

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

PLAN RULES AND REGULATIONS

August 1999

The 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 Pension Plan, effective January 1, 1999, unless otherwise expressly provided.

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS.....	5
SECTION 1.01 ACTIVE PARTICIPANT	5
SECTION 1.02 ACTUARIAL PRESENT VALUE.....	5
SECTION 1.03 ANNUITY STARTING DATE	5
SECTION 1.04 BENEFICIARY	6
SECTION 1.05 CALENDAR YEAR.....	6
SECTION 1.06 CODE.....	6
SECTION 1.07 COLLECTIVE BARGAINING AGREEMENT	6
SECTION 1.08 CONTRIBUTION PERIOD	6
SECTION 1.09 COVERED EMPLOYMENT	7
SECTION 1.10. EMPLOYEE	7
SECTION 1.11 EMPLOYER.....	7
SECTION 1.12 ERISA.....	8
SECTION 1.13 HIGHLY COMPENSATED EMPLOYEE	8
SECTION 1.14 HOTEL INDUSTRY	8
SECTION 1.15 HOUR OF SERVICE	8
SECTION 1.16 NON-BARGAINED EMPLOYEE.....	9
SECTION 1.17 NORMAL RETIREMENT AGE.....	9
SECTION 1.18 OTHER TERMS.....	10
SECTION 1.19 PARTICIPANT.....	10
SECTION 1.20 PENSION FUND.....	10
SECTION 1.21 PENSION PLAN OR PLAN	11
SECTION 1.22 PENSIONER.....	11
SECTION 1.23 RELATED PLANS.....	11
SECTION 1.24 SPOUSE.....	11
SECTION 1.25 TOTALLY DISABLED	11
SECTION 1.26 TRUST AGREEMENT	12
SECTION 1.27 TRUSTEES.....	12

SECTION 1.28 UNION.....	12
ARTICLE 2 PARTICIPATION.....	13
ARTICLE 3 PENSION ELIGIBILITY AND AMOUNTS.....	14
ARTICLE 4 PENSION CREDITS AND YEARS OF VESTING SERVICE	21
ARTICLE 5 HUSBAND-AND-WIFE PENSION.....	31
ARTICLE 6 APPLICATIONS, BENEFIT PAYMENTS AND RETIREMENT	39
ARTICLE 7 MISCELLANEOUS	51
ARTICLE 8 AMENDMENTS.....	53
ARTICLE 9 RECIPROCAL PENSIONS	54
ARTICLE 10 ROLLOVERS.....	56

ARTICLE 1
DEFINITIONS

Section 1.01. Active participant. "Active Participant" means an Employee who meets the requirements for participation in the Plan as set forth in Section 2.02.

Section 1.02. Actuarial Present Value. Unless otherwise specified in the Plan, the "Actuarial Present Value" of a benefit shall be determined using the interest rate prescribed by the Pension Benefit Guaranty Corporation for valuing annuities under single employer plans that terminate without a Notice of Sufficiency during the first month of the Calendar Year in which the date as of which the benefit is valued occurs. The mortality assumption shall be based on the 1971 Group Annuity Mortality Table, weighted as follows:

- (a) For a Participant's benefit, 60% male and 40 female;
- (b) For the benefit of a Participant's Spouse or former Spouse, 40% male and 60% female; and
- (c) In any other case, 50% male and 50% female.

Section 1.03. 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 Husband and Wife 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 6.05(b)(4)
- (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.

The Annuity Starting Date will not be later than the Participant's Required Beginning Date as defined in Section 6.05(b)(2).

Section 1.04. Beneficiary. “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.

Section 1.05. Calendar Year. “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.

Section 1.06. Code. “Code” means the Internal Revenue Code of 1986, as amended from time to time.

Section 1.07. Collective Bargaining Agreement. “Collective Bargaining Agreement” or “Agreement” means an agreement between the Union and an Employer which requires contributions to the Fund.

Section 1.08. Contribution Period. “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.

Section 1.09. Covered Employment. “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 the 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”,

Section 1.10. Employee. "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.

The term "Employee" includes a leased employee of an Employer, within the meaning of §414(n) of the Code, who otherwise meets the conditions for participation, vesting and/or benefit accrual under the Fund.

Section 1.11. Employer. "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. An employer shall not be deemed an Employer simply because it is part of a controlled group of corporations or trades or businesses under common control, some other part of which is an Employer.

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 Internal Revenue Code §414(b), (c), (m) and (o).

Section 1.12. ERISA. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

Section 1.13. Highly Compensated Employee. "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.

Section 1.14. Hotel Industry. "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.

Section 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.

Section 1.16. Non-Bargained Employee. A "Non-Bargained Employee" is a Participant whose participation is not covered by a Collective Bargaining Agreement.

Section 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 2.04 are disregarded in applying this Section.

Section 1.18. Other Terms. Other terms are specifically defined as follows:

	<u>Term</u>	<u>Section(s)</u>
(a)	Regular Pension	3.02
(b)	Early Retirement Pension	3.04
(c)	Disability Pension	3.06
(d)	Pension Credits	4.02
(e)	Years of Vesting Service	4.03
(f)	Breaks in Service (One Year and Extended Breaks in Service)	4.04
(g)	Husband-and-Wife Pension	5.01
(h)	Effective Date of Pension	6.05
(i)	Retired	6.06
(j)	Vested Status	6.09

Section 1.19. Participant. “Participant” means an Active Participant, a Pensioner or a former Active Participant who has acquired a right to a pension under this Plan.

Section 1.20. Pension Fund. “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.

Section 1.21. Pension Plan or Plan. “Pension Plan” or “Plan” means this document as adopted and amended by the Trustees.

Section 1.22. Pensioner. “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.

Section 1.23. Related Plans. “Related Plans” means the pension plans of any other pension funds which execute a reciprocal agreement with this Fund.

Section 1.24. Spouse. “Spouse” means a person to whom the Participant is legally married at the commencement of his benefits and, if and to the extent provided in a qualified domestic relations order (as defined in Code Section 414(p)), a participant’s former spouse.

Section 1.25. Totally Disabled. An Employee shall be deemed "Totally Disabled" hereunder if he satisfies either of the following:

- (a) On the basis of medical evidence the Board of Trustees shall, in its sole judgment, find that the Employee is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, provided such disability:
 - (i) was not contracted, suffered, or incurred while the Employee was engaged in, or did not result from his having engaged in a criminal enterprise, or
 - (ii) did not result from his habitual drunkenness or addiction to narcotics, or
 - (iii) did not result from a self-inflicted injury, or

- (iv) did not result from service in the Armed Service which prevents a return to employment and for which the Employee receives a pension from any branch of the Armed Services; or
- (b) The Employee is eligible for and receiving a Social Security Disability Pension. However, the requirement for receipt of a Social Security Disability Pension shall be waived for individuals who become totally disabled on or after reaching 64 years seven months, and who qualify for a Social Security Old Age Pension.

Section 1.26. Trust Agreement. “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.

Section 1.27. Trustees. “Trustees” means the Board of Trustees as established and constituted from time to time in accordance with the Trust Agreement.

Section 1.28. Union. “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 2

PARTICIPATION

Section 2.01. 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.

Section 2.02. 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.

Section 2.03. Termination of Participation. An Active Participant who incurs a One-Year Break in Service (defined in Section 4.04) shall cease to be an Active Participant as of the last day of the Calendar Year which constituted the One-Year Break in Service.

Section 2.04. Reinstatement of Participation. An Employee who has lost his status as an Active Participant in accordance with Section 2.03 shall again become an Active Participant by meeting the requirements of Section 2.02 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 3
PENSION ELIGIBILITY AND AMOUNTS

Section 3.01. General. The accumulation and retention of Pension Credits and years of Vesting Service for eligibility are subject to the provisions of Article 4. The benefit amounts described in this Article are subject to reduction if a Husband-and-Wife Pension (Article 5) 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 6.

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 Effective Date of the Pension is before January 1, 1976, the Participant must have Pension Credits in at least 15 years, and
 - (1) Have been employed in Covered Employment from any date prior to December 31, 1952 to the date of retirement, or
 - (2) 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
 - (3) 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

- (4) 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 Effective Date of the Pension is on or after January 1, 1976, the Participant must have at least ten (10) years of Vesting Service (at least five (5) years of Vesting Service for the Participant who has at least one Hour of Service on or after January 1, 1999, or at least five (5) years of Vesting Service for Non-Bargained Participants who have at least one Hour of Service after December 31, 1988).

Section 3.02. 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 3.01 and has attained age 65.

Section 3.03. 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.

<u>Effective Date of Pension</u>	<u>Amount Per Pension Credit (up to 25)</u>
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
February 1, 1995 through June 30, 1995	24.00
On or after July 1, 1995	30.00

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 3.04.

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.

Section 3.04. 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 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.

Section 3.05. Early Retirement Pension - Eligibility. A Participant is eligible to retire on an Early Retirement Pension if he meets the requirements of Section 3.01 and has attained age 62.

Section 3.06. 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 effective date of the pension precedes the Participant's Normal Retirement Age.

Section 3.07. 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.

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.

Section 3.08. Medical Examinations for Disability Pensions. An Employee applying for a Disability Pension shall be required to submit to examination by a physician or physicians selected by the Trustees and may be required to submit to re-examination as deemed necessary by the Trustees to determine his physical or mental condition. The eligibility of a Disability Pensioner shall immediately terminate upon his failure or refusal to submit to such a physical examination or if, upon examination, it is determined that he is not Totally Disabled. The determination of the physician or physicians designated by the Fund to examine the Employee or Pensioner shall be conclusive and shall be binding on the Fund and the Employee or Pensioner, as the case may be.

Section 3.09. 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 3.08, equals the Regular Pension payable based on his actual Pension Credits.

For the husband and wife benefit conversion factors to be used when the Participant is retiring with a Disability Pension, see Section 5.05.

Section 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 Pension Effective 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.

Section 3.11 Age and Service Pension – Amount. The monthly amount of the Age and Service Pension will be calculated in the same manner as a Regular Pension.

Section 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 Plan Section 5.03.

Section 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.
- (b) Where additional Pension Credits bring the total beyond 25, 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 Husband-and-Wife Pension, the additional benefit payable is adjusted in accordance with the provisions of Section 5.05, based on the attained ages when the additional benefit becomes payable, but only if the Pensioner's Spouse is then alive.

Section 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 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 4.04 and in accordance with the provisions of Section 4.02 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 4
PENSION CREDITS AND YEARS OF
VESTING SERVICE

Section 4.01. General. Pension Credits and years of Vesting Service are determined in accordance with the provisions of Section 4.02 and 4.03 respectively, subject to the Break in Service Rules of Section 4.04.

Section 4.02. 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:

<u>Employment During</u> <u>a Calendar Year</u>	<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

- (1) 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**

<u>Year Totalling at Least</u>	<u>Pension Credit</u>
1,050 Hours of Service	1
700 but less than 1,050 hours	3/4
420 but less than 700 hours	1/2

- (2) Extra painters shall receive Pension Credits on the basis of the number of hours worked as set forth in paragraph (1) above but shall not be required to work in any minimum number of weeks in a Calendar Year.
- (3) 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

- (4) 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:

**Covered Employment During at
Least 20 Weeks of a Calendar**

<u>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

(1) All Employees other than banquet waiters and checkroom and washroom attendants 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.

(2) 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

- (3) 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 functions	1/2

- (e) Special Credits

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

- (1) 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).

- (2) Disability due to sickness or accident for not more than 12 consecutive months for any one disability.
 - (3) 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 ($\30.00×25 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.

Section 4.03. 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.

- (1) 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.
- (2) 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.
- (3) 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.

- (4) 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 4.03(a), he will, nonetheless be credited with one year of Vesting Service.

Section 4.04. 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

(1) 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 4.03, 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.

(2) 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 2.03; and

(B) Previously earned years of Vesting Service and Pension Credits are restored.

(3) 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 (3) 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.

(4) Nothing contained in the above paragraphs (2) or (3), however, shall change the effect of an Extended Break in Service before 1974.

(c) Extended Break in Service

- (1) 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.
- (2) From 1952 through 1975 – An Extended Break in Service will occur if an Employee fails to earn Pension Credits in:
 - (a) 3 or more Calendar Years for reasons other than involuntary layoff or illness.
 - (b) 4 or more consecutive Calendar Years regardless of cause, or
 - (c) 5 or more years regardless of cause.
- (3)
 - (a) 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.
 - (b) 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.

- (4) 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.

- (5) 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.

ARTICLE 5
HUSBAND-AND-WIFE PENSION

Section 5.01. General. Effective for all Participants with at least one Hour of Service after August 22, 1984, all pensions will be provided as a Husband-and-Wife Pension which 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. When a Husband-and-Wife 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 5.05.

Section 5.02. Effective Date and Conditions. The provisions of this Article do not apply to a pension, the effective 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 Husband-and-Wife Pension the Spouse must be a "Qualified Spouse". For purposes of this section, a Spouse is a Qualified Spouse if (i) the Participant and Spouse are married for at least one year.

- (c) Notwithstanding any provisions to the contrary in paragraph (a) or (b) above, for purposes of this Article a person to whom a Participant was married on the date his pension payments started and for at least one year 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.

Section 5.03. Upon Retirement.

- (a) Upon retirement, pensions are payable in the form of a Husband-and-Wife 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 Husband-and-Wife Pension (or revoke a previous rejection) within the time period described in Section 5.05(c)(3), except that any otherwise proper election made by June 30, 1976, shall be deemed timely.
- (c) If a Participant's Disability Pension is effective before January 1, 1978 and before he attains age 55, the Husband-and-Wife 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.

Section 5.04. Preretirement Surviving Spouse Pension.

- (a) If a Participant who has a Qualified Spouse (as defined in Section 5.02(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.

- (b) For purposes of this Section 5.04, 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 lifetime Surviving Spouse pension determined in accordance with the provisions of Section 5.01 as if the Participant had retired the day before he died.
- (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 Husband-and-Wife 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 Husband-and-Wife 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 Husband-and-Wife 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 one lump sum, actuarially determined to be equivalent to the benefit payable in accordance with Section 5.04(d).

Section 5.05. Adjustment of Pension Amount.

- (a) When a Husband-and-Wife 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.
 - (1) If the Participant's pension is not a Disability Pension - the percentage of his pension determined under Article 3 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;
 - (2) If the Participant's pension is a Disability Pension - the percentage shall of his pension determined under Article 3 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;

- (3) In no event, shall the percentage adjustment of the Participant's pension determined under Article 3 which is payable hereunder be greater than 99%.
 - (4) This formula is not otherwise in any respect to be deemed a vested right of any Participant nor part of his accrued benefit, and is subject to change by the Trustees for pensions commencing later or for elections (or rejections or revocations of either) which the Participant has the option to make later.
- (b) A retiring Participant shall be advised by the Trustees of the impact on his monthly benefit of the Husband and Wife Pension adjustment
- (c) The Husband-and-Wife Pension may be waived in favor of a single life pension only as follows:
- (1) 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.
 - (2) The Participant establishes to the satisfaction of the Trustees that:
 - (i) he or she is not married;
 - (ii) the Spouse whose consent would be required cannot be located; or
 - (iii) consent of the Spouse cannot be obtained because of extenuating circumstances, as provided in IRS regulations;
 - (iv) 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
 - (v) 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.

- (3) To be timely, the request for a waiver and any required consent must be filed with the Trustees not more than 90 days and not less than 30 day 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 Husband-and-Wife 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 Husband-and-Wife Pension is provided to the Participant.

Section 5.06. 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 5.04 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.

Section 5.07. 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 5, determined as of the effective date of the participant's pension 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 effective date of the pension nor may the Beneficiary for the benefits under this Section be changed thereafter.
- (c) The monthly amount of the Husband-and-Wife Pension shall not be increased if, after the effective date of the pension, 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) Where a Pensioner returns to Employment and earns additional pension benefits, no separate election (or rejection) of the Husband-and-Wife Pension is available with respect to the additional benefits, except that where the spouse has died prior to the date the additional benefits become payable, no adjustment shall be made for the Husband-and-Wife Pension form even if earlier elected.

- (f) Notwithstanding any other provision of the Plan, all survivor benefits shall comply with the limits of Internal Revenue 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 6
APPLICATIONS, BENEFIT PAYMENTS AND RETIREMENT

Section 6.01. Applications. A pension must be applied for in writing filed with the Trustees in advance of its Effective Date except as specifically provided in Section 6.05.

Section 6.02. Information and Proof. Every Participant shall furnish, at the request of the Trustees, any information or proof reasonably required to determine his benefit rights. 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 6.09 may be denied, suspended or discontinued. The Trustees shall have the right to recover any benefit payments made in reliance on any false or fraudulent statements, information or proof submitted by a Participant 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.

Section 6.03. Action of Trustees. The Trustees shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case and the application and interpretation of this Plan, and decisions of the Trustees shall be final and binding on all parties.

Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise such powers in a uniform and non-discriminatory manner.

Section 6.04. Right of Appeal. A Participant whose application for benefits under this Plan has been denied, in whole or in part, is to be provided with adequate notice in writing setting forth the specific reasons for such denial, and shall have the right to appeal the decisions by written request filed with the Trustees within 180 days after receipt of such notice. The appeal shall be considered by a person or committee designated by the Trustees.

Section 6.05. Benefit Payments Generally. 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:

- (a) The Participant attains Normal Retirement Age, or
- (b) The Participant terminates his Covered Employment and is Retired as that term is defined in Section 6.06.

(1) 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 with the month following the month in which the Participant has fulfilled all the conditions for entitlement to benefits, including the filing of an application. The "Effective Date" of the Participant's pension is the first day of such later month.

(2) 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. 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 Internal Revenue Code) the Required Beginning Date is April 1st of the calendar year in which the Participant ceases work.

(3) Pension payments shall not be made for the month in which the death of the Pensioner occurs except as provided in accordance with a Husband-and-Wife Pension.

- (4) Notwithstanding any other provisions of this Plan, if the actuarial present value (as defined below) of a benefit payable under the Plan is \$3,500 (\$5,000, effective for distributions made after December 31, 1997) or less as of the date payment would start, the Trustees shall pay it in a single sum equal to that value.

For the purposes of the above paragraph (d), the actuarial present value shall be determined using the lesser of 7% or the interest rate used by the Pension Benefit Guaranty Corporation for valuing annuities under single-employer plans that terminate without a Notice of Sufficiency during the first month of the Calendar Year in which the date as of which the benefit is valued occurs.

Any additional benefits earned by a Participant in Covered Employment after Normal Retirement Age will be determined at the end of each Plan Year and will be payable as of February 1 following the end of the Plan Year in which it accrued, provided payment of benefits at that time is not suspended pursuant to Section 6.07 or postponed due to the Participant's continued employment.

Additional benefits described in the subsection above that are not suspended or postponed will be paid in the payment form in effect for the Participant as of the Annuity Starting Date most recently preceding the date the additional benefits became payable.

Section 6.06. 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.

Section 6.07. 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 6.05(b)(2).

- (ii) The term "Industry covered by the Plan" means any industry in which Employees covered by the Plan were employed when the Participant's pension payments began or, but for suspension under this Article, would have begun.
 - (iii) 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.
 - (iv) 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.
 - (v) 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 Participation 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 6.07(g), and in accordance with Section 6.03.

(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 6.07(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 6.07(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.

Section 6.08. 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, 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 6.07(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 Husband-and-Wife 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 Husband-and-Wife option or any other optional form of benefit.

Section 6.09. 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:
- (1) when the amendment was adopted,
 - (2) when the amendment became effective, or
 - (3) 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 nonforfeitable rights 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 6.02, 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 6.07. The Trustees may make retroactive amendments within the limitations of Section 411(a)(3)(C) of the Internal Revenue 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.

Section 6.10. 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.

Section 6.11. 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. Section 6.05(b) shall apply to determine the Actuarial Present Value of a benefit in connection with a Qualified Domestic Relations Order, if necessary.

Section 6.12. 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.

Section 6.13. Maximum Limitation. In no event shall this Plan pay benefits in excess of the maximums specified for qualified plans by Section 415 of the Code. The Trustees shall be entitled to rely on a representation by an Employer that the pension payable to a Participant under this Plan, to the extent attributable to employment with that Employer, does not together with any other pension payable to him under any other plan maintained by that Employer (and to the extent attributable to employment with that Employer), exceed the limitations of Section 415.

Section 6.14. 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.

ARTICLE 7
MISCELLANEOUS

Section 7.01. 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.

Section 7.02. 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.

Section 7.03. 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.

Section 7.04. Termination.

(a) Right to Terminate

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.

ARTICLE 8
AMENDMENTS

Section 8.01. 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 9
RECIPROCAL PENSIONS

Section 9.01. 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.

Section 9.02. 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 all 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 his 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.

Section 9.03. 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 a condition of eligibility.

Section 9.04. 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.

Section 9.05. 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 ever 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 10

ROLLOVERS

Section 10.01. 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.

Section 10.02. 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.** An Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 4.03(a) of the Code or a qualified trust described in Section 401(a) of the Code that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an eligible Rollover Distribution to the surviving Spouse, an eligible Retirement Plan is an individual retirement account or individual retirement annuity.

- (c) **Distributee.** A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.

- (d) **Direct Rollover.** A Direct Rollover is a payment by the plan to the Eligible Retirement Plan specified by the Distributee