

**FOOD & BEVERAGE WORKERS UNION LOCAL 32
& EMPLOYERS PENSION PLAN**

Effective January 1, 2015

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**FOOD & BEVERAGE WORKERS UNION LOCAL 32
& EMPLOYERS PENSION PLAN**

WHEREAS, it is desirable to revise and restate the Food & Beverage Workers Union Local 32 & Employers Pension Plan to conform with the requirements of changing Federal law;

NOW THEREFORE, the Plan is hereby revised and restated in its entirety as follows, effective January 1, 2015 except as otherwise provided herein; provided, however, that the rights and benefits, if any, of a former Participant shall be determined in accordance with the provisions of the Plan in effect on the date he ceased being an active Participant.

ARTICLE I - DEFINITIONS

1.1 Account. The term Account means the separate account maintained for each Participant adjusted for withdrawals, income, expenses, and realized and unrealized gains and losses, attributed thereto.

1.2 Annual Addition. The term Annual Addition shall mean the sum for any Plan Year of Employer Contributions and forfeitures allocable to a Participant's Account, except to the extent provided in Section 4.2 herein.

1.3 Annuity Starting Date. The term Annuity Starting Date means (a) the first day of the month for which an annuity benefit is payable after the Participant has fulfilled all of the conditions for entitlement to benefits under the terms of the Plan, excluding the requirements of filing a completed application for benefits, including the pension election form, with the Trustees, or (b) in the case of a benefit not payable as an annuity, the first day on which all events have occurred that entitle the Participant to such benefit.

1.4 Beneficiary. The term Beneficiary means the Participant's spouse, except that the Participant may designate a person other than the spouse as the Beneficiary to receive any death benefit as long as the spouse consents to such alternative election in writing, and the spouse's consent acknowledges the effect of such election and is witnessed by a notary public. Any subsequent change in Beneficiary shall be subject to the consent of the Participant's spouse, if any. If the Participant does not have a surviving spouse and no alternative election has been made, Beneficiary shall mean the Participant's surviving children, or if none, the surviving parent or parents, or if none, the estate of the deceased Participant.

A Beneficiary may also be designated in an order that has been entered by a court, provided that such order contains a clear designation of rights and is presented to the Fund prior to any payment being made to another Beneficiary of the same Participant. A Beneficiary designation made pursuant to a court order meeting the above requirements will supersede any prior or subsequent conflicting Beneficiary designation that is filed with the Fund. A Beneficiary may waive his or her rights as a Beneficiary under the Plan in an order that has been entered by a court, provided that such order contains a clear and unequivocal waiver of the Beneficiary's rights and is presented to the Fund prior to any payment being made to the Beneficiary. A waiver in a court order meeting the above requirements will supersede any prior conflicting Beneficiary

designation that has been filed with the Fund. If a court order meeting the above requirements contains a waiver of rights by the Beneficiary on file with the Fund office, and the Participant subsequently dies without naming a new Beneficiary, any benefits payable on behalf of the Participant will be paid pursuant to the Plan as though the Participant died without designating a Beneficiary. The Trustees shall be the sole judges of the effectiveness of the designation, change or waiver of a Beneficiary pursuant to this Section.

1.5 Break-in-Service. The term Break-in-Service means a Plan Year during which an Employee does not accrue 501 or more Hours of Service with an Employer hereunder. Solely for purposes of determining whether a Break-in-Service has occurred, an Employee shall be given credit for up to 501 Hours of Service (or such other periods of time as required by law) for any absence from work by reason of (a) the pregnancy of an Employee, (b) the birth of a child or the adoption of a child by an Employee, or (c) the care of an Employee's child immediately after its birth or adoption. For purposes of this subsection, the Employee shall be credited with the hours or months of service that otherwise would normally have been credited but for the absence, or in cases in which it is not possible to determine such service, with eight Hours of Service for each business day during such absence. For purposes of this subsection, service for one of the permitted leaves of absence shall be credited in the year of the absence, if needed to prevent a break in service, or in any other case, the following year. The Fund may require proof from the Employee that the absence was for one of the reasons referred to in this section or of the number of days for which there was such an absence.

1.6 Code. The term Code means the Internal Revenue Code of 1986, as amended from time to time.

1.7 Collective Bargaining Agreement. The term Collective Bargaining Agreement means: (a) any current agreement between the Union and Employer that provides for the making of Employer contributions to the Trust; (b) any agreement acceptable to the Trustees evidencing the Union's or Fund's agreement to participate as an Employer; and (c) any extensions, amendments, modifications, renewals or memoranda of understanding of such agreement, or any substitution or successor agreement or agreements, which provide for the making of Employer contributions to the Trust.

1.8 Compensation. The term Compensation means the aggregate of all payments for services, including bonuses, commissions, and overtime pay, paid by an Employer to an Employee for the Plan Year during which the Employee has been a Participant in the Plan. Compensation shall not exceed two hundred thousand dollars (\$200,000), (\$265,000 for Plan Years beginning on or after January 1, 2015), or other such amounts for any Plan Year, adjusted for inflation as provided for under section 415(d) of the Code, and adjusted for increases in cost of living under Code Section 401(a)(17), and shall not include any contributions for a Participant under the Plan or amounts contributed by an Employer under any other employee benefit plan. A cost of living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period is less than 12 months, the adjusted limitation will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

1.9 Contribution. The term Contribution means the amount to be paid to the Trust by the Employer as required by a Collective Bargaining Agreement, the Trust, or applicable law.

1.10 Covered Employment. Covered Employment means employment of an Employee by an Employer for which the Employer is required to contribute to the Trust. Covered Employment shall not include employment after the employer's status as an Employer under Section 1.13 has terminated.

1.11 Effective Date. The term Effective Date means January 1, 2015.

1.12 Employee. The term Employee means (a) any employee performing work under a Collective Bargaining Agreement between an Employer and the Union and for whom the Employer is obligated under such Agreement to make contributions to the Trust; and (b) any officers or employees of the Union or Fund which may be participating herein as an Employer.

1.13 Employer. The term Employer means any individual employer (including any individual, partnership, corporation, contractor, joint venture or other entity), which is required by a Collective Bargaining Agreement to make contributions to the Trust and is accepted for participation by the Trustees. The term Employer may also include the Union, which may make contributions to this Fund on behalf of their officers and Employees, provided such contributions do not jeopardize the tax exempt status of this Fund and the Union signs an agreement obligating itself to make contributions to the Fund and is accepted for participation by the Trustees.

1.14 ERISA. The term ERISA means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

1.15 Fund. The term Fund means the Food & Beverage Workers Union Local 32 & Employers Pension Fund.

1.16 Highly Compensated Employee. The term Highly Compensated Employee means any Employee who meets the definition of highly compensated employee under Code Section 414(q), and, if electing in writing by the Employer, is in the top 20% of Employees ranked on the basis of compensation received during such preceding year.

1.17 Hour of Service. The term Hour of Service shall mean:

(a) Each hour for which an Employee is directly or indirectly paid, or entitled to payment by an Employer for the performance of duties. Each Hour of Service shall be credited to the day on which the duties were performed.

(b) Each hour for which backpay (irrespective of mitigation of damages) has been either awarded or agreed to by an Employer. Each such Hour of Service shall be credited to the year in which the award, agreement, or payment is made.

(c) Each hour for which an Employee is directly or indirectly paid, or entitled to payment, by an Employer for reasons other than the performance of duties during a period of service with an Employer (such as vacation, reporting time, holiday, sickness, disability, layoff, jury duty, military duty, compensated leaves of absence, or similar pay periods). Each such Hour

of Service shall be credited in accordance with the Department of Labor Regulations appearing at 29 C.F.R. Part 2530.200(b).

(d) An Employee shall not be credited with an Hour of Service under both paragraphs (a) through (c) above with respect to the same item.

1.18 Limitation Year. The term Limitation Year means the Plan Year.

1.19 Normal Retirement Age. The term Normal Retirement Age means the date the Participant attains age sixty-five (65).

1.20 Normal Retirement Date. The term Normal Retirement Date means the first day of the month coinciding with or next following the date a Participant attains his Normal Retirement Age.

1.21 Participant. The term Participant means any Employee who meets the requirements of participation as set forth in Section 3.1 hereunder.

1.22 Permanent and Total Disability. The term Permanent and Total Disability means a disability by a Participant who is, on the basis of medical evidence satisfactory to the Trustees, found to be permanently and totally unable, as a result of bodily injury or disease, to engage in any further employment in the industry covered by the Plan. The Trustees shall be the sole and final judges of permanent and total disability and the entitlement to a disability benefit hereunder. The Trustees may, in their discretion, accept as proof of disability, a disability award issued by the Social Security Administration.

1.23 Plan. The term Plan means the Food & Beverage Workers Union Local 32 & Employers Pension Plan, the terms of which are set forth herein, as it may be amended from time to time. The Plan shall be deemed to be a profit sharing plan.

1.24 Plan Year. The term Plan Year means the twelve (12) month period ending on December 31.

1.25 Qualified Joint and Survivor Annuity. The term Qualified Joint and Survivor Annuity means a monthly Annuity payable for the life of the Participant with a survivor annuity for the life of the Participant's spouse. The monthly annuity payment to the Participant's spouse shall be equal to fifty percent (50%) of the amount which was payable to the Participant.

1.26 Qualified Preretirement Survivor Annuity. The term Qualified Preretirement Survivor Annuity means an annuity for the life of the surviving spouse, the actuarial equivalent of which is equal to fifty percent (50%) of the Account balance of the Participant as of the date of the Participant's death.

1.27 Qualified Optional Survivor Annuity. The term Qualified Optional Survivor Annuity means a monthly Annuity payable for the life of the Participant with a survivor annuity for the life of the Participant's spouse which shall be equal to seventy-five percent (75%) of the amount which was payable to the Participant, and as defined in Internal Revenue Code Section 417(g) and ERISA Section 205(d).

1.28 Termination of Employment. The term Termination of Employment means the failure to complete any work in Covered Employment for a full Plan Year.

1.29 Trust. The term Trust means the corpus of the Fund and earnings, appreciations or additions, losses, expenses and disbursements thereon and thereto held by the Trustees for the uses and purposes set forth in the Plan.

1.30 Trustees. The term Trustees means the Trustees appointed pursuant to the terms of the Trust.

1.31 Union. The term Union means Food & Beverage Workers Union Local 32 or any successor thereto.

1.32 Valuation Date. Effective for January 1, 2010, the term Valuation Date shall mean December 31 of each Plan Year, and such additional dates as the Trustees determine.

1.33 Vested Interest. The term Vested Interest on any date means the nonforfeitable right to a benefit in the amount which is equal to one hundred percent (100%) of the Participant's Account balance.

1.34 Year of Service. The term Year of Service shall mean any Plan Year during which an Employee completes at least one thousand (1,000) Hours of Service.

ARTICLE II - PURPOSE OF THE PLAN

The purpose of this Plan is to provide retirement and other related benefits to Participants and Beneficiaries under the terms and conditions set forth herein. The Plan is for the exclusive benefit of Employees of the contributing Employers who qualify as Participants under the terms and conditions herein, and the Beneficiaries of these Participants. At no time may any part of the corpus or income of the Trust be used for, or diverted to, any other purpose, except that the Trustees shall provide for reasonable expenses of administering the Fund from the assets of the Trust.

ARTICLE III - ELIGIBILITY AND VESTING

3.1 Participation. An Employee shall become a Participant in the Plan upon the completion of two Years of Service. If an Employee incurs a one year Break-in-Service before attaining two Years of Service, any service completed prior to the Break-in-Service shall be disregarded. Each Participant shall execute and complete such applications or other forms required by the Trustees.

3.2 Vesting. A Participant shall be one hundred percent (100%) vested and have a Vested Interest in his Account at all times.

3.3 Military Service. This Section is effective December 12, 1994. Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to Qualified Military Service as defined in Code Section 414(u)(5) will be provided in accordance with the general provisions of Code Section 414(u). To protect his full rights, an Employee who

left employment to enter such military service should apply for reemployment with the 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 supply the evidence necessary to determine his rights.

Effective January 1, 2007, a Participant who would otherwise qualify for reemployment rights under applicable federal law but who is not timely reemployed (or does not make himself available for reemployment) within the time limits established by applicable federal law due to the Participant's death on or after January 1, 2007 while performing qualified military service shall be treated as having been reemployed on the day preceding the date of death and then having terminated Covered Employment on the date of death for granting Vesting Service for such period, to the maximum extent permitted by law.

3.4 Leave Under Family and Medical Leave Act of 1993. To the extent required by federal law, for the sole purpose of determining whether a one year Break-in-Service has occurred, a Participant shall receive credit for up to 501 Hours of Service, or such larger period required by law, if he or she is absent from work because of a period of leave as provided under the Family and Medical Leave Act of 1993. Periods of such leave shall not be taken into account for any other purpose under this Plan except to the extent required by federal law.

ARTICLE IV - CONTRIBUTIONS AND ANNUAL ADDITIONS TO PARTICIPANT ACCOUNTS

4.1 Employer Contributions. The Employer shall make Contributions to the Trust as set forth in its Collective Bargaining Agreement. No Employee contributions shall be made to the Trust.

4.2 Annual Additions. As of December 31 of each Plan Year, Employer Contributions shall be allocated to each Employee's Account according to the rate of Contribution established in each Collective Bargaining Agreement covering the Employee for the Plan Year, but only to the extent that the Employee's Employer has actually made the Contribution due as of December 31st of such Plan Year.

ARTICLE V - ANNUAL VALUATION AND ADJUSTMENTS TO PARTICIPANT ACCOUNTS

5.1 Valuation of Trust. As soon as practicable after December 31 of each year, the Trustees shall determine and establish the market value of the assets in the Trust and shall determine the amount of the net income, loss, administrative expenses, appreciation or depreciation in the value of the Trust for the Plan Year as of the Valuation Date.

5.2 Adjustment to Participant Accounts. Promptly after preparation of the Trustees' valuation, as provided in Section 5.1 above, the Trustees shall adjust the Account of each Participant so that the amount of net income, loss, administrative expenses, appreciation or depreciation in the value of the Trust for the Plan Year shall be credited to or charged against each Participant's Account in the ratio that (a) the balance in the Account of each Participant as of the first day of the Plan Year minus the amount distributed to the Participant during the Plan Year bears to (b) the balance in all the Participants' Accounts as of the first day of the Plan Year minus the total amount distributed to all Participants during the Plan Year. If at the end of a Plan

Year an Employee does not become a Participant (as provided in Section 3.1), contributions made to the Plan attributable to service performed by the Employee shall first be allocated to pay administrative expenses incurred in the Plan Year and second to the Participants' Accounts according to the ratio described in this Section 5.2.

5.3 Distribution Pending Calculation. Effective January 1, 2010, pending the preparation of the Trustees' valuation, as provided under Section 5.1, and the Trustees' adjustment to the Participant's Accounts, as provided under Section 5.2, of a total distribution as elected by an eligible Participant or Beneficiary pursuant to Article IX herein, a partial distribution of benefits equal to fifty percent (50%) of the Participant's Account determined as of the last completed Valuation Date preceding the later of Termination of Employment, death, Total and Permanent Disability, retirement or the receipt of an application shall be paid upon receipt of a completed application of the Participant or Beneficiary. If benefits are paid in the form of a partial distribution, the balance of the Participant's benefits, if any, shall be paid following the Valuation Date in the year in which the later of the Termination of Employment, death, Total and Permanent Disability, retirement or application of the Participant occurs. To the extent that such a partial distribution made to the Participant or Beneficiary exceeds the value of the Participant's Account as of the Valuation Date, the Participant or Beneficiary receiving such partial distribution shall be obligated to repay the Trust the amount of the overpayment.

ARTICLE VI - DISABILITY BENEFITS

6.1 Payment of Disability Benefits. If a Participant retires by reason of Permanent and Total Disability, then such Participant shall be entitled, upon completion of a benefit application and providing all necessary documentation to the Fund Office, to receive benefits equal to his Account balance calculated as of the next Valuation Date. Subject to satisfying the spousal consent requirements of Section 9.2, unless the Participant elects otherwise, such benefits shall commence in accordance with one of the forms of payment set forth in Section 9.1, no later than the later of (1) sixty (60) days after the end of the Plan Year in which disability retirement occurs, or (2) sixty (60) days after the earliest date on which the amount of such benefits can be ascertained. Effective for benefit applications made on or after January 1, 2010, if a Participant retires by reason of Permanent and Total Disability, then such Participant shall be entitled, upon completion of a benefit application and providing all necessary documentation to the Fund Office, to receive benefits in accordance with Sections 5.1 through 5.3 hereunder.

ARTICLE VII - RETIREMENT AND DEATH BENEFITS

7.1 Normal Retirement.

- (a) Upon the attainment of his Normal Retirement Date, a Participant shall be

entitled to receive benefits equal to his Account balance. If a Participant continues in employment with an Employer after his Normal Retirement Date, he may continue to participate in the Plan until his actual date of retirement. Upon receipt of a properly completed benefit application by the Fund Office in accordance with subsection 7.1(b), benefits shall commence, in accordance with one of the forms of payment set forth in Section 9.1 hereof, as soon as practical after the Participant's Annuity Starting Date, but in no event, unless the Participant elects otherwise, shall the payment of benefits begin later than the sixtieth (60th) day after the later of the close of the Plan Year in which: (1) the Participant attains Normal Retirement Age, (2) the Participant's Termination of Employment, or (3) after the earliest date on which the amount of such benefits can be ascertained.

(b) No pension or other benefit hereunder shall be payable until the Participant or other applicant shall have submitted a properly completed application for benefits, including the pension election form, upon a form to be furnished by, and acceptable to, the Trustees.

(c) Notwithstanding any other provision of the Plan, all distributions of benefits shall comply with the limits of the Code Section 401(a)(9), to the extent applicable, including the minimum distribution incidental benefit requirements described in Code Section 401(a)(9)(g) and Treasury Regulation 1.409(a)(9)-6, Q&A 2.

7.2 Preretirement Death Benefits.

(a) Except as otherwise provided in Section 7.2(b), upon the death of a Participant while in the employ of an Employer or on an authorized leave of absence, his Beneficiary shall be entitled to receive benefits equal to the deceased Participant's Account balance. Upon completing the benefit application and providing all necessary documentation to the Fund Office in accordance with subsection 7.1(b), such benefits shall be paid in a lump sum no later than the later of (1) sixty (60) days after the end of the Year in which the Participant's death occurs, or (2) sixty (60) days after the earliest date on which the amount of such benefits can be ascertained.

(b) Upon the death of a married Participant, prior to the payment of benefits, the Participant's spouse shall be entitled to receive benefits in the form of a Qualified Pre-retirement Survivor Annuity equal to fifty percent (50%) of the deceased Participant's Account balance. The Participant's Beneficiary shall be entitled to receive all remaining amounts in accordance with Section 7.2(a). A Qualified Pre-retirement Survivor Annuity shall be payable on the later of (1) sixty (60) days after the end of the Plan Year in which the Participant's death occurs, or (2) sixty (60) days after the earliest date on which the amount of the monthly benefit can be ascertained, provided that the surviving spouse shall have the option of either receiving the benefit in the form of a lump sum or deferring the Qualified Pre-retirement Survivor Annuity to a date no later than the Required Beginning Date under Plan Section 9.3.

ARTICLE VIII - TERMINATION OF COVERED EMPLOYMENT

8.1 Payment of Benefits.

(a) In the event of the Termination of Employment of a Participant, the Participant shall be entitled to receive one hundred percent (100%) of the amount in his Account, to be paid in a form selected under the provisions of Article IX.

(b) No pension or other benefit hereunder shall be payable until the Participant or other applicant shall have submitted a properly completed application for benefits, including the pension election form, upon a form to be furnished by, and acceptable to, the Trustees.

(c) The Trustees shall begin payment of benefits, upon receipt of a properly completed benefit application in accordance with subsection 8.1(b), to a Participant who incurs a Termination of Employment no later than the sixtieth (60th) day after the later of the close of the Plan Year in which: (1) the Participant experiences Termination of Employment, or (2) the earliest date on which the amount of such benefits can be ascertained.

(d) Notwithstanding the foregoing, if the Participant's Account balance exceeds five thousand dollars (\$5,000), no distribution may be made prior to the date the Participant reaches age sixty-five (65), unless the Participant and his spouse, if any, consents to an earlier distribution. If the Participant's Account balance is five thousand dollars (\$5,000) or less, the Trustees shall distribute, in accordance with subsection 8.1(b), such Account following the Valuation Date after Termination of Employment in a lump sum.

ARTICLE IX - FORMS OF BENEFIT PAYMENT

9.1 Options.

(a) Except as provided in Section 9.1(b), a Participant shall have the option of receiving benefits in one of the following forms:

(1) for a Participant married on his Annuity Starting Date, a 50% Qualified Joint and Survivor Annuity;

(2) for a Participant married on his Annuity Starting Date, a Qualified Optional Survivor Annuity effective for Annuity Starting Dates on or after January 1, 2008. Such Participant may waive payment of the Qualified Joint and Survivor Annuity benefit and may elect, pursuant to Section 9.2, to receive a pension in the form of a 75% Qualified Optional Joint and Survivor Annuity ("QOSA") which is the Actuarial Equivalent of the Single Life Annuity, paid as a monthly pension, commencing on the Employee's applicable Annuity Starting Date and continuing throughout his remaining lifetime. Under the 75% QOSA, the Participant will receive an adjusted monthly amount for life, and if the Participant dies before his or her surviving spouse, the latter will receive a monthly benefit for his or her lifetime equal to seventy-five percent (75%) of the Participant's adjusted monthly amount, through the surviving spouse's remaining lifetime.

- (3) a single life annuity; and
- (4) a lump sum cash payment.

(b) Notwithstanding any other provisions of the Plan, if the Participant's Account balance is less than five thousand dollars (\$5,000), upon receipt from the Participant of a completed benefit application and all required supporting documentation, the Trustees shall pay the entire balance in a lump sum. Such payment shall be in full discharge of all obligations under the Plan with respect to the Participant. A lump sum payment shall not be made after the date payment of benefits by another method commences.

(c) Each Participant shall be provided within such time as consistent with such regulations as the Secretary of the Treasury shall provide before the Annuity Starting Date, a written explanation of:

- (1) the terms and conditions of the Joint and Survivor benefit;
- (2) the terms and conditions of the optional forms of benefits set forth in this Article;
- (3) the Participant's right to make, and the effect of, an election to waive the Joint and Survivor form of benefit;
- (4) the rights of the Participant's spouse; and
- (5) the right to make, and the effect of, a revocation of any election.

9.2 Notice and Election Period.

(a) A Participant who otherwise would receive his benefit in the form of a Qualified Joint and Survivor Annuity may elect to receive his benefit in another form provided that such election is received in writing by the Trustees no more than one hundred and eighty (180) days prior to the Participant's Annuity Starting Date, and either the Participant's spouse consents in writing no more than one hundred and eighty (180) days prior to the Participant's Annuity Starting Date to waive his or her right to receive benefits pursuant to a Qualified Joint and Survivor Annuity or the Participant establishes that his spouse cannot be located or that written consent cannot be obtained because of such other circumstances as the Internal Revenue Service may prescribe by regulation.

(b) For purposes of Section 9.2, a spousal consent shall not be valid unless such consent is in writing, acknowledges the effect of such election, and is witnessed by a notary public.

(c) Any election by a Participant not to receive his benefit in the form of a Qualified Joint and Survivor Annuity may be revoked by the Participant by delivery of a written revocation prior to the Participant's Annuity Starting Date. Once revoked, an election may be reinstated prior to the Participant's Annuity Starting Date. After the Participant's Annuity Starting Date, an election may not be revoked.

(d) Such spousal consent shall also acknowledge the specific non-spouse Beneficiary, if any, to receive benefits as well as the benefit option elected by the Participant.

9.3 Limitations on the Payment of Benefits.

(a) (1) In accordance with the provisions of Code section 401(a)(9), notwithstanding any other provisions of this Plan, payment of retirement benefits shall commence no later than the April 1 of the calendar year following the calendar year in which a Participant attains age seventy and one-half (70 1/2), which shall be the Required Beginning Date. For all Employees who attain age seventy and one-half (70 1/2) on or after January 1, 1999, Required Beginning Date shall be the April 1 of the calendar year following the later of the calendar year in which the Employee attains seventy and one-half (70 1/2) or the calendar year in which the Employee retires.

(2) Payment of benefits under this Plan to a Beneficiary or surviving spouse will commence by the applicable Required Beginning Date as follows:

(i) In the case of benefits to a Beneficiary other than a surviving spouse, which become payable on account of the Participant's death, payments shall begin no later than one (1) year from the date of death, or if later, as soon as practicable after the Trustees learn of the death.

(ii) In the case of benefits to a surviving spouse, payments shall begin on or before the later of the December 31st of the calendar year immediately following the calendar year in which the Participant died, the December 31st of the calendar year in which the Employee would have attained age seventy and one-half (70 1/2), or as soon as practicable after the Trustees learn of the death.

(b) In the event a Participant dies prior to commencement of benefits, the death benefits attributable to the Participant shall be paid to the Participant's Beneficiary not later than five (5) years after the date the Participant dies.

(c) Notwithstanding any other provision of the Plan, all distributions of benefits shall comply with the limits of the Code Section 401(a)(9) to the extent applicable, including the minimum distribution incidental benefit requirements described in Code Section 401(a)(9)(g) and Treasury Regulation 1.409(a)(9)-6, Q&A 2.

ARTICLE X - ANNUAL ADDITIONS

10.1 Limitations on Annual Additions to Participant's Account.

(a) For Plan Years prior to January 1, 2002, the Annual Additions to a Participant's Account shall under no circumstances exceed the lesser of (1) or (2) below:

(1) twenty-five percent (25%) of the Participant's Compensation. For purposes of this Section, Compensation includes the Participant's wages, salaries, fees for professional services, other amounts received for personal services actually rendered in the course of the employment with the Employer, Employer contributions to a cash or

deferred arrangement or a 403(b) annuity plan, and amounts excluded from gross income pursuant to Code Sections 125, 132(f)(4), or 457. Except as provided in the preceding sentence, the term Compensation does not include amounts which receive special tax benefits; or

(2) thirty thousand dollars (\$30,000).

All defined contribution plans of an Employer, whether terminated or not, shall, for purposes of these limitations, be considered as one plan in accordance with Code Section 415(f).

The thirty thousand dollar (\$30,000) limitation in Section 10.1(a)(2) shall be adjusted for increases in the cost of living in accordance with regulations prescribed by the Secretary of Treasury under Code Section 415.

(b) For Plan Years on or after January 1, 2002, the Annual Additions to a Participant's Account shall under no circumstances exceed the lesser of (1) or (2) below:

(1) \$49,000, as adjusted for increases in the cost of living under Section 415(d) of the Code or

(2) 100% of such Participant's Compensation (including such additional amounts as may be included in Compensation under Section 415(c)(3) of the Code for such Plan Year).

Effective January 1, 2000, the combined plan limit of Code Section 415 is eliminated.

(c) In the event the Annual Addition to a Participant's Account exceeds the limitations contained in this Article, such excess shall be allocated to each remaining Participant's Account based on a fraction the numerator of which is equal to the value of such Participant's Account balance as of the first day of the Plan Year and the denominator of which is equal to the value of all Participants' Account balances as of the first day of the Plan Year. If the allocation of excess Annual Additions causes each Participant's Account to exceed the limitations contained herein, the excess amounts shall be held in a suspense account and allocated to Participants in the next Plan Year prior to the allocation of any Employer contributions made to the Plan in that Plan Year. Excess allocations may not be distributed to Participants or former Participants.

(d) For Limitation Years on or after January 1, 2008, benefits under the Plan shall be limited in accordance with Code Section 415 and the Treasury regulations thereunder, in accordance with this subsection. Capitalized terms used in this subsection that are not defined in the Plan, shall have the meaning ascribed to them under the Treasury regulations adopted under Code Section 415.

(1) In no event shall the Annual Additions credited to the Account of a Participant under the Plan in a Limitation Year beginning on or after January 1, 2008 exceed the annual limit determined in accordance with Code Section 415 and the Treasury regulations thereunder. If the Annual Additions credited to a Participant's Account in a Limitation Year would exceed such limitation, the Annual Additions shall

be limited to comply with the maximum permissible annual amount.

(2) The term Compensation as used in this subsection shall have the same meaning as in Code Section 415(c)(3) and the Treasury regulations adopted thereunder, including payments from a nonqualified unfunded deferred compensation plan and Deemed 125 Compensation, to the extent permitted by law. Compensation shall also include compensation paid after an Employee's severance from employment to the maximum extent permitted by law, including such leave cashouts and deferred compensation and other post-severance payments. If a Participant is totally and permanently disabled, Compensation shall also include compensation the Participant would have received during the Limitations Year at the rate of compensation the Participant received from his Employer immediately before becoming totally and permanently disabled, to the extent permitted by law. For the purpose of applying the limitations of this subsection, in no event shall the Plan include Compensation that exceeds the limitations of Code Section 401(a)(17).

(3) In aggregating the benefits under this Plan with any plan that is not a multiemployer plan maintained by any Employer, only the Annual Additions to this Plan that are provided by such Employer shall be treated as Annual Additions to a plan maintained by the Employer, to the maximum extent permitted by law. In the event that the Annual Additions in any Plan Year by a Participant exceed the limits under Code Section 415 as a result of the mandatory aggregation of this Plan with the benefits under another plan maintained by an Employer, the Annual Additions under such other plan shall be reduced to the extent necessary to comply with Code Section 415.

(4) Annual Additions that are limited by this Article shall be increased annually to the maximum extent permitted by Code Section 415(d) and the regulations thereunder.

ARTICLE XI - PARTICIPANTS' RIGHTS

11.1 General Rights of Participants and Beneficiaries.

(a) The Plan is established and the Trust assets are held for the exclusive purpose of providing benefits to Employees and their Beneficiaries qualified to participate under the terms of the Plan. As a Participant in the Food & Beverage Workers Union Local 32 & Employers Pension Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). The Board of Trustees complies fully with this law and encourages you to first seek assistance from the Fund Office when you have questions or problems that involve the Plan at the following address:

Associated Administrators, LLC
Food & Beverage Workers Union
Local 32 & Employer's Pension Plan
4301 Garden City Drive, Suite 201
Landover, MD 20785
(301) 429-8964

ERISA provides that all Participants are entitled to:

- (1) Receive information about your Plan and benefits.
- (2) Examine, without charge, all documents governing the Plan, including insurance contracts, Collective Bargaining Agreements, and copies of the latest annual reports (Form 5500) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration. Participants may examine these documents without charge at the Fund office and at other specified locations, such as Participating Union halls and work sites.
- (3) Obtain, upon written request to the Fund office, copies of all documents governing the Plan and other Plan information, including insurance contracts, Collective Bargaining Agreements, copies of the latest annual report (Form 5500) and updated summary plan descriptions. The Administrator may make a reasonable charge for the copies.
- (4) Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each Participant with a copy of this annual funding notice.
- (5) Obtain a statement telling you whether you have a right to receive a pension at Normal Retirement Age (age 65) and if so, what your benefits would be at Normal Retirement Age if you stop working under the Plan now. This statement must be requested in writing and is not required to be given more than once a year. The Plan must provide the statement free of charge.

(b) In addition to creating rights for Participants, ERISA imposes duties upon the people responsible for the operation of the Plan. The people who operate your Plan, called fiduciaries, have a duty to do so prudently and in the interest of you and other Plan Participants and beneficiaries. The Plan does not give you any right to continue in employment. However, no one, including your Participating Employer, your Participating Union, or any other person, may fire you or discriminate against you in any way for the purpose of preventing you from obtaining a benefit or exercising your rights under ERISA.

(c) If your claim for a benefit is denied in whole or in part or ignored, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

(d) Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the Plan and do not receive them within 30 days, you may file suit in a federal court. In such case, the court may require the Trustees to provide the materials and pay you a fine of up to \$110 a day until you receive them, unless the materials were not sent because of reasons beyond the control of the Trustees. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. In addition, if you disagree with the Fund's decision or lack thereof concerning the qualified status of a Domestic Relations Order, you may file suit in federal court. If Fund

fiduciaries ever misuse the Fund's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay the court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees--if it finds your claim is frivolous, for example.

(e) If you have any questions about your Plan, you should contact the Fund office. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Fund office, you should contact the nearest area office of the Employee Benefits Security Administration (EBSA), U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N1513, Washington, DC 20210. You also may obtain certain publications about your rights and responsibilities under ERISA by calling the public disclosure room of the Employee Benefits Security Administration at (202) 693-8673.

11.2 Claims and Appeals Procedure; Right to Appeal.

(a) **Non-Disability Benefit Claims Review Procedure.** The Trustees shall make a determination with respect to an application for benefits within 90 days after such application is filed with the Fund. If a claimant's application for benefits is denied, in whole or in part (or if the claimant's benefits are reduced or terminated) the Trustees shall notify the claimant. Such notification shall be in writing and shall be delivered, by mail or otherwise, to the claimant within ninety days (90) after such application is filed (or after the claimant's benefits are reduced or terminated). If additional time is required because of special circumstances, the Fund shall notify the claimant in writing of the reason for the delay and the date that the Fund expects to issue a final decision. A decision will be made with respect to each application no more than 180 days from the date the application is filed. If the application is denied in whole or in part, the written notification shall set forth, in a manner calculated to be understood by the claimant:

- (1) the specific reason or reasons for the denial;
 - (2) specific reference to pertinent provisions of the Plan on which the denial is based;
 - (3) any additional information necessary to reconsider the application;
 - (4) an explanation of the Plan's claim review and appeal procedures;
- and
- (5) a statement that the claimant has the right to bring an action under ERISA if he or she decides to appeal and the appeal is denied.

A claimant whose application for benefits has been denied in whole or in part may, within 60 days after written notification of such denial, file a written request for a review of

his application by the Trustees. Such written request must include all facts regarding the application as well the reasons the claimant feels that the denial was incorrect, and shall be deemed filed upon receipt of it by the Fund.

A claimant who timely files a request for review of his application for benefits may receive, upon request and free of charge, reasonable access to and copies of documents relevant to his or her application. A claimant may also submit issues and comments and to the reviewer in writing and may submit documents relating to the application.

A claimant may name a representative to act on his or her behalf. To do so, the claimant must notify the Fund in writing of the representative's name, address and telephone number. A claimant may also, at his or her own expense, have legal representation at any stage of these review procedures. However, neither the Fund nor the Board of Trustees will be responsible for paying any legal expenses incurred by the claimant during the course of the appeal.

The Board of Trustees, in making its decisions on applications and appeals, will apply the terms of the Plan document and any applicable guidelines, rules and schedules, and will periodically verify that benefit determinations are made in accordance with such documents, and where appropriate, are applied consistently with respect to similarly situated claimants. The Board of Trustees will also take into account all information that the claimant submits.

The Board of Trustees will make its decision at the next regular meeting following receipt of the appeal, unless there are special circumstances, such as the need to hold a hearing, in which case the Board of Trustees will decide the case at its next regular meeting. If the claimant submits an appeal less than 30 days before the next scheduled Board of Trustees meeting, the Board of Trustees will decide the case at the second scheduled meeting, or, if there are special circumstances, the third meeting after the appeal is received. If the Board of Trustees requires a postponement of the decision to the next meeting, the claimant will receive a notice describing the reason for the delay and an expected date of the decision.

The Board of Trustees will send the claimant a notice of its decision within 5 days of the decision. If the Board of Trustees denies the appeal, the notice will contain the reasons for the decision, specific references to the plan provisions on which the decision was based, notice that the claimant may receive, upon request and free of charge, reasonable access to and copies of all documents and records relevant to the claim, and a statement of the claimant's right to bring a lawsuit under ERISA.

A decision by the Board of Trustees is final and binding.

(b) **Disability Benefit Claims Review Procedure.** If an Employee applies for a benefit based on permanent and total disability in accordance with Section 6.1, the Trustees shall make a determination with respect to the application within 45 days after such application is filed with the Fund Office. If a claimant's application for benefits is denied, in whole or in part (or if the claimant's benefits are reduced or terminated) the Trustees shall notify the claimant. Such notification shall be in writing and shall be delivered, by mail or otherwise, to the claimant within forty-five (45) days after such application is filed (or after the claimant's benefits are

reduced or terminated). The Fund may require an additional 30 days, and occasionally another 30 days beyond that, for reasons beyond the control of the Fund, including the claimant's failure to properly file his or her application or submit sufficient information for the Fund to process it. If extra time is required, the claimant will be notified in writing explaining the reason for the delay, the standards for entitlement to a benefit, any unresolved issues and additional information required, and the date that the Fund expects to issue a final decision. If the Fund requests additional information, the claimant will have 45 days to respond. The Fund will not decide the application until the claimant responds or the 45 days expires, whichever comes first. If the claimant does not submit the requested information, the Fund will deny the application.

If the application is denied in whole or in part, the written notification shall set forth, in a manner calculated to be understood by the claimant:

- (1) the specific reason or reasons for the denial;
 - (2) specific reference to pertinent provisions of the Plan on which the denial is based;
 - (3) any additional information necessary to reconsider the application;
 - (4) an explanation of the Plan's claim review and appeal procedures;
- and
- (5) a statement that the claimant has the right to bring an action under ERISA if he or she decides to appeal and the appeal is denied.

If the Fund relied on an internal rule, guideline or protocol in making the decision, the claimant will receive either a copy of the rule, etc., or a statement that it was relied upon and is available upon request and free of charge. If the Fund based its decision on medical necessity, experimental treatment or a similar exclusion or limit, the claimant will receive either an explanation of the judgment related to the condition or a statement that such an explanation is available upon request and free of charge. If the Fund received the advice of any medical or vocational expert with respect to the application, the Fund will identify the expert upon the claimant's request.

A claimant whose application for benefits has been denied in whole or in part may, within 180 days after written notification of such denial, file a written request for a review of his application by the Trustees. Such written request should be addressed to the Board of Trustees and must include all facts regarding the application as well the reasons the claimant feels that the denial was incorrect, and shall be deemed filed upon receipt of it by the Fund.

A claimant who timely files a request for review of his application for benefits may receive, upon request and free of charge, reasonable access to and copies of documents relevant to his or her application. A claimant may also submit issues and comments and to the reviewer in writing and may submit documents relating to the application.

A claimant may name a representative to act on his or her behalf. To do so, the claimant must notify the Fund in writing of the representative's name, address and telephone

number. A claimant may also, at his or her own expense, have legal representation at any stage of these review procedures. However, neither the Fund nor the Board of Trustees will be responsible for paying any legal expenses incurred by the claimant during the course of the appeal.

The Board of Trustees, in making its decisions on applications and appeals, will apply the terms of the Plan document and any applicable guidelines, rules and schedules, and will periodically verify that benefit determinations are made in accordance with such documents, and where appropriate, are applied consistently with respect to similarly situated claimants. The Board of Trustees will also take into account all information that the claimant submits. If the initial decision was based in whole or in part on a medical judgment, the Board of Trustees will consult with a health care professional in the appropriate field who was not consulted in the initial determination (or a subordinate of such person). The Board of Trustees did not initially review the application, and will not give deference to the initial decision.

The Board of Trustees will make its decision at the next regular meeting following receipt of the claimant's appeal, unless there are special circumstances, such as the need to hold a hearing, in which case the Board of Trustees will decide the case at its next regular meeting. If the appeal is submitted less than 30 days before the next scheduled Board of Trustees meeting, the Board of Trustees will decide the case at the second scheduled meeting, or, if there are special circumstances, the third meeting after it receives the appeal. If the Board of Trustees requires a postponement of the decision to the next meeting, the claimant will receive a notice describing the reason for the delay and an expected date of the decision.

The Board of Trustees will send the claimant a notice of its decision within 5 days of the decision. If the Board of Trustees denies the appeal, the notice will contain the reasons for the decision, specific references to the plan provisions on which the decision was based, notice that the claimant may receive, upon request and free of charge, reasonable access to and copies of all documents and records relevant to the claim, and a statement of the claimant's right to bring a lawsuit under ERISA.

A decision by the Board of Trustees is final and binding.

11.3 Limitation of Rights. Participation hereunder shall not grant any Participant the right to be retained in the service of an Employer or any other rights or interest in the Plan or Trust other than those specifically herein set forth.

ARTICLE XII - AMENDMENT OR TERMINATION OF THE PLAN

12.1 Amendment of Plan. The Trustees shall have the right from time to time to modify or amend, in whole or in part, any or all of the provisions of the Plan. No amendment shall deprive any Participant or Beneficiary of any Vested Interest hereunder.

The Trustees shall have the power to establish, amend, interpret and promulgate the rules and regulations regarding the administration and function of the Plan, including the power to adopt, maintain and, if necessary, amend the Plan.

12.2 Conditions of Amendment. The Trustees shall not make any amendment or

modification to the Plan that would cause the Plan:

- (a) to lose its status as a qualified plan within the meaning of Code Section 401(a);
- (b) to become a "defined benefit plan" as defined by Section 3(35) of ERISA, 29 U.S.C. 1002(35); or
- (c) to become subject to the provisions of Title IV of ERISA, 29 U.S.C. 1301 et seq.

12.3 Termination of the Plan. Although the continuation of the Plan is contingent upon the continued existence of a Collective Bargaining Agreement, and the Trustees intend to continue the Plan indefinitely for the benefit of the Employees, they reserve the right to terminate the Plan at any time. A temporary period between Collective Bargaining Agreements shall not cause a termination or partial termination of the Plan.

12.4 Full Vesting. Upon the termination or partial termination of the Plan, the rights of all affected Participants in and to the amounts credited to each Participant's Account shall be one hundred percent (100%) vested and nonforfeitable. Thereupon, each Participant shall receive a total distribution of his Account in accordance with the terms of the Plan.

12.5 Approval by the Internal Revenue Service. Notwithstanding any other provisions of this Plan, the adoption of this Plan is subject to the condition precedent that the Plan shall be approved and qualified by the Internal Revenue Service and that the Trust established in connection herewith shall be entitled to exemption under the provisions of Code Section 501(a).

12.6 Subsequent Unfavorable Determination. If the Trustees are notified subsequent to initial favorable qualification that the Plan is no longer qualified within the meaning of Code Section 401(a), or that the Trust is no longer entitled to exemption under the provisions of Code Section 501(a), and if the Trustees shall fail within a reasonable time to make any necessary changes in order that the Plan and/or Trust shall so qualify, the Plan and the Trust shall be deemed to have terminated and the Participants' Account balance shall be disposed of in the manner set forth in Section 12.4 above.

ARTICLE XIII - MISCELLANEOUS

13.1 Anti-Assignment. The right of any Participant or Beneficiary to any benefit or payment under the Trust shall not be subject to voluntary or involuntary transfer, alienation, or assignment, and to the fullest extent permitted by law, shall not be subject to attachment execution, garnishment, sequestration, or other legal or equitable process. Notwithstanding the preceding sentence, benefits shall be payable to an individual, other than the Participant, in accordance with a Qualified Domestic Relations Order under Code Section 414(p) and section 206(d) of ERISA.

13.2 Non-Reversion. This Plan has been established for the exclusive benefit of the Participants and their Beneficiaries. Under no circumstances shall any Trust assets at any time revert to or be used by any Employer, nor shall any such funds or assets of any kind be used

other than for the benefit of the Participants or their Beneficiaries, except contributions which may be returned in accordance with Code Section 401(a)(2).

13.3 Gender and Number. When necessary to the meaning hereof, and except when otherwise indicated by the context, either the masculine or the neuter pronoun shall be deemed to include the masculine, feminine and the neuter, and the singular shall be deemed to include the plural.

13.4 Reference to the Code and ERISA. Any reference herein to any section of the Code, ERISA, or to any other statute or law shall be deemed to include any successor law of similar import.

13.5 Governing Law. The Plan shall be governed and construed in accordance with ERISA and to the extent not preempted the laws of the District of Columbia.

13.6 Compliance with the Code. This Plan is intended to comply with all requirements for qualification under the Code, and if any provision hereof is subject to more than one interpretation or any term used herein is subject to more than one construction, such ambiguity shall be resolved in favor of the interpretation or construction which is consistent with the Plan being so qualified. If any provision of the Plan is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions, and this Plan shall be construed and enforced as if such provision had not been included.

13.7 Benefit Determinations and Interpretation. Notwithstanding any other provision of the Plan, the Trustees shall have the exclusive and final authority and discretion to: (a) determine whether an individual is eligible for any benefits under the Plan; (b) determine the amount of benefits, if any, an individual is entitled to under the Plan; (c) interpret all of the provisions of the Plan and make factual determinations regarding its construction, interpretation and application; and (d) interpret all of the terms used in the Plan, to the maximum extent and with the maximum deference permitted by law.

13.8 Rollovers.

(a) A Recipient of a distribution may elect, at the time and in the manner prescribed by the Plan, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Recipient in a Direct Rollover.

(b) For the purposes of this section, an Eligible Rollover Distribution is any distribution of at least \$200.00 of any portion of the balance to the credit of the Recipient except that an Eligible Rollover Distribution does not include: (1) 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 Recipient or the joint lives (or joint life expectancies) of the Recipient and the Recipient's designated Beneficiary, or for a specified period of ten years or more; (2) any distribution to the extent such distribution is required under Code Section 401(a)(9); (3) the portion of any distribution that cannot be included in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), and (4) hardship distributions, to the extent applicable.

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

Effective for distributions after December 31, 2007, an eligible retirement plan shall also include an inherited IRA as defined in Code Section 408(d)(3)(C)(ii) of the Code or a Roth individual retirement account under Code Section 408A, provided such transfer is made subject to Code Section 408A.

(d) For the purposes of this Section, a Recipient includes the Participant, the Participant's surviving spouse, or former spouse who is an alternate payee under a Qualified Domestic Relations Order (with regard to this Plan) as defined in Code Section 414(p), and effective for distributions after December 31, 2009, a Participant's non-spouse Beneficiary.

(e) For the purposes of this section, a Direct Rollover is a payment by this Plan to the Eligible Retirement Plan specified by the Recipient.

13.9 Mergers and Consolidations. 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 terminated) 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).

ARTICLE XIV - TOP HEAVY PROVISIONS

14.1 Top-Heavy Requirements. Notwithstanding any other provision of the Plan, if for any Plan Year the Plan is determined to be a Top Heavy Plan within the meaning of Code Section 416(g), then the provisions of this Article XIV will supersede any conflicting provisions in the Plan. For the purpose of applying the terms of this Article XIV, effective January 1, 2000, the combined plan limit of Code Section 415 is eliminated.

14.2 Definitions. For purposes of this Article, the following terms shall have the respective meanings set forth below:

(a) "Key-Employee" means any Employee or former Employee (and the Beneficiaries of such Employee) who at any time during the determination period was an officer of an Employer whose annual compensation exceeds \$130,000, a five percent owner of an

Employer, or a one percent owner of an Employer having an annual Compensation from such Employer of more than One Hundred Fifty Thousand Dollars (\$150,000). The determination period is the Plan Year containing the Determination Date. The determination of who is a Key-Employee will be made in accordance with Code Section 416(i)(1) and the regulations thereunder.

(b) "Top-Heavy Plan" means for any Plan Year, the Plan is Top-Heavy if any of the following conditions exist:

(1) If the Top-Heavy ratio for the Fund exceeds 60% and the Plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans.

(2) If the Plan is part of Required Aggregation Group of plans but not part of a Permissive Aggregation Group and the Top-Heavy ratio for the group of plans exceeds 60%.

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

(c) "Top-Heavy Ratio" means:

(1) If the Employer maintains one or more defined contribution plans, (including any Simplified Employee Pension Plan) and the Employer has not maintained any defined benefit plan, that during the one-year period ending on the Determination Date(s) has or had accrued benefits, the Top-Heavy ratio for the Fund alone or for the Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the account balances of all Key-Employees as of the Determination Date(s) (including any part of any account balance distributed in the five-year period ending on the Determination Date(s)), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the one-year period ending on the Determination Date(s)), both computed in accordance with Code Section 416 and the regulations thereunder. Both the numerator and denominator of the Top-Heavy Ratio are adjusted to reflect any contribution not actually made as of the Determination Date, but which is required to be taken into account on that date under Code Section 416 and the regulations thereunder.

(2) If the Employer maintains one or more defined contribution plans (including any Simplified Employee Pension Plan) and the Employer maintains or has maintained one or more defined benefit plans that during the one-year period ending on the Determination Date(s) has or had any accrued benefits, the Top-Heavy Ratio for any Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of account balances under the aggregated defined contribution plan or plans for all Key-Employees, determined in accordance with (1) above, and the Present Value of accrued benefits under the aggregated defined benefit plan or plans for all Key-Employees as of the Determination Date(s), and the denominator of which is the sum of the account balances under the aggregated defined contribution plan or plans for all

Participants determined in accordance with (1) above, and the Present Value of accrued benefits under the defined benefit plan or plans for all Participants as of the Determination Date(s), all determined in accordance with Code Section 416 and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and the denominator of the Top-Heavy Ratio are adjusted for any distribution of an accrued benefit made in the one-year period ending on the Determination Date.

(3) For purposes of (1) and (2) above, the value of account balances and the Present Value of accrued benefits will be determined as of the most recent Valuation Date that falls within or ends with the 12-month period ending on the Determination Date, except as provided in Code Section 416 and the regulations thereunder for the first and second Plan Years of a defined benefit plan. The account balances and accrued benefits of a Participant (A) who is not a Key-Employee but who was a Key-Employee in a prior year, or (B) who has not been credited with at least one Hour of Service with an Employer maintaining the Fund at any time during the one-year period ending on the Determination Date will be disregarded. The calculation of the Top-Heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code Section 416 and the regulations thereunder. Deductible Employee contributions will not be taken into account for purposes of computing the Top-Heavy Ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the Determination Date(s) that fall within the same calendar year.

(d) “Permissive Aggregation Group” means a Required Aggregation Group (as defined in Section 14.2(e)) plus any and all other benefit plan or plans of the Employer that is or are not required to be included in the Required Aggregation Group, including plans that have been terminated, provided that such Required Aggregation Group would continue to meet the requirements of Code Sections 401(a)(4) and 410 with such benefit plan or plans being taken into account.

(e) “Required Aggregation Group” means each plan of the Employer in which a Key-Employee participates (in the Plan Year containing the Determination Date or any of the four preceding Plan Years) and each other plan, including plans which have been terminated, that enables any plan in which a Key-Employee participates during the period tested to meet the requirements of Code Sections 401(a)(4) or 410(b), are required to be aggregated for Top-Heavy testing purposes. For Plan Years beginning on or after January 1, 2002, “Required Aggregation Group” means each plan of the Employer in which a Key-Employee participates (in the Plan Year containing the Determination Date) and each other plan, including plans which have been terminated, that enables any plan in which a Key-Employee participates during the period tested to meet the requirements of Code Sections 401(a)(4) or 410(b), are required to be aggregated for Top-Heavy testing purposes.

(f) “Determination Date” means for any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, the last day of that year.

(g) “Valuation Date” means the last day of the Fund’s Plan Year as of which

account balances or accrued benefits are valued for purposes of calculating the Top-Heavy Ratio.

(h) “Non-Key-Employee” means any Employee who is not a Key-Employee as defined in Article 15.2(a).

(i) “Compensation” means all of the Participant’s earnings for the taxable year ending with or within the Plan Year that are subject to tax under the Code, but not including deferred compensation other than contributions through a salary reduction agreement to a cash or deferred plan under Code Section 401(k) or a tax deferred annuity under Code Section 403(b) and shall exclude any other fringe benefit program maintained by an Employer. Compensation considered in any year shall not exceed \$150,000, adjusted for changes in the cost of living as provided by Code Section 415(d).

14.3 Minimum Allocation.

(a) In the event the Plan is Top-Heavy and except as otherwise provided in (c) and (d) below, the Employer contributions allocated on behalf of any Participant who is not a Key-Employee shall not be less than the lesser of three percent (3%) of such Participant’s Compensation or in the case in which the Employer has no defined benefit plan that designates the Fund to satisfy Code Section 401, the largest percentage of Employer contributions, as a percentage of the first \$150,000 (as indexed by the Code) of the Key-Employee’s Compensation, allocated on behalf of any Key-Employee for that year. The minimum allocation is determined without regard to any Social Security contribution.

(b) For purposes of computing the minimum allocation, Compensation means Compensation defined in Section 15.2(i).

(c) The provision in (a) above shall not apply to any Participant who is not employed by the Employer on the last day of the Plan Year.

(d) The provision in (a) above shall not apply to any Participant to the extent the Participant is covered under any other plan or plans of the Employer and the Employer has provided in the plan documents of the other plans that the minimum allocation or benefit requirement applicable to Top-Heavy plans will be met in the other plan or plans.

(e) For purposes of Top-Heavy allocation, contributions and forfeitures equal to 3% of each Non-Key-Employee’s Compensation shall be allocated to the Employee’s Account when the Plan is Top-Heavy, if a Contribution is made for Key-Employees.

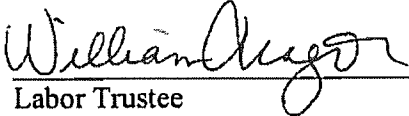
14.4 Non-Forfeitability of Minimum Allocation. The minimum allocation required (to the extent required to be non-forfeitable under Code Section 416(b)) may not be forfeited under Code Sections 411(a)(3)(B) or 411(a)(3)(D).

14.5 Compensation Limitation. For any Plan Year in which the Plan is Top-Heavy, only the first \$150,000 (or such larger amount as may be prescribed by the Secretary of Treasury or his delegate) of a Participant’s annual Compensation shall be taken into account for purposes of determining Employer Contributions under the Plan.

14.6 Commencement of Benefits to Key-Employees Participating in Top-Heavy Plan. A distribution to a Participant who is a Key-Employee in a Top-Heavy Plan must commence no later than the first day of April following the calendar year in which the age of 70-1/2 occurs.

14.7 Maximum Limits on Benefits. In any year in which the Fund is Top-Heavy and a Participant or other Non-Key Employee is covered under a Top-Heavy defined benefit plan maintained by the Employer, such Participant shall receive a minimum contribution under the defined benefit plan as required by Code Section 416(c)(1)(B).

In Witness Whereof, the Trustees named herein have executed this Plan this ____ day of December, 2014.



Labor Trustee

Management Trustee

Labor Trustee

Management Trustee

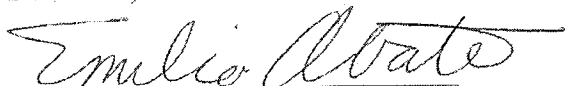
Labor Trustee

Management Trustee

14.6 Commencement of Benefits to Key-Employees Participating in Top-Heavy Plan. A distribution to a Participant who is a Key-Employee in a Top-Heavy Plan must commence no later than the first day of April following the calendar year in which the age of 70-1/2 occurs.

14.7 Maximum Limits on Benefits. In any year in which the Fund is Top-Heavy and a Participant or other Non-Key Employee is covered under a Top-Heavy defined benefit plan maintained by the Employer, such Participant shall receive a minimum contribution under the defined benefit plan as required by Code Section 416(c)(1)(B).

In Witness Whereof, the Trustees named herein have executed this Plan this ____ day of December, 2014.



Labor Trustee

Management Trustee

Labor Trustee

Management Trustee

Labor Trustee

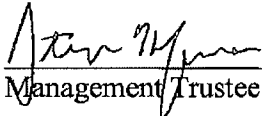
Management Trustee

14.6 Commencement of Benefits to Key-Employees Participating in Top-Heavy Plan. A distribution to a Participant who is a Key-Employee in a Top-Heavy Plan must commence no later than the first day of April following the calendar year in which the age of 70-1/2 occurs.

14.7 Maximum Limits on Benefits. In any year in which the Fund is Top-Heavy and a Participant or other Non-Key Employee is covered under a Top-Heavy defined benefit plan maintained by the Employer, such Participant shall receive a minimum contribution under the defined benefit plan as required by Code Section 416(c)(1)(B).

In Witness Whereof, the Trustees named herein have executed this Plan this _____ day of December, 2014.

Labor Trustee

 12/23/14

Management Trustee

Labor Trustee

Management Trustee

Labor Trustee

Management Trustee

**FOOD & BEVERAGE WORKERS UNION LOCAL 23
& EMPLOYERS PENSION PLAN
(RESTATED JANUARY 1, 2015)
AMENDMENT 2015-1**

In accordance with Article XII, Section 12.1 of the Food & Beverage Workers Union Local 32 & Employers Pension Plan, the Board of Trustees of the Plan hereby changes the name of the Plan to be the Food & Beverage Workers Union Local 23 & Employers Pension Plan and, accordingly, amends the Plan as follows:

1. Article I, Section 1.15, "Fund," is amended to read:

1.15 Fund. The term Fund means the Food & Beverage Workers Union Local ~~32~~ 23 & Employers Pension Fund.

2. Article I, Section 1.23, "Plan," is amended to read:

1.23 Plan. The term Plan means the Food & Beverage Workers Union Local ~~32~~ 23 & Employers Pension Plan, the terms of which are set forth herein, as it may be amended from time to time. The Plan shall be deemed to be a profit sharing plan.

3. Article I, Section 1.31, "Union," is amended to read:

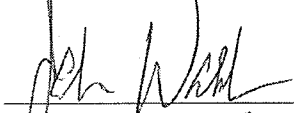
1.31 Union. The term Union means Food & Beverage Workers Union Local ~~32~~ 23 or any predecessors or successor thereto.

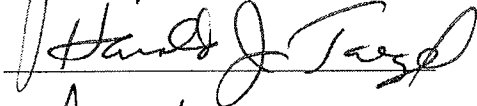
4. All references in Section 11.1, "General Rights of Participants and Beneficiaries," to the "Food & Beverage Workers Union Local 32 & Employers Pension Plan" shall be changed to the "Food & Beverage Workers Union Local 23 & Employers Pension Plan."

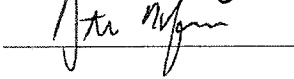
5. All Plan and Fund records shall be changed to reflect the name of the Plan as the "Food & Beverage Workers Union Local 23 & Employers Pension Plan."

The undersigned hereby certify that the above Amendment Number 2015-1 was duly adopted by the Board of Trustees on May 5, 2015.

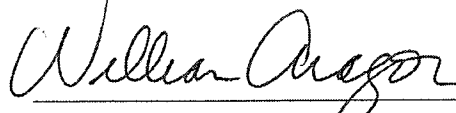
EMPLOYER TRUSTEES

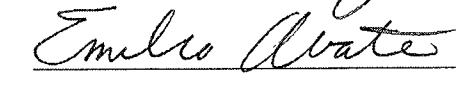






UNION TRUSTEES





FOOD & BEVERAGE WORKERS UNION LOCAL 23

& EMPLOYERS PENSION PLAN

(RESTATED JANUARY 1, 2015)

AMENDMENT 2015-2

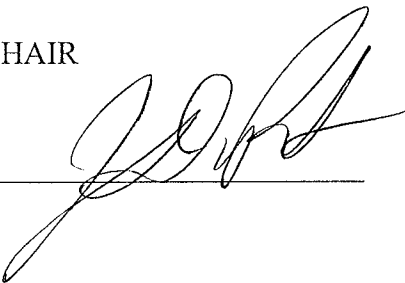
In accordance with Article XII, Section 12.1 of the Food & Beverage Workers Union Local 23 & Employers Pension Plan, the Board of Trustees of the Plan hereby amends Article VII, Section 7.1, effective August 1, 2015, to permit in-service distributions to a Participant on or after the age at which the Participant is entitled to full Social Security benefits ("Full Social Security Retirement Age"), provided that in no event shall in-service distributions be allowed earlier than as permitted by the Internal Revenue Code under 26 U.S.C. § 401(a)(36). Accordingly, the Plan is amended as follows:

1. Article VII, Section 7.1, Normal Retirement, is amended to add the following Subsection (d):

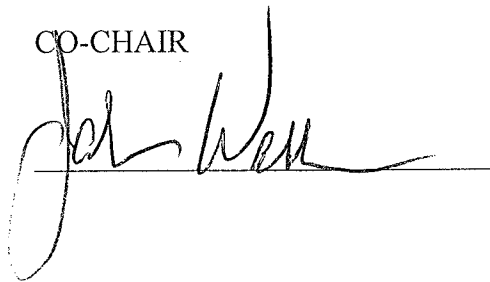
(d) In-Service Distributions: Notwithstanding any provision to the contrary, including the provisions of this Article VII and Article VIII, a Participant who is actively employed by an Employer may elect to begin receiving benefits from his or her account on or after the Participant's attainment of Full Social Security Retirement Age, despite the fact that he or she has not terminated employment. The Participant may elect to receive such benefits in any manner permitted under the provisions of Article IX.

The undersigned hereby certify that the above Amendment Number 2015-2 was duly adopted by the Board of Trustees on August 14, 2015.

CHAIR



CO-CHAIR



FOOD & BEVERAGE WORKERS UNION LOCAL 23

& EMPLOYERS PENSION PLAN

(RESTATED JANUARY 1, 2015)

AMENDMENT 2016-1 ³

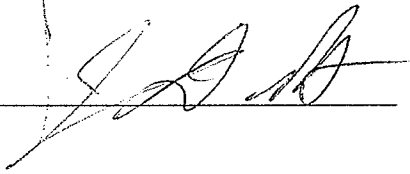
In accordance with Article XII, Section 12.1 of the Food & Beverage Workers Union Local 23 & Employers Pension Plan ("Plan"), the Board of Trustees of the Plan hereby amends the Plan effective January 1, 2016 to change the definition of "Termination of Employment" as follows:

1. Article I, Section 1.28 is amended to read as follows:

1.28 Termination of Employment. The term Termination of Employment means a bona fide termination of employment and the failure to complete any work in Covered Employment for a full Plan Year at least six (6) consecutive months.

The undersigned hereby certify that the above Amendment Number 2016-1 was duly adopted by the Board of Trustees on February 19, 2016.

CHAIR



CO-CHAIR

