

# **BAKERY AND CONFECTIONERY UNION AND INDUSTRY INTERNATIONAL PENSION FUND**

## ***Agreement and Declaration of Trust***



**DATED  
SEPTEMBER 11, 1955  
INCLUDING ALL AMENDMENTS  
ADOPTED THROUGH  
JANUARY 1, 2008**



# **AGREEMENT AND DECLARATION OF TRUST**

**Establishing the**

## **Bakery and Confectionery Union and Industry International Pension Fund**

**(WITH AMENDMENTS TO JANUARY 1, 2008)**

THIS AGREEMENT AND DECLARATION OF TRUST is made and entered into as of the 11th day of September, 1955, in the City of New York, State of New York, by and between the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union (hereinafter referred to as the "International Union"), and various employers in the Bakery and Confectionery Industries who are or who may become parties to this agreement as hereinafter defined (hereinafter referred to as "Employers").

### **WITNESSETH:**

WHEREAS, various Local Unions of the International Union and Employers have entered into collective bargaining agreements which provide, among other things, for the establishment of a Pension Fund and prescribe the contributions or payments to be made by the Employer to such Fund, and

WHEREAS, various Local Unions of the International Union expect to enter into collective bargaining agreements with various Employers which will provide, among other things, for the establishment of a Pension Fund and prescribe the contributions or payments to be made by such Employer to the Fund, and

WHEREAS, to accomplish the aforesaid purpose, it is desired to establish a Pension Fund as a Trust Fund for receiving contributions and providing benefits for eligible employees, and

WHEREAS, the said Trust Fund is to be known as the "Bakery and Confectionery Union and Industry International Pension Fund," and

WHEREAS, it is desired to set forth the terms and conditions under which the said Fund is to be established and administered, and

WHEREAS, it has been mutually agreed that the Fund shall be administered by Trustees and it is desired to define the powers and duties of the Trustees and the nature of benefits to be provided,

NOW, THEREFORE, in consideration of the premises, it is mutually understood and agreed as follows:

## **ARTICLE I DEFINITIONS**

Unless the context or subject matter otherwise requires, the following definitions shall govern in this Agreement:

*Section 1. EMPLOYERS.* The term "Employers" as used herein, shall mean, and is limited to any employer in the Bakery or Confectionery Industry who now or hereafter has a collective bargaining agreement with a Local Union requiring periodic contributions to the Pension Fund created by this Trust Agreement and who in writing adopts and agrees to be bound by the terms and provisions of this Agreement and any amendments and modifications thereof. The term shall include Employers who participate in this Fund by action of the Trustees pursuant to Article IV, Section 5 hereof, for the particular Employees affected. The term shall also include the Bakery and Confectionery Union and Industry Health Benefits and Pension Funds if said Funds have a collective bargaining agreement with a labor organization requiring payment of periodic contributions to this Fund on behalf of the employees covered by said collective bargaining agreement. The term shall also include the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, any Local Unions affiliated therewith that has entered into either a collective bargaining agreement with a labor organization requiring payment of periodic contributions to the Fund or a written agreement with the Trustees whereby it agrees to make contributions to the Fund on behalf of its employees, and any federal credit union or welfare fund, affiliated with or sponsored by any Local Union, which enters into a written agreement with the Trustees whereby it agrees to make contributions to the Fund on behalf of its employees.

*Section 2. EMPLOYEES.* The term "Employees" as used herein, shall mean all persons working in job classifications covered by collective bargaining agreements between the Employer and Local Union, and between the Bakery and Confectionery Union and Industry International Pension Fund and a labor organization.

*Section 3. UNION OR INTERNATIONAL UNION.* The term "Union" or "International Union" as used herein shall mean the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union.

*Section 4. LOCAL UNION.* The term "Local Union" as used herein shall mean any local union affiliated with the International Union.

*Section 5. BAKERY AND CONFECTIONERY INDUSTRY.* The term “Bakery and Confectionery Industry” as used herein shall mean any industry or type of work as to which any local unions of the International Union presently have or hereafter will have collective bargaining agreements.

*Section 6. TRUSTEES.*

(a) The term “Employer Trustees” as used herein shall mean the Trustees appointed by the Employers (excluding the Bakery and Confectionery Union and Industry International Pension and Health Benefits Funds, the International Union, any Local Unions, and federal credit unions, and any welfare funds) provided such Trustees are actively employed by an Employer in the Bakery or Confectionery Industry.

(b) The term “Union Trustees” as used herein shall mean the Trustees appointed by the International Union provided that such Trustees are officers of the International Union.

(c) The term “Trustees” as used herein shall mean the Employer Trustees, Union Trustees, collectively, and shall include their successors when acting as Trustees.

(d) Subsections (a) and (b) above shall be deemed to be basic principles within the meaning of Article X, Section 2 hereof.

*Section 7. AGREEMENT AND DECLARATION OF TRUST.* The term “Agreement and Declaration of Trust” as used herein shall mean this instrument including any amendments hereto and modifications thereof.

*Section 8. PLAN.* The term “Plan” as used herein shall mean the plan or program of pension benefits to be established by the Trustees pursuant to this Agreement and Declaration of Trust.

*Section 9. FUND.* The term “Fund” as used herein shall mean the Bakery and Confectionery Union and Industry International Pension Fund, the Trust Fund created pursuant to this Agreement, and shall mean generally the moneys or other things of value which comprise the corpus and additions to the Trust Fund.

*Section 10. CONTRIBUTIONS.* The term “Contributions” as used herein shall mean the contributions made by the Employers to the Fund.

*Section 11. BENEFITS.* The term “Benefits” as used herein shall mean the pension benefits to be provided pursuant to the Plan.

*Section 12. COLLECTIVE BARGAINING AGREEMENTS.* The term “Collective Bargaining Agreements” as used herein shall mean the Collective Bargaining Agreements in force and effect between the Local Union and the Employers, together with any modifications or amendments thereto.

*Section 13. INVESTMENT ADVISER.* The term “Investment Adviser” as used herein shall mean any person, firm or corporation registered as an investment adviser under the Investment Advisers Act of 1940.

**ARTICLE II  
CREATION OF PENSION FUND**

*Section 1. ESTABLISHMENT OF FUND.* There is hereby established the Bakery and Confectionery Union and Industry International Pension Fund to be used for the purpose set forth in this Agreement and Declaration of Trust.

*Section 2. GENERAL PURPOSE.* The Fund shall be a Trust Fund and shall be used for the purpose of providing Pension Benefits, as decided by the Trustees, and shall further provide the means for financing the expenses of the Trustees and the operation and administration of the Fund, in accordance with this Agreement and Declaration of Trust.

**ARTICLE III  
TRUSTEES**

*Section 1. UNION AND EMPLOYER TRUSTEES.* The operation and administration of the Pension Fund shall be the joint responsibility of ten Trustees appointed by the Employers and ten Trustees appointed by the International Union. The number of Trustees may be changed from time to time except that there shall always be an equal number, and except that there shall not be more than ten Employer Trustees and ten Union Trustees.

*Section 2. TRUSTEES.* The Trustees shall be:

(a) UNION TRUSTEES:

FRANK HURT, Chairman  
DAVID B. DURKEE  
ANTHONY L. JOHNSON

ART MONTMINY  
ROBERT OAKLEY  
RANDY D. ROARK

JOSEPH THIBODEAU

(b) EMPLOYER TRUSTEES:

RICHARD B. COOK, Secretary  
THOMAS G. KIRCHNER

LOU MINELLA  
JOSEPH W. MISNER

JOHN WAGNER

*Section 3. ACCEPTANCE OF TRUSTEESHIP.* The Trustees shall immediately meet and sign this Agreement and Declaration of Trust which establishes the Pension Fund. The Trustees, by affixing their signatures at the end of this Agreement and Declaration of Trust, agree to accept the trusteeship and act in their capacity strictly in accordance with the provisions of this Agreement and Declaration of Trust.

*Section 4. TERM OF TRUSTEES.* Each Trustee above named, and each successor Trustee shall continue to serve as such until his death, incapacity, resignation, or removal, as herein provided. Employer Trustees may be removed and replaced at will by a majority of the then Employer Trustees, and Union Trustees may be removed and replaced at will by the International Union.

*Section 5. FORM OF NOTIFICATION.* In case any Trustee shall be removed, replaced, or succeeded, a statement in writing by the Secretary-Treasurer of the aforesaid International Union shall be sufficient evidence of the action taken by the International Union and a statement in writing signed by a majority of the then Employer Trustees shall be deemed sufficient evidence of any action taken with respect to the removal or replacement of the Employer Trustee. In the case of the removal or replacement of any Trustee, the statement in writing shall be forwarded to the Chairman and Secretary of the Fund, with a copy to the office of the Fund. Any resignation by a Trustee shall be by registered mail addressed to the office of the Fund.

*Section 6. CHANGE IN METHOD OF DESIGNATION OF EMPLOYER TRUSTEES.* The Employer and Union Trustees are authorized to revise the procedure for designation of Employer Trustees so that Employer Associations in specialized branches of the Bakery and Confectionery Industry may be authorized to designate the Employer Trustees.

*Section 7. DESIGNATION OF EMPLOYER TRUSTEES BY EMPLOYER PARTIES.* Any Employer who is or may become a party to this Agreement and Declaration of Trust agrees irrevocably to designate as its representatives in the operation and administration of the Pension Fund such Trustees as are named in said Agreement and Declaration of Trust as Employer Trustees, together with their successors selected in the manner provided herein, and agrees to be bound by all the actions taken by the said Employer Trustees pursuant to this Agreement and Declaration of Trust.

## **ARTICLE IV**

### **POWERS, DUTIES, AND OBLIGATIONS OF TRUSTEES**

*Section 1. PROPERTY AND ASSISTANCE.* The Trustees are authorized and empowered to lease or purchase such premises, materials, supplies and equipment, and to hire and employ and retain such legal counsel, Investment Adviser, administrative, accounting, actuarial, clerical and other assistants or employees as in their discretion they may find necessary or appropriate in the performance of their duties.

*Section 2. CONSTRUCTION OF AGREEMENT.* The Trustees shall have power to construe the provisions of this Agreement and Declaration of Trust and the terms used herein and any construction adopted by the Trustees in good faith shall be binding upon the International Union, the Local Unions, the Employers and the Employees and their families, dependents, beneficiaries and/or legal representatives.

*Section 3. GENERAL POWERS.* The Trustees are hereby empowered, in addition to other such powers as are set forth herein or conferred by law:

- (a) To establish and administer a Pension Plan on behalf of the Employees referred to in this instrument.
- (b) To enter into any and all contracts and agreements for carrying out the terms of this Agreement and Declaration of Trust and for the administration of the Trust Fund and do all acts as they, in their discretion, may deem necessary and advisable.
- (c) To compromise, settle, arbitrate, and release claims or demands in favor of or against the Trust Fund or the Trustees on such terms and conditions as the Trustees may deem advisable.
- (d) To establish and accumulate as part of the Trust Fund a reserve or reserves, adequate, in the opinion of the Trustees, to carry out the purposes of such Trust.
- (e) To pay out of the Fund all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Fund or any money, property, or securities forming a part thereof.
- (f) To make appropriate allocations of common administrative expenses and disbursements shared or to be shared with any other Plan or Fund.
- (g) To receive contributions or payments from any source whatsoever to the extent permitted by law.
- (h) To establish Advisory Committees composed of Local Union and Employer representatives and to set forth the duties and functions of the members of such Advisory Committees.
- (i) In their discretion and to the extent they deem it wise, beneficial or necessary to appoint a bank or banks or trust company or trust companies to be designated as "Corporate Trustee," and to enter into and execute a trust agreement or agreements with such bank or banks or trust company or trust companies, to provide for the investment and reinvestment of assets of the Pension Fund, with such other provisions incorporated therein as may be deemed desirable in the Trustees' sole discretion for the proper management of the Pension Fund and upon such execution to convey and transfer to such Corporate Trustee any assets of the Pension Fund and without limit with respect to the powers which the Trustees may grant to such Corporate Trustee in such agreement; provided that

assets received from contributing employers who employ individuals in Canadian based bakeries or plants shall, to the extent they are not required for the payment of current pension and administrative expenses in connection therewith, be invested and reinvested in securities and loans prescribed by the Regulations of the Provinces of Alberta, Ontario, Quebec, Saskatchewan and such other Canadian Provinces as may adopt the same or similar pension legislation as obtains in said named provinces. The Trustees shall be forever released and discharged from any responsibility or liability with respect to any assets which they may convey to such "Corporate Trustees."

(j) In their discretion and to the extent they deem it wise, beneficial or necessary to appoint a bank or banks or trust company or trust companies, to be designated as "Corporate Trustee," and to enter into and execute a trust agreement or agreements with such bank or banks or trust company or trust companies, to provide for the investment and reinvestment of assets of the Pension Fund, with such other provisions incorporated therein as may be deemed desirable in the Trustees' sole discretion for the proper management of the Pension Fund and upon such execution to convey and transfer to such Corporate Trustee any assets of the Pension Fund and without limit with respect to the powers which the Trustees may grant to such Corporate Trustee in such agreement. The Trustees shall be forever released and discharged from any responsibility or liability with respect to any assets which they may convey to such Corporate Trustee.

(k) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

(l) To establish an escrow bank account or accounts to the extent deemed necessary in their discretion pending adoption of a Pension Plan.

(m) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to accomplish the general objective of enabling the employees to obtain pension benefits in the most efficient and economical manner.

(n) To invest and reinvest the assets of the Pension Fund in any securities or other property or part interest therein, without being limited to what are commonly known as legal investments for trust funds, and to take any and all action with respect to holding, buying, selling or maintaining such investments as they, in their sole discretion, may deem appropriate.

(o) To select and employ by action of the Trustees in office from time to time (other than any Corporate Trustee or Trustees), by written agreement upon such terms and for such compensation as they may determine, one or more Investment Advisers to manage all or any portion of the Fund with full power to invest and reinvest that portion of the Fund with respect to which it is to act in accordance with the provisions of Subsection (n) of this Section 3. Such agreement may contain such other provisions as may be deemed desirable in the Trustees' sole discretion for the proper management of such portion of the Fund. In such event:

(i) The Trustees shall at their periodic meetings review the record of each Investment Adviser employed by them and may, but need not, determine the general investment policy to be followed by such Investment Adviser with respect to that portion of the Fund which is under its management.

(ii) The Trustees may at any time terminate the employment of any Investment Adviser employed hereunder.

(iii) The Trustees may by written agreement upon such terms and for such compensation as they may determine, employ one or more banks or trust companies as custodians for all or any portion of the Fund as to which no Corporate Trustee is in office. Such agreement may contain such other provisions as may be deemed desirable in the Trustees' sole discretion for the proper custodial management of the Fund.

(p) To invest in units of any group trust that is created or organized in the United States and is maintained at all times as a domestic trust in the United States, and the Trust Agreement of which: (1) is adopted by the Trustees as part of the Plan for so long as the assets of the Trust Fund are so invested (such adoption shall take effect automatically—without the need for a formal resolution by the Trustees—when the Trust Fund assets are first invested in the group trust, and shall terminate automatically when the Trust Fund assets are no longer invested in the group trust); (2) expressly limits participation to individual retirement accounts which are exempt under section 408(e) of the Code and employer's pension and profit sharing trusts which are exempt under section 501(a) of the Code by qualifying under section 401(a) or governmental units described in section 813(a)(6) of the Code; (3) prohibits that part of its corpus or income which equitably belongs to any individual retirement account, employer's trust, or governmental unit from being used for or diverted to any purposes other than for the exclusive benefit of the individual or the employees respectively, or their beneficiaries who are entitled to benefits under such participating individual retirement account, employer's trust, or governmental unit; (4) prohibits assignment by a participating individual retirement account, employer's trust, or governmental unit of any part of its equity or interest in the group trust.

(q) To transfer any assets and liabilities of the Fund to, or to effect any merger of the Fund with, another pension plan established or maintained for Employees or former Employees on such terms and under such conditions as the Trustees may determine; provided, however, that in making any transfer or merger decision the Trustees shall act as fiduciaries within the meaning of section 3(21) of the Employee Retirement Income Security Act; and provided further that, in the case of any such transfer or merger, provisions shall be made so that no accrued benefit of a Fund participant or beneficiary will be lower immediately after the effective date of the transfer or merger than the benefit immediately before that date.

(r) To delegate to other fiduciaries (including committees) the responsibilities involved in operating and administering the Fund (other than trustee responsibilities or duties defined in section 405(c)(3) of the Employee Retirement Income Security Act.)

**Section 4. COMPENSATION.** The Union and Employer Trustees shall not receive compensation for the performance of their duties.

**Section 5. AUTHORITY TO ENTER INTO AGREEMENTS WITH OTHER TRUSTEES.** The Trustees are hereby given authority to enter into Agreements with Trustees of other Pension Plans to which Locals of the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, are parties. In such agreements, the Trustees may agree with the Trustees of other such Funds to exercise any and all of the duties, powers, rights or obligations granted to the Trustees under the Agreements and Declarations of

Trust establishing such other Funds and may provide that such Agreement be binding on their successor Trustees and on the parties to this Agreement.

**Section 6. PERSONAL LIABILITY.** Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Fund contracted by them as such Trustees, or for the nonfulfillment of contracts, but the same shall be paid out of the Fund and the Fund is hereby charged with a first lien in favor of such Trustee for his or their security and indemnification for any amounts paid out by any such Trustee for any such liability and for his and their security and indemnification against any liability of any kind which the Trustees or any of them may incur hereunder; provided, however, that nothing herein shall exempt any Trustee from liability arising out of his own willful misconduct, bad faith or gross negligence, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof.

The Trustees and each individual Trustee shall not be liable for any error of judgment or for any loss arising out of any act or omission in the execution of their duties so long as they act in good faith and without gross negligence; nor shall any Trustee, in the absence of his own willful misconduct, bad faith or gross negligence, be personally liable for the acts or omissions (whether performed at the request of the Trustees or not) of any other Trustee, or of any agent or attorney elected or appointed by or acting for the Trustees.

The Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

Neither the employers, the International Union or the Local Union shall in any way be liable in any respect for any of the acts, omissions or obligations of the Trustees, individually or collectively.

The Trustees may from time to time consult with the Trust's legal counsel and shall be fully protected in acting upon such advice of counsel to the Trust as respects legal questions.

**Section 7. BOOKS OF ACCOUNT.** The Trustees shall keep true and accurate books of account and records of all their transactions, which shall be audited annually or oftener by a certified public accountant selected by the Trustees. Such audits shall be available at all times for inspection by the International Union, the Local Unions and the employers at the principal office of the Fund.

**Section 8. EXECUTION OF DOCUMENTS.** The Trustees may authorize an Employer Trustee and a Union Trustee or any joint group equally composed of Employer and Union Trustees to jointly execute any notice or other instrument in writing and all persons, partnerships, corporations, or associations may rely thereupon that such notice or instrument has been duly authorized and is binding on the Fund and the Trustees.

**Section 9. DEPOSIT AND WITHDRAWAL OF FUNDS.** All moneys received by the Trustees hereunder shall be deposited by them in such bank or banks as the Trustees may designate for that purpose and all withdrawals of moneys from such account or accounts shall be made only by checks signed by the Trustees authorized in writing by the Trustees to sign such checks. Except as hereinafter provided, no checks shall be valid unless signed by two persons of whom one shall be a Union Trustee and one an Employer Trustee. The Employer Trustees shall designate in writing the names of the particular and the alternate Employer Trustees who may sign checks in the above manner, and the Union Trustees shall likewise designate in writing the names of the particular and alternate Union Trustees who may sign checks in the above manner.

The Trustees may, in their discretion, designate and authorize an Employee of the Trust to sign checks upon such separate and specific bank account or bank accounts as the Trustees may designate and establish for such purpose.

**Section 10. SURETY BONDS.** The Trustees and any employees of the Trustees who are empowered and authorized to sign checks as aforesaid shall each be bonded by a duly authorized surety company in such amounts as may be determined from time to time by the Trustees. Each such employee employed by the Trustees who may be engaged in handling moneys of the Trust Fund shall also be bonded by a duly authorized surety company in the same manner. The cost of the premium on such bonds shall be paid out of the Fund.

## **ARTICLE V**

### **CONTRIBUTIONS TO THE FUND**

**Section 1. RATE OF CONTRIBUTIONS.** In order to effectuate the purposes hereof, each Employer shall contribute to the Fund the amount required by the Collective Bargaining Agreement between the Local Union and the Employer. The rate of contribution shall at all times be governed by the aforesaid Collective Bargaining Agreement then in force and effect, together with any amendments, supplements or modifications thereto.

**Section 2. EFFECTIVE DATE OF CONTRIBUTIONS.** All contributions shall be made effective as required by the Collective Bargaining Agreement and shall continue to be paid as long as the Employer is so obligated pursuant to the Collective Bargaining Agreement with the Local Union or until he ceases to be an Employer within the meaning of this Agreement and Declaration of Trust as hereinafter provided.

**Section 3. MODE OF PAYMENT.** All contributions shall be payable to the Bakery and Confectionery Union and Industry International Pension Fund and shall be paid in the manner and form determined by the Trustees.

**Section 4. DEFAULT IN PAYMENT.** Nonpayment by an Employer of any contributions when due shall not relieve any other Employer of his obligation to make payments. In addition to any other remedies to which the parties may be entitled, an Employer in default for ten working days may be required at the discretion of the Trustees to pay such reasonable rate of interest as the Trustees

may fix on the moneys due to the Trustees from the date when the payment was due to the date when payment is made, together with all expenses of collection incurred by the Trustees. The Trustees may take any action necessary to enforce payment of the contributions due hereunder, including but not limited to proceedings at law and in equity, including but not limited to reasonable counsel fees.

*Section 5. REPORT ON CONTRIBUTIONS.* The Employers shall make all reports on contributions required by the Trustees. The Trustees may at any time have an audit made by independent certified public accountants of the payroll and wage records of any Employer in connection with the said contributions and/or reports.

*Section 6. PAYMENT OF WITHDRAWAL LIABILITY.* Each Employer shall pay to the Fund all amounts due as a result of a partial or total withdrawal from the Fund, as determined by the Trustees in accordance with the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980. Withdrawal liability amounts shall be payable in the manner and form determined by the Trustees. The Trustees shall have full authority to adopt rules and regulations setting forth procedures for the determination and collection of withdrawal liability, which shall be binding on the Employers.

*Section 7. RETURN OF MISTAKEN CONTRIBUTIONS.* To the extent permitted by ERISA, the Internal Revenue Code, and other applicable law, in the event that the Trustees or their designees determine that an Employer has made a contribution to the Fund by mistake of fact or law, that no benefits have been paid to Employees or their families and dependents as a consequence of the mistake, and that the mistaken contribution can be returned to the Employer without actuarial harm to the Fund, the Trustees may return the mistaken contribution to the Employer in their sole and absolute discretion, but shall not be required to do so.

## **ARTICLE VI PLAN OF BENEFITS**

*Section 1. BENEFITS.* The Trustees shall have full authority to determine all questions of nature, amount and duration of benefits to be provided based on what it is estimated the Fund can provide without undue depletion or excessive accumulation, provided, however, that no benefits other than pension or annuity benefits may be provided for or paid under this Agreement and Declaration of Trust.

*Section 2. RECIPIENTS OF BENEFITS.* Benefits may be provided in accordance with Section 1 of this Article for any Employee of a contributing Employer covered by a collective bargaining agreement between the Employer and the Local Union.

*Section 3. ELIGIBILITY REQUIREMENTS FOR BENEFITS.* The Trustees shall have full discretionary authority to determine eligibility requirements for benefits and to adopt rules and regulations setting forth same which shall be binding on all parties.

*Section 4. METHOD OF PROVIDING BENEFITS.* The benefits shall be provided and maintained by such means as the Trustees shall in their sole discretion determine.

*Section 5. WRITTEN PLAN OF BENEFITS.* The detailed basis on which payment of benefits is to be made pursuant to this Agreement shall be specified in writing by appropriate resolutions of the Trustees subject, however, to such change or modification by the Trustees from time to time as they in their discretion may determine. All such changes or modifications shall similarly be specified in writing by appropriate resolution of the Trustees. The Trustees shall have full discretionary authority to administer and interpret the Plan.

*Section 6. INFORMATION TO COVERED EMPLOYEES.* The Trustees shall cause to be distributed to each participating Local Union an adequate supply of printed booklets explaining the terms and conditions of the Bakery and Confectionery Union and Industry International Pension Plan and any and all amendments thereto for distribution to all covered employees. Amendments which may be adopted subsequent to the distribution of such booklets and an explanation thereof shall appear in the official monthly publication of the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union in the issue next following the date of their adoption. Such insertions in the official monthly publication which is distributed to all members of the International Union shall be sufficient notice to all covered employees.

*Section 7. IRS APPROVED PLAN.* The Pension Plan adopted by the Trustees shall be such as will qualify for approval by the Bureau of Internal Revenue, U.S. Treasury Department, and will continue as a qualified Plan, so as to insure that the employer contributions to the Pension Fund are proper deductions for income tax purposes. The Trustees are authorized to make whatever applications are necessary with the said Bureau of Internal Revenue to receive and maintain approval of the Pension Plan.

*Section 8. DETERMINING CLAIMS FOR BENEFITS.* The Trustees shall have full discretionary authority to determine all claims for benefits, provided that they may delegate to the duly designated administrator of the Fund authority to determine such claims initially. Any individual adversely affected by an initial determination of the administrator shall have the right to submit a written appeal to the Trustees (or any committee to which the Trustees have delegated authority). The decision of the Trustees (or committee) shall be final and binding on all parties.

*Section 9. FIDUCIARY STATUS OF TRUSTEES.* In exercising any of the powers and authorities granted to them by Sections 1 through 5 of Article VI of this Agreement and Declaration of Trust, the Trustees shall act as fiduciaries within the meaning of section 3(21) of ERISA.

## **ARTICLE VII MEETING AND DECISIONS OF TRUSTEES**

*Section 1. OFFICERS OF TRUSTEES.* The Trustees shall meet as promptly as possible after the execution of this Agreement and Declaration of Trust and elect a Chairman and a Secretary from among the Trustees. The terms of such officers shall commence on the date of their election and continue to the end of the calendar year or until his or their successors have been elected. At no time shall both offices be held by Trustees designated by the same parties.

*Section 2. MEETING OF TRUSTEES.* Meetings of the Trustees shall be held at such place or places as may be agreed upon by the Chairman and Secretary and may be called by the said officers upon ten (10) days' written notice to the other Trustees and may be held at any time without such notice if all the Trustees consent thereto in writing.

*Section 3. ACTION BY TRUSTEES WITHOUT MEETING.* Action by the Trustees may also be taken by them in writing without a meeting, provided, however, that in such cases there shall be unanimous written concurrence by all of the Trustees.

*Section 4. QUORUM.* In all meetings of the Trustees, six Trustees shall constitute a quorum for the transaction of business providing there are at least three Employer Trustees and three Union Trustees present at the meeting, and at all meetings the Employer Trustees and the Union Trustees shall have equal voting strength. The vote of any absent Trustee shall be cast by the Trustees present, designated by the same party with the same force and effect as if such absent Trustee were present.

*Section 5. MAJORITY VOTE OF TRUSTEES.* All action by the Trustees shall be by majority decision of the Employer and Union Trustees. Such majority vote shall govern not only this Article but any portion of this Agreement and Declaration of Trust which refers to action by the Trustees. In the event any matter presented for decision cannot be decided because of a tie vote, or because of the lack of a quorum at two consecutive meetings, the matter may then be submitted to arbitration as hereinafter provided.

*Section 6. MINUTES OF MEETINGS.* The Trustees shall keep minutes of all meetings but such minutes need not be verbatim. Copies of the minutes shall be sent to all Trustees.

## **ARTICLE VIII ARBITRATION**

*Section 1. APPLICATION OF THIS ARTICLE.* Either the Employer or Union Trustees may apply to the American Arbitration Association in the area in which the Fund maintains its principal office for the designation of an arbitrator who will decide any disputes among the Trustees or any other matter submitted to arbitration in accordance with the provisions of Article VII, Section 5. The decisions of the arbitrator shall be final and binding.

*Section 2. EXPENSES OF ARBITRATION.* The cost and expense incidental to any arbitration proceeding, including the fee, if any, of the impartial arbitrator, shall be a proper charge against the Fund and the Trustees are authorized and directed to pay such charges.

## **ARTICLE IX EXECUTION OF TRUST AGREEMENT**

*Section 1. COUNTERPARTS.* This Trust Agreement may be executed in one or more counterparts. The signature of a party on any counterpart shall be sufficient evidence of his execution thereof.

*Section 2. WRITTEN INSTRUMENTS.* An Employer may become a party to this Trust Agreement only by executing such written instruments as the Trustees may, from time to time, prescribe, and acceptance by the Trustees of such an Employer shall be based on the representations set forth by the Employer in such written instruments. Such acceptance shall be evidenced in writing by the Trustees.

*Section 3. BINDING EFFECT.* This Trust Agreement, upon execution, shall be binding upon the parties hereto, their successors, administrators, executors and assigns. In the event that the Employer sells, leases, or transfers his or its company or any part thereof, or it is taken over by assignment, receivership or bankruptcy proceedings, the successor shall be bound by the terms and conditions of this Agreement. The Employer shall give notice of the existence of this Agreement to any purchaser, transferee, lessee, assignee, et al. Such notice shall be in writing, with a copy to the Trustees not later than the effective date of the transaction. The Employer agrees that its failure to so notify its successor will operate to continue its obligation under this Agreement.

## **ARTICLE X AMENDMENT TO TRUST AGREEMENT**

*Section 1. AMENDMENT BY TRUSTEES.* This Agreement and Declaration of Trust may be amended in any respect from time to time by the Trustees, provided that each amendment shall be duly executed in writing by the Trustees and annexed hereto. As to any amendment the Trustees in their sole discretion shall have full power to fix the effective date thereof.

*Section 2. LIMITATION OF RIGHT TO AMENDMENT.* No amendment may be adopted which will alter the basic principles of this Agreement and Declaration of Trust, be in conflict with the Collective Bargaining Agreements with the Local Unions as such Agreements affect contributions to the Fund created hereunder, be contrary to the laws governing trust funds of this nature, or be contrary to any agreements entered into by the Trustees.

*Section 3. AMENDMENT BY UNION AND EMPLOYERS.* The International Union and the Employers shall have the same power to amend this Agreement and Declaration of Trust as set forth in Section 1 hereof and as limited by Section 2 hereof.

*Section 4. NOTIFICATION OF AMENDMENT.* Whenever an amendment is adopted in accordance with this Article, a copy thereof shall be distributed to all Trustees, and the Trustees shall so notify all necessary parties and shall execute any instrument or instruments necessary in connection therewith.

## **ARTICLE XI**

### **TERMINATION OF TRUST**

*Section 1. BY THE TRUSTEES.* This Agreement and Declaration of Trust may be terminated by an instrument in writing executed by all the Trustees when there is no longer in force and effect a collective bargaining agreement between any Employer and any Local Union requiring contributions to the Fund.

*Section 2. BY THE PARTIES.* This Agreement and Declaration of Trust may be terminated by an instrument in writing duly executed by the Employers and the Union.

*Section 3. PROCEDURE ON TERMINATION.* In the event of the termination of this Agreement and Declaration of Trust, the Trustees shall apply the Fund to pay or to provide for the payment of any and all obligations of the Fund and shall distribute and apply any remaining surplus in such manner as will in their opinion best effectuate the purpose of the Fund; provided, however, that no part of the corpus or income of said Fund shall be used for or diverted to purposes other than for the exclusive benefit of the employees, their families, beneficiaries, or dependents, or the administrative expenses of the Fund or for other payments in accordance with the provisions of the Fund. Under no circumstances shall any portion of the corpus or income of the Fund, directly or indirectly, revert or accrue to the benefit of any contributing Employer or Local Union. Anything contained in this subsection to the contrary notwithstanding, the Superintendents of the Department of Labour of the Provinces of Alberta, Ontario, Quebec, Saskatchewan and any other Canadian Province which may adopt the same or similar pension legislation shall be notified of the termination of this Agreement and payment of benefits to Canadian pensioners thereafter shall be subject to approval of the Superintendent of Labour having jurisdiction over said pensioners.

*Section 4. NOTIFICATION OF TERMINATION.* Upon termination of the Fund in accordance with this Article, the Trustees shall forthwith notify each Local Union and each Employer and also all other necessary parties; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

## **ARTICLE XII**

### **MISCELLANEOUS PROVISIONS**

*Section 1. TERMINATION OF INDIVIDUAL EMPLOYERS.* An Employer shall cease to be an Employer within the meaning of this Agreement and Declaration of Trust when he is no longer obligated, pursuant to a Collective Bargaining Agreement with a Local Union, to make contributions to this Pension Fund, or, as determined by the Trustees, when he is delinquent in his contributions or reports to the Pension Fund.

*Section 2. VESTED RIGHTS.* No Employee or any person claiming by or through such Employee, including his family, dependents, beneficiary and/or legal representative, shall have any right, title or interest in or to the Fund or any property of the Fund or any part thereof except as may be specifically determined by the Trustees.

*Section 3. ENCUMBRANCE OF BENEFITS.* No moneys, property or equity, of any nature whatsoever, in the Fund, or policies or benefits or moneys payable therefrom, shall be subject in any manner by any Employee or person claiming through such employee to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void.

*Section 4. SITUS.* The State of Maryland shall be deemed the situs of the Trust Fund created hereunder. All questions pertaining to validity, construction and administration shall be determined in accordance with federal law, to the extent that it applies, and otherwise by the laws of the State of Maryland, but not including the Statute of Limitations of Maryland.

*Section 5. CONSTRUCTION OF TERMS.* Wherever any words are used in this Agreement and Declaration of Trust in the masculine gender they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and wherever any words are used in this Agreement and Declaration of Trust in the singular form they shall be construed as though they were also used in the plural form in all situations where they would so apply, and wherever any words are used in this Agreement and Declaration of Trust in the plural form they shall be construed as though they were also used in the singular form in all situations where they would so apply.

*Section 6. CERTIFICATION OF TRUSTEES' ACTIONS.* The Chairman and Secretary of the Trustees may execute any certificate or document jointly on behalf of the Trustees and such execution shall be deemed execution by all the Trustees. All persons having dealings with the Fund or with the Trustees shall be fully protected in reliance placed on such duly executed document.

*Section 7. NOTIFICATION TO TRUSTEES.* The address of each of the Trustees shall be that stated on the signature page of this Agreement and Declaration of Trust. Any change of address shall be affected by written notice to the Trustees.

*Section 8. SEVERABILITY.* Should any provision in this Trust Agreement or in the Plan or rules and regulations adopted thereunder or in any collective bargaining agreement be deemed or held to be unlawful or invalid for any reason, such fact shall not adversely affect the provisions herein and therein contained unless such illegality shall make impossible or impractical the functioning of the Trust and the Plan, and in such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

*Section 9. EXPENSES OF TRUSTEES.* All expenses of the Trustees incurred in the performance of their duties, such as traveling expenses to attend Trustees' meetings, may be chargeable to the Fund at the discretion of the Trustees. All other expenses incurred pursuant to Article IV hereof shall be paid by the Fund.



