

**AMENDMENT NUMBER ONE
TO THE
SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION PLAN
(Restated Effective December 31, 2014)**

Article XII of the Southern Nevada Culinary and Bartenders Pension Plan is amended in its entirety, effective as of the date written below, to read as follows:

**ARTICLE XII
EMPLOYER WITHDRAWAL LIABILITY**

- 12.01 **General.** If an Employer withdraws from the Plan in a complete withdrawal or partial withdrawal (as such terms are defined under ERISA Sections 4203 and 4205, respectively), then the Employer shall be liable to the Plan for the amount of withdrawal liability determined in accordance with this Article XII. To the extent the provisions of this Article XII do not address any matter affecting an Employer's withdrawal liability or the provisions are inconsistent with the requirements of the Multiemployer Pension Plan Amendments Act of 1980 (the "Act") or regulations or rulings thereunder, the Act and regulations and rulings shall apply.
- 12.02 **Allocation Method.** The amount of an Employer's withdrawal liability shall be determined in accordance with the presumptive method under ERISA Section 4211(b) adjusted in accordance with the provisions of this Article XII.
- 12.03 **Actuarial Assumptions and Methods**
- (a) For purposes of determining an Employer's withdrawal liability, the Plan's unfunded vested benefits shall be determined by the Plan's actuary on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the Plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the Plan as provided under ERISA Section 4213.
 - (b) The methods to be used by the Plan in determining an Employer's withdrawal liability may be changed from time to time at the discretion of the Board of Trustees upon the advice of the Plan actuaries.
- 12.04 **Partial Withdrawal.** If an Employer withdraws from the Plan in a partial withdrawal, the amount of the Employer's withdrawal liability shall be adjusted in accordance with ERISA Sections 4206 and 4219(c)(1)(E).
- 12.05 **De Minimis.** In accordance with ERISA Section 4209(a), the amount of unfunded vested benefits allocable to a withdrawing Employer shall be reduced by the smaller of:
- (a) 3/4 of 1 percent of the Plan's unfunded vested obligations (determined as of the end of the Plan Year ending before the date of withdrawal), or

(b) \$50,000

reduced by the amount, if any, by which the unfunded vested benefits allocable to the Employer, determined without regard to ERISA Section 4209(a), exceeds \$100,000.

12.06 **Six-Year Free-Look Rule.** An Employer who withdraws from the Plan will not be liable for any withdrawal liability under this Article XII if the Employer:

- (a) first had an obligation to contribute to the Plan after the date of enactment of the Act, and
- (b) had an obligation to contribute to the Plan for no more than or the lesser of:
 - (i) six consecutive Plan Years preceding the date on which the Employer withdraws, or
 - (ii) the number of years required for Vesting under this Plan, and
- (c) was required to make Contributions to the Plan for each such Plan Year in an amount equal to less than 2% of the sum of all Employer Contributions made to the Plan for each such Plan Year, and
- (d) has never avoided withdrawal liability because of the application of this rule with respect to the Plan.

The reduction under Section 411(a)(3)(E) of the Internal Revenue Code of 1954, as amended, shall apply with respect to the Employees of any Employer who, because of the operation of this Section 12.06, is not liable to the Plan upon a complete or partial withdrawal.

This Section 12.06 shall apply to an Employer only if the ratio of the assets of the Plan for the Plan Year preceding the first Plan Year for which the Employer was required to contribute to the Plan to the benefit payments made during that Plan Year was at least 8 to 1.

12.07 **Mass Withdrawal.** Notwithstanding any other provisions of this Article XII, in the event of a withdrawal of all or substantially all Employers as described in ERISA Section 4219(c)(1)(D), the withdrawal liability of each such Employer shall be adjusted in accordance with ERISA Sections 4209(c) and 4219(c)(1)(D) and the PBGC Regulations thereunder.

12.08 **Sale of Assets.** An Employer that ceases to have an obligation to contribute to the Plan or ceases covered operations because of a bona fide arm's-length sale of assets to an unrelated third party shall not incur withdrawal liability as a result of the sale as long as the transaction and the sale of asset agreement satisfy the requirements of ERISA Section 4204 and the PBGC Regulations thereunder.

12.09 **Abatement.** If an Employer that has withdrawn from the Plan resumes covered operations under the Plan or renews its obligation to contribute, the Trustees will abate the Employer's withdrawal liability in accordance with Section 4207(a) of ERISA and the PBGC regulations thereunder.

12.10 **Control Group.** For purposes of this Article XII, all corporations, trades or businesses that are under common control shall be considered a single Employer as provided under ERISA Section 4001(b)(1).

12.11 **Payment of Withdrawal Liability**

- (a) If an Employer owes withdrawal liability under this Article XII, the Trustees shall send the employer a notice and demand for payment along with a schedule of payments. Withdrawal liability shall be payable in accordance with the schedule determined by the Trustees. The schedule of payments shall provide for payment over the period of years necessary to amortize the total liability owed in level annual payments determined under Section 12.11(c), calculated as if the first payment were made on the first day of the Plan Year following the Plan Year in which the withdrawal occurs and as if each subsequent payment were made on the first day of each subsequent Plan Year. The amortization period shall be determined based on actuarial assumptions used in the most recent actuarial valuation of the Plan.
- (b) If the amortization period described in Section 12.11(a) exceeds 20 years, the liability of the Employer shall be limited to the first 20 annual payments.
- (c) Except as provided in Section 12.11(d), the amount of each annual payment shall be the product of (i) the average annual number of contribution base units for the period of three consecutive Plan Years, during the period of 10 consecutive Plan Years ending before the Plan Year in which the withdrawal occurs, in which the number of contribution base units for which the Employer had an obligation to contribute under the Plan is the highest, and (ii) the highest contribution rate at which the Employer had an obligation to contribute under the Plan during the 10 Plan Years ending with the Plan Year in which the withdrawal occurs. Each annual payment shall be payable in four equal installments due quarterly.
- (d) In the event of a partial withdrawal, the amount of annual payments shall be adjusted as described in ERISA Section 4219(c)(1)(E).
- (e) Payment of withdrawal liability shall commence no later than 60 days after the date of the Trustees' demand for payment notwithstanding any request for review or appeal of determinations of the amount of such liability or of the schedule.
- (f) An Employer shall be entitled to prepay its withdrawal liability and accrued interest without penalty. If prepayment is made pursuant to a withdrawal which is later determined to be part of a mass withdrawal described in Section 4219(c)(1)(D) of ERISA, however, the withdrawal liability of the Employer shall not be limited to the amount of the prepayment.

- (g) In the event the Plan terminates, an Employer's obligation to make payments under this Article 12 ceases at the end of the Plan Year in which the assets of the Plan (exclusive of withdrawal liability claims) are sufficient to meet all obligations of the Plan, as determined by the PBGC.

12.12 Request for Review and Arbitration

- (a) No later than 90 days after an Employer receives a notice for withdrawal liability, the Employer may submit a written request for a review of the assessment by the Trustees (i) requesting that the Trustees review any specific matter relating to the determination of the Employer's liability and schedule of payments, (ii) identifying any inaccuracy in the determination of the amount of the unfunded vested benefits allocable to the Employer, and (iii) furnishing any additional relevant information to the Trustees. After a reasonable review of any matter(s) raised, the Trustees shall notify the Employer of the Trustees' decision, basis for the decision, and reason for any change in the determination of the Employer's liability or schedule of liability payments.
- (b) The Employer or the Trustees may initiate arbitration within a 60-day period after the earlier of (i) the date of notification of the Trustees' decision in response to a request for review, or (ii) 120 days after the date of the Employer's request for review. The Employer and Trustees may jointly initiate arbitration within the 180-day period after the date of the Trustees' demand for payment of withdrawal liability. No issue regarding withdrawal liability may be submitted for arbitration unless the matter has been reviewed by the Trustees in accordance with ERISA Section 4219(b)(2) and any Plan rules adopted thereunder. Arbitration will be conducted in accordance with the Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes of the American Arbitration Association. Upon completion of the arbitration proceedings in favor of one of the parties, either party may file a lawsuit to enforce, vacate, or modify the arbitrator's award. If the Trustees prevail in such an action, the Trustees may seek an award of attorney's fees and costs against the Employer.
- (c) In the event an Employer fails to request a review in accordance with Section 12.12(a) or fails to initiate arbitration in accordance with Section 12.12(b), the Employer will forever lose the right to challenge the withdrawal liability assessment and collection of withdrawal liability by the Plan.


12.13 Default

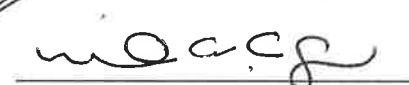
- (a) In the event of a default, Trustees may require immediate payment of the outstanding amount of an Employer's withdrawal liability, plus accrued interest on the total outstanding liability from the due date of the first payment that was not timely made. Interest will be charged on any amount in default from the date the payment was due to the date it is paid at an annual rate equal to prevailing market rates for comparable obligations, in accordance with PBGC regulations.


- (b) An Employer is in default on its withdrawal liability if any payment is not made when due, the Trustees have notified the Employer of its failure to pay the liability, and the Employer fails to pay the amount due within 60 days of the date of the Trustees' notification. The Trustees may also declare an Employer in default in any circumstances indicating a substantial likelihood that the Employer will be unable to pay its withdrawal liability, such as the filing of a petition under the Bankruptcy Code or any similar proceeding under state law, or entry of a compromise with creditors, or undergoing of a bulk sale, insolvency or dissolution of a partnership or corporation, or any other event or circumstance that in the judgment of the Trustees materially impairs the Employer's credit worthiness or the Employer's ability to pay its withdrawal liability when due.


Adopted on 12/12, 2016 in Las Vegas, Nevada.

Management Trustees









Union Trustees









