POLICY AND PROCEDURES FOR COLLECTION OF DELINQUENT CONTRIBUTIONS

UNITE HERE LOCAL 25 AND HOTEL ASSOCIATION OF WASHINGTON, D.C. PENSION FUND

In order to implement the requirements of Article V of the Trust Agreement, the Board of Trustees of the UNITE HERE Local 25 and Hotel Association of Washington, D.C. Pension Fund hereby adopts the following policy and procedures for the collection of delinquent contributions.

SECTION I: GENERAL POLICY

It is the policy of the Fund to collect all employer contributions as they are due and to vigorously pursue collection of delinquent contributions. The procedures set forth herein are to be followed unless the Board of Trustees determines that there is good cause in particular instances that they should not be applied.

SECTION II: COLLECTION PROCEDURE

In accordance with the Trust Agreement, applicable law and the above declaration of policy, the following procedures shall apply to effectuate the collection of delinquent contributions:

(A) All contributions required by a collective bargaining agreement with respect to services performed by covered employees in a calendar month, together with a contribution report in the form required by the Fund's Administrator, must be received by the Fund by the 15th day of the following calendar month.

(B) If the contributions and/or contribution report have not been received by the Fund on or before the 15th day of the following calendar month, the Administrator shall send an initial warning letter to the employer in the form attached as Exhibit 1.

(C) If the contributions and/or contribution report are not received by the last day of the following calendar month, the Administrator shall refer the matter to collection counsel. If collection counsel is forced to proceed with formal litigation to secure payment and/or the contribution report, collection counsel shall be instructed to request the following relief from the court:

(1) the full contribution due along with the contribution report;

(2) interest from the date of delinquency at the annual rate of prime plus 4 percent adjusted and compounded quarterly;

(3) liquidated damages equal to 20% of the full contribution due, as permitted under ERISA in cases where the employer has failed to pay the contribution prior to the filing of a lawsuit or, in all other cases, 12% of the full contribution due, which is the Board of Trustees' best estimate and forecast of the amount necessary to compensate the Fund for the harm caused by the employer's delinquency, in light of:

(a) administrative costs, including such elements as employee salaries, supplies and postage associated with detecting delinquencies, generating demand letters and coordinating the Administrator's efforts with those of counsel;

(b) costs associated with providing benefits and extending coverage to employees and other beneficiaries in the absence of contributions from employers required to make such contributions;

(c) impairment of the Fund's capacity to formulate funding standards;

(d) damage to the Fund's financial integrity and future viability as well as the legitimate expectations of participants and their dependents; and

(4) audit fees, if applicable;

(5) attorney's fees; and

(6) court costs.

Collection counsel shall obtain the approval of the Finance and Collection Committee (consisting of one Union Trustee and one Employer Trustee) of the Board of Trustees prior to filing litigation. Collection counsel shall be encouraged to negotiate settlements of litigation brought against delinquent employers, provided however, that the Finance and Collection Committee's authorization shall be required for any settlement providing for payments of less than the amounts described in (1) through (6) above.

SECTION III: SPECIAL PROCEDURES APPLICABLE TO HABITUALLY DELINQUENT EMPLOYERS

(A) The Administrator shall bring to the attention of the Finance and Collection Committee the name of any employer that has repeatedly failed to pay its contributions in full and in a timely manner. With respect to any such employer, the Finance and Collection Committee shall determine, upon consideration of the employer's payment history, whether it is appropriate under the circumstances to designate such an employer a Habitually Delinquent

Employer. An employer that is so designated a Habitually Delinquent Employer shall be required to pay interest and liquidated damages, in the amounts described in Section II(C)(2) and (3) above, on all future delinquent contributions regardless of whether it is necessary to institute legal action to collect such delinquent contributions.

(B) The Administrator shall send to the Habitually Delinquent Employer a letter in the form attached as Exhibit 2. In the event that a Habitually Delinquent Employer engages in any future delinquencies following receipt of such a letter, the Administrator shall send a single warning letter to the Habitually Delinquent Employer in the form attached as Exhibit 3.

(C) The Habitually Delinquent Employer shall be assessed interest and liquidated damages as of the date of delinquency and will be considered delinquent until all delinquent contributions, interest and liquidated damages have been paid in full. Should such an employer pay the delinquent contributions but fail to pay the interest and liquidated damages, which amounts shall be referred to as the “Shortfall,” interest shall continue to accrue on such Shortfall.

(D) If the contributions and Shortfall are not received by the 15th day of the second calendar month following the month in which services were performed, the Administrator shall refer the matter to collection counsel for recovery of unpaid contributions and/or Shortfall as well as other amounts specified in Section II(C) above.

(E) A Habitually Delinquent Employer that has paid its contributions in a timely manner for twelve consecutive months and that does not owe any Shortfall shall no longer be subject to automatic assessment of interest and liquidated damages (and shall be so notified), unless and until the employer is subsequently determined to be a Habitually Delinquent Employer.

SECTION IV: AUDIT POLICY

In order to ensure that employers comply in full with their obligations to make required contributions, the Board of Trustees hereby adopts this policy providing for periodic audits as well as audits necessitated by particular circumstances.

(A) The Fund's independent auditor shall perform a payroll audit of each participating employer no less than once every three years. In addition, the Administrator, after first obtaining the approval of the Finance and Collection Committee, shall direct the Fund's independent auditor to conduct payroll audits of participating employers in the following circumstances, regardless of the amount of time that may have elapsed since a prior audit:

(1) when an employer ceases to participate in the Fund, unless the Administrator has reason to believe that such an audit is unlikely to disclose significant delinquencies or is otherwise unnecessary. The audit shall be performed as soon as practicable after the Fund is notified that such participation will cease or has ceased; and

(2) when, in the Administrator's opinion, an employer has substantially underpaid its required contributions and an audit is likely to assist the Fund in ascertaining the nature and extent of such underpayments.

(B) The following procedures shall apply to payroll audits:

(1) The audit shall encompass the three years preceding the calendar quarter in which the audit is performed, unless the Administrator directs that a different audit period shall be audited. The Administrator shall also have the discretion to direct the auditor to perform a test audit of an employer covering one or more months within the audit period and to proceed to audit the full audit period only if the test audit reveals discrepancies.

(2) The auditor shall conduct an exit interview with the employer in order to explain the errors, if any, the employer has made with respect to the calculation or payment of contributions.

(3) The auditor shall calculate interest on delinquent contributions commencing on the date of the delinquency at the rate of prime plus 4%, compounded quarterly, and forward the audit results (contributions plus interest) to the Administrator who shall transmit them to the employer with a letter in the form attached as Exhibit 4, referred to as a “ten-day letter.” The employer shall have ten business days from receipt of the ten-day letter in which to dispute the audit results and to pay all delinquencies that are not in dispute. An employer that wishes to dispute the audit results must do so by sending a written communication to the auditor and a copy of that communication to the Administrator as directed in the ten-day letter.

(4) In the event the audit has disclosed delinquencies, and the auditor does not receive a timely response to the ten-day letter, on the first business day following the tenth day, the Administrator shall send to the employer a letter in the form attached as Exhibit 5.

(5) If the employer does not remit the delinquencies disclosed by the audit within thirty days of the date of the Administrator's letter, the Administrator shall refer the matter to collection counsel. If collection counsel is forced to proceed with formal litigation, collection counsel shall be instructed to request from the court the relief described in Section II(C) above.

(6) The Board of Trustees shall have the authority, at its discretion (taking into account such factors as it deems relevant, which may include, for example, whether the employer has demonstrated good faith), to charge the employer with the costs of the audit, in whole or in part, under either of the following circumstances:

(a) whenever an audit reveals delinquencies in excess of 10% of the required contribution amount for the period audited; or

(b) whenever the employer impedes the audit process by failing to cooperate with the auditor. Examples of failing to cooperate include but are not limited to (i) evading the auditor by refusing to schedule appointments or failing to return telephone calls, (ii) unreasonable or repeated cancellation of appointments, and (iii) incomplete or piecemeal provision of records, specifically including:

- monthly, quarterly and annual payroll registers for the entire company or location as directed by the auditor (not just for employees covered by collective bargaining agreements);
- governmental payroll tax returns such as IRS Form 941s, IRS Forms W-2 and W-3, IRS Form 1099s (misc.)/1096, and annual and federal and state unemployment returns;
- banquet event orders or function sheets for each event identifying each employee who worked the event;
- employee master list (company-wide or location-wide as directed by the auditor) summary by year, showing name, social security number and job description;
- annual payroll reconciliation of company-wide or location-wide gross wages between employee payroll registers and IRS Form 941s and/or W-2s/W-3s;
- total number of employees per year (i.e., the number of W-2s issued each year); and
- accounts payable/cash disbursement journals, purchase journals, wire transfers, journal entries, and other documents showing pensionable work not otherwise reported on a Form W-2 or Form 1099.

(7) The Board of Trustees shall provide written notice to the employer of the assessment described in Section IV(B)(6) above. The employer shall have ten business days from receipt of the Board's notice of assessment in which to protest the assessment. Such protest shall be directed to the Finance and Collection Committee, shall be in writing, and shall state with particularity the grounds for protest. The Finance and Collection Committee shall consider the protest and shall have full authority to accept or reject it in whole or in part. Within

ten business days of the employer's receipt of the Board's notice of assessment (or, if the employer has timely protested the assessment, within ten business days from the employer's receipt of the Finance and Collection Committee's notice of its decision concerning the employer's protest), the employer shall pay the assessment. Should the employer fail to make such payment, the Finance and Collection Committee shall refer the matter to collection counsel. If collection counsel is forced to proceed with formal litigation to secure payment of the assessment, the employer shall be required to pay the Funds' attorney's fees and costs of suit. Nothing in this section or in Section IV(B)(6) is intended to limit the Board's authority to impose all costs of the audit- whenever litigation is filed in connection with an audit.

SECTION V: AUTOMATIC RE-AUDIT POLICY

(A) In the event an audit reveals delinquencies in excess of 10 percent of the required contribution amount for the period audited, the Administrator shall direct the auditor to perform a second audit of the employer covering a different and not previously audited period, which may be subsequent, prior or both subsequent and prior to the original audit period, whichever the Administrator deems appropriate under the circumstances. Should the Administrator conclude, however, based on collection reports received from the employer or otherwise, that a second audit of the employer is not likely to reveal significant additional delinquencies, the Administrator shall apply to the Finance and Collection Committee for an exemption from this policy.

(B) The procedures in Section IV(B) shall apply as well to audits conducted pursuant to the automatic re-audit policy.

(C) The automatic re-audit policy is not intended to limit the authority of the Board of Trustees or the Administrator to order an audit or second audit of an employer or to charge the employer with the costs of such audit or second audit in circumstances to which the automatic re-audit policy does not apply.

SECTION VI: REFUNDS OF OVERPAYMENTS

In the event an audit reveals overpayments by the employer, the Finance and Collection Committee may, in its sole discretion, agree to credit the employer ~~shall be credited~~ with such overpayments towards future obligations for the period of the payroll audit (not to exceed three years) ~~up to three years~~ subject to an offset, in the Finance and Collection Committee's discretion, for the cost of the audit. Credits for overpayments shall not include interest or any portion of the overpayment that was used to calculate the pension of a participant in pay status.

SECTION VII: DISTRIBUTION OF POLICY AND PROCEDURES FOR COLLECTION OF DELINQUENT CONTRIBUTIONS

The foregoing policy and procedures shall be distributed to all employers who are participating in the Fund as of the date of adoption as well as to employers who subsequently begin participating in the Fund.

(Rev. 09/2009)

EXHIBIT 1

[letter to be dated and sent on or about the 22nd day of the month following the month for which contributions were due]

Dear Participating Employer:

Your contributions for the month of [insert month and year] were not received as of the 15th of [insert following month] and are therefore delinquent.

If your contributions and contribution report are not received by the end of this month, the matter will be referred to the Fund's attorney for collection. The Board of Trustees has authorized the collection attorney to seek the following amounts in addition to the amount of the delinquent contribution:

1. Interest on the delinquent amount from the date of delinquency at the annual rate of prime plus 4 percent adjusted and compounded quarterly;

2. Liquidated damages equal to 20% of the full contribution due;

3. Attorney's fees;

4. Audit fees; and

5. Court costs.

In order to avoid the imposition of these additional charges, it is imperative that you submit the contribution immediately. If by the end of this month you have failed to submit the required contribution or a written response contesting the amount and making payment of the undisputed amount, such failure will constitute your admission that the Trustees' determination of the amount owed is, in fact, due and owing, and further, that liquidated damages in the amount of 20 percent is an appropriate and reasonable assessment of the damages caused by your delinquency.

EXHIBIT 2

Dear [insert name of employer]:

As a participant in the UNITE HERE Local 25 and Hotel Association of Washington, D.C. Pension Fund, [the employer] is required to make contributions to the Fund in a timely manner. [The employer], however, has repeatedly failed to pay its contributions and submit its contribution report in a timely manner.

Accordingly, the Board of Trustees of the Fund has directed me to advise you that from this day forward, should [the employer] fail to pay its contributions in a timely manner, [the employer] shall be required to pay interest on the delinquent amount from the date of delinquency at the annual rate of prime plus 4% adjusted and compounded quarterly and liquidated damages equal to an additional 12% of the delinquent amount. Payment of these additional amounts will be required regardless of whether it becomes necessary for the Board of Trustees to initiate legal action against you. In addition, you will be considered delinquent until all delinquent contributions, interest and liquidated damages have been paid in full. Should you pay the delinquent contributions but fail to pay the interest and liquidated damages, interest shall continue to accrue on the unpaid interest and liquidated damages.

In order to avoid the imposition of these additional charges, it is imperative that you make all future contributions to the Fund as they become due.

EXHIBIT 3

[letter to be dated and sent on or about the 22nd day of the month following the month for which contributions were due]

Dear Participating Employer:

Your contributions for the month of [insert month and year] were not received as of the 15th of [insert following month] and are therefore delinquent.

Because of your repeated failure to make timely contributions to the Fund, we previously advised you that in the event of any future delinquencies, the Board of Trustees would impose additional charges of interest on the delinquent amount from the date of delinquency at the annual rate of prime plus 4% adjusted and compounded quarterly and liquidated damages equal to an additional 12% of the delinquent amount. Accordingly, you are now required to remit these sums in addition to the delinquent contribution.

If your payment of contributions, interest and liquidated damages is not received by the end of this month, the matter will be referred to the Fund's attorney for collection. The Board of Trustees has authorized the collection attorney to seek attorney's fees, audit fees and court costs should you fail to make the required payments. Accordingly, it is imperative that you submit the required payments immediately.

EXHIBIT 4

Re: Payroll Audit – UNITE HERE Local 25 and Hotel Association of Washington, D.C. Pension Fund

Dear [insert name of employer]:

The Fund's independent auditor recently completed an examination of your payroll records to verify the hours worked by covered employees reported by you to the UNITE HERE Local 25 and Hotel Association of Washington, D.C. Pension Fund.

In summary, the auditor's examination indicates that $ [insert amount of delinquency] is due to the above-referenced Fund in principal and interest as set forth in the accompanying schedules.

Pursuant to the policies and procedures of the Fund, you have ten business days from receipt of this letter in which to dispute the audit findings, should you believe they are erroneous, and in which to pay all amounts not in dispute. You must communicate with the auditor in writing if you wish to dispute the results. Please send your communication to the auditor at the following address.

[insert auditor's firm name and address]

Please send a copy to this office of your written communication to the auditor.

If the auditor does not receive a written communication from you within ten business days after you receive this letter, the audit results will be considered final.

Please submit to this office the amount shown above made payable to the UNITE HERE Local 25 and Hotel Association of Washington, D.C. Pension Fund. If you do not agree with the total amount due, please submit the amount not in dispute and notify the auditor and this office of the disputed amount in writing as described above.

EXHIBIT 5

[letter to be dated and sent the first business day after ten business days from the date employer received the ten-day letter]

Dear Participating Employer:

The Fund's independent auditor recently completed its audit of your payroll records, and we forwarded a copy of the audit results to you for review. As we previously informed you, the payroll examination revealed that $[insert amount of delinquency] is due to the Fund in principal and interest as set forth in the schedules accompanying the audit report. The period for your review has expired, and the auditor has advised my office that no written response was received from you during the review period. Accordingly, the deficiency revealed by the audit is now immediately due and owing.

If the deficiency is not received within thirty days from the date of this letter, the matter will be referred to the Fund's attorney for collection. The Board of Trustees has authorized the collection attorney to seek the following amounts in addition to the amount of the deficiency should you fail to rectify it within the thirty-day period:

1. Additional interest accrued after the date set forth in the audit report calculated at the annual rate of prime plus 4 percent adjusted and compounded quarterly;

2. Liquidated damages equal to 20% of the full contribution due;

3. Attorney's fees;

4. Audit fees; and

5. Court costs.

In order to avoid the imposition of these additional charges, it is imperative that you submit payment immediately.