. Such one-time contribution by the Employer shall be based on the contribution rate required by the Participation Agreement, based on the regular wages that would be paid to the Participant had he continued to be actively employed in Covered Employment. The period of time covered by the Employer's one-time contribution shall be considered a period of Covered Employment for all purposes under the Plan upon the Fund's receipt of such contribution from the Employer.

12. AGE AND SERVICE PENSION – AMOUNT

- (a) The amount of the Age and Service Pension shall be \$875.00 per month.
- (b) Notwithstanding the foregoing, an Active Participant who retires after attaining age 62 and accruing more than 25 Pension Credits shall be entitled to receive the greater of the Age and Service Pension set forth in (a) above or the Early Retirement Pension determined under Section 8 of this Appendix A.

13. DISABILITY PENSION – ELIGIBILITY

- (a) An Active Participant who becomes Totally Disabled, as defined in Section 1.25 of the Hotel Plan, will be eligible to receive a Disability Pension if the Years of Vesting Service he has earned under the A Division Plan and the Hotel Plan total at least ten, and he has worked in Covered Employment under either the A Division Plan or the Hotel Plan for at least 500 Hours of Service in the combined period consisting of the Calendar Year in which he became Totally Disabled and the previous Calendar Year.
- (b) No Disability Pension payments shall be made, however, for any period during which the applicant receives disability benefits under the New York State Disability Benefits law or under a plan of benefits relating to employment in the Hotel Industry which qualified in lieu thereof.
- (c) An Active Participant who applies for a Disability Pension and, as of the date such application is filed, (1) has applied for but has not yet received a Social

Security Disability Income Award and (2) is eligible to receive an Early Retirement Pension under Section 7 of this Appendix A shall automatically have his Pension application processed as an Early Retirement Pension, pending receipt of such Social Security Disability Income Award. In the event such award is granted, the disabled Participant's Early Retirement Pension shall be converted to a Disability Pension as of the first day of the first month covered by such Award.

14. DISABILITY PENSION – AMOUNT

The monthly amount of the Disability Pension shall be the same as the amount of the Regular Pension determined under Section 6 of this Appendix A. The Disability Pension shall continue for as long as the Participant continues to be Totally Disabled and meets the requirements set forth in Section 3.8 of the Hotel Plan.

15. ACTUARIAL INCREASE FOR DELAYED RETIREMENT

If the Active Participant's Annuity Starting Date is after Normal Retirement Age, but before April 1 of the calendar year following his attainment of age 70 ½, his monthly benefit shall be increased as follows:

- (a) The amount of the Regular Pension determined under Subsection (a) of Section 6 of this Appendix A, shall be actuarially increased as provided under Section 3.08(b) or Section 4.17(a) of the A Division Plan, as applicable, or
- (b) The amount of the Regular Pension determined under Subsection (b) of Section 6 of this Appendix A, shall be actuarially increased as provided under Section 6.5(f) of the Hotel Plan.

16. FORMS OF PAYMENT

- (a) The normal form of payment for a Participant who is not married is a single-life annuity.
- (b) The normal form of payment for a married Participant is a Joint and Survivor Pension. A Joint and Survivor Pension provides a lifetime benefit for the Participant and a lifetime pension for his or her surviving Spouse, starting with the month of the Participant's death. The monthly amount to be paid to the surviving Spouse is one-half the monthly amount paid to the Participant. The monthly amount of an Active Participant's benefit payable in the form of a Joint and Survivor Pension will be determined in accordance with Section 5.5(a)(i) of the Hotel Plan.
- (c) A Participant and Spouse who have rejected the Joint and Survivor Pension in accordance with this Article V may elect a Qualified Optional Joint and Survivor Pension. A Participant who has rejected the Joint and Survivor Pension may also elect a single life annuity, subject to the spousal consent provisions of Section 5.3 of the Hotel Plan. A Qualified Optional Joint and Survivor Pension provides a lifetime benefit for the Participant and a lifetime

benefit for his or her surviving Spouse, starting with the month of the Participant's death. The monthly amount to be paid to the surviving Spouse is 75% of the monthly amount paid to the Participant. The monthly amount of an Active Participant's benefit payable in the form of a Qualified Optional Joint and Survivor Pension shall be determined as set forth in Section 5.5(a)(ii) of the Hotel Plan.

17. PRERETIREMENT SURVIVING SPOUSE PENSION

If an Active Participant who has a Qualified Spouse as defined in Section 1.24 of the Hotel Plan dies before his pension payments start, but after he has earned a vested right to a pension, a Preretirement Surviving Spouse Pension shall be paid to his Surviving Spouse, as set forth in Section 5.4 of the Hotel Plan, based on the benefit determined under the provisions of this Appendix A.

18. SPECIAL DEATH BENEFIT

The designated beneficiary of an Active Participant who dies prior to retirement shall be eligible to receive the Special Death Benefit provided in Section 3.14 of the Hotel Plan, provided he meets the eligibility requirements set forth in Section 3.14 of the Hotel Plan.

19. REQUIRED BEGINNING DATE

With respect to minimum distribution requirements under Article XI of the Hotel Plan, the Required Beginning Date for a Former A Division Participant is April 1 of the calendar year following the later of (i) the calendar year in which the Former A Division Participant attains age 70-1/2, or (ii) his termination of employment with the Employer.

20. SUSPENSION OF BENEFITS

The monthly benefit earned under the A Division Plan shall be suspended pursuant to the provisions set forth under Section 3.08 of the A Division Plan.

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