

RESTAURANT INDUSTRY HEALTH AND WELFARE TRUST FUND ADOPTION AGREEMENT

This Adoption Agreement is made and entered into by and between _____ ("Participating Employer") and the Restaurant Industry Health and Welfare Trust Fund ("Trust Fund") effective, _____, 20___. The Participating Employer agrees to abide by the terms and provisions of the Amended and Restated Declaration of Trust of the Restaurant Industry Health and Welfare Trust Fund, incorporated herein by reference, and all policies and procedures promulgated by the Trustees. The Participating Employer must employ at least 101 full-time employees, including full-time equivalents, on at least fifty percent (50%) of the business days during the preceding calendar year. The Participating Employer shall contribute to the Trust Fund for all employees who work an average of 30 hours or more per week. At least 50% of the eligible employees of the Participating Employer, with a required minimum of twenty-five (25) eligible employees, must participate in the coverage provided by the Trust Fund. Only eligible employees are permitted to participate in the Trust Fund. While this Adoption Agreement is in effect, the Participating Employer shall only participate in plans offered by the Trust Fund, except as required by a collective bargaining agreement.

Employer Contributions

The Participating Employer makes the following election regarding employer contributions:

- Employer will contribute 100% of the monthly premium for the lowest cost plan for single employee coverage.

Or

- Employer will contribute ___% (minimum 50%) of the monthly premium for the lowest cost plan for single employee coverage. Participating Employees shall be responsible for the remaining monthly premium payment.

Participating Employer shall only deduct from the employees' wages the amount agreed to in this Adoption Agreement for healthcare coverage. The Participating Employer understands that it must elect medical coverage for its Employees in order to participate in the Trust Fund. The Participating Employer cannot elect only ancillary benefits (i.e., vision, dental, life) for its Employees.

Employee Coverage Waiver

The Participating Employer makes the following election regarding employee coverage waivers (this section only applies to Employers that elect to contribute 100% of the monthly premium for the lowest cost plan for single employee coverage):

- Participating Employer will permit employees to waive coverage according to the terms of a written Addendum to this Adoption Agreement.

_____Initials

- Participating Employer will not permit employees to waive coverage according to the terms of a written Addendum to this Adoption Agreement.

Waiting Period

The waiting period for employees is:

_____days (must be equal to or less than 90 days). The waiting period does not include any substantive eligibility requirements the Participating Employer may have.

Contributions

Contributions to the Trust Fund shall be made on a monthly flat-rate basis. Contribution rates will be set from time to time by the Trustees and set forth in the monthly Contribution Reporting Form. The Participating Employer shall identify all reported employees on monthly Contribution Reporting Forms provided by the Trust Fund. The Participating Employer agrees to pay contributions at the rates established from time to time by the Trustees. Contributions will be paid to the Trust Fund for each of the benefit options selected on the Attachment to this Adoption Agreement. Contributions to the Trust Fund shall be made on a corporate or business check payable to "Restaurant Industry Health and Welfare Trust Fund." Personal checks will not be accepted.

Monthly contributions and Contribution Reporting Forms are due by the 5th day of the month preceding the month of coverage. Contributions are delinquent if not received by the 15th of the month preceding the month of coverage. The Participating Employer's participation will be automatically terminated if contributions are not received by the 25th of the month preceding the month of coverage. The Participating Employer shall be liable for liquidated damages in the amount of 10% of the monthly contributions, and interest from the date of delinquency as provided by the Trust Agreement. The payment of contributions will begin during the month of _____, 20____, and will continue each month during the term of this Adoption Agreement.

Audits / Payroll Record Reviews

The Participating Employer shall cooperate with the Trust Fund in any and all Payroll Record Reviews. The Trustees may, at any time, designate a qualified representative to conduct an audit of the payroll, wage, and other business records of the Participating Employer to permit the Trustees to determine whether the Participating Employer is reporting and making contribution payments to the Trust Fund in compliance with this Adoption Agreement and the Trust Agreement. Pursuant to ERISA and federal case law, the Participating Employer agrees that the Trust's qualified representative is authorized to request and review a broad range of records of the Participating Employer. The Participating Employer agrees to maintain payroll, wage, and other business records sufficient for the Auditor to determine compliance with its reporting and payment obligations under this Adoption Agreement and Trust Agreement. In particular, Participating Employer agrees to maintain all Enrollment Forms and Declination Forms, and to provide copies to the Auditor upon request. The Participating Employer understands that payroll record reviews may be undertaken as deemed necessary by the Trustees. The Participating Employer agrees to pay the costs of the audit in the event the Trustees discover a delinquency or noncompliance with the provisions of this Adoption Agreement, Trust Agreement, or Trust Fund policies.

Termination of Participation

The Participating Employer shall not terminate this Adoption Agreement during the twelve (12) month period following the effective date set forth above. At the end of any month thereafter, the Participating Employer may terminate this Adoption Agreement by giving written notice of termination to the Trust Fund at least sixty (60) days in advance of the annual plan renewal date. Based on the health plan selected, the current renewal dates are February 1 and March 1. The Participating Employer may also terminate this Adoption Agreement by giving written notice to the Fund Office if it files a petition for bankruptcy or otherwise becomes insolvent and is no longer capable of contributing on behalf of eligible employees. The Trustees may terminate this Adoption Agreement at any time for the reasons set forth in Article VII, Section 2 of the Trust Agreement, or if continued participation by the Participating Employer would cause the Trust Fund and/or the employee welfare benefit plan(s) to lose tax-exempt status. The Trust Agreement is acknowledged as received by the Participating Employer and the Participating Employer agrees to be bound by its provisions, amendments, and any and all policies and procedures adopted by the Trustees.

After termination of participation, an employer shall not be eligible to participate in the Trust Fund again until the next open enrollment period following expiration of twelve (12) months.

Confidential and Proprietary Information

The Participating Employer agrees not to disclose Confidential and Proprietary Information, as defined below, to any third party at any time while it is a Participating Employer. The Participating Employer further agrees not to disclose Confidential Proprietary Information to any third party for a period of three (3) years after it has ceased to be a Participating Employer. Notwithstanding the above, the Participating Employer may disclose Confidential and Proprietary information to its professional advisors. Additionally, the Participating Employer may disclose Confidential and Proprietary information to its employees, but only to the extent to disclose the benefits offered through the Trust Fund.

Confidential and Proprietary Information includes any information in any form about the type, level or amount of any benefits offered through the Trust Fund. It also includes any information related to the management or operation of the Trust Fund. Examples of Confidential and Proprietary Information shall include, but is not be limited to:

- Information or documents describing benefits or features of any benefit program offered through the Trust Fund.
- Information or documents related to the governance or operation of the Trust Fund.
- Information or documents related to third parties who have at any time had a business relationship with the Trust Fund, including, but not limited to, insurance companies, accounting firms, law firms, consulting firms or record keeping firms (as well as agents or employees of any of these types of firms).
- Financial or accounting records or data related to the operations or administration of the Trust Fund or the benefit programs offered through the Trust Fund, including, but not limited to, reports, statements, summaries, correspondence and memoranda.

- Protected Health Information subject to the privacy standards set forth under the Health Insurance Portability and Accountability Act.

The Participating Employer agrees that in the event it ceases to be a Participating Employer for any reason the Participating Employer shall immediately turn over to the Trust Fund any and all information and/or documents in its possession, which contain Confidential, and Proprietary Information described above. The Participating Employer agrees that the information and documents listed above are Confidential and Proprietary and that the contents may not be copied or retained in any manner by the Participating Employer or any agent of the Participating Employer. The Participating Employer further agrees not to discuss the contents of such documents with any third party, including business associates or family members, in accordance with the terms set forth herein.

The Participating Employer acknowledges that the measure of damages which would result from its disclosure of Confidential and Proprietary information would be difficult to ascertain. The Participating Employer agrees that in the event it is found in violation of the provisions of this Agreement pertaining to Confidential and Proprietary Information it shall be liable for damages in the amount of \$25,000 for each separate violation.

Indemnification

The Participating Employer will fully defend, indemnify and hold harmless the Trust Fund and its Trustees, Plan Administrator and employees, consultants, agents and advisors against any and all loss, damage, liabilities, claims, demands, causes of action of any and every kind, nature and character, known or unknown, arising out of or in any way connected with the participation of the Participating Employer in the Trust Fund under this Adoption Agreement. This is intended to include, but is not limited to, employment-related claims, statutory violations, breach of contract claims and claims for damages resulting from personal injury or injury to property.

The Participating Employer has received the Trust Agreement of the Trust Fund and the employee welfare benefit plans(s) adopted by the Trustees and agrees to be bound to the provisions contained therein, and any future amendments, which terms are incorporated into this Adoption Agreement by reference as though fully set forth herein.

Arbitration of Claims

The Trustees have adopted mandatory binding arbitration as a means of dispute resolution regarding any and all claims that may exist between the Trustees and any Participating Employer, Participating Employee, former Participating Employer, former Participating Employee, or other person (collectively "Claimants"). Under this Policy, should any dispute arise between the Trustees and Claimants, for whatever reason, the parties will be required to resolve the dispute through binding arbitration. This means that no party can file a civil lawsuit against the other to seek redress for any dispute or claim, and that the Participating Employers, Participating Employees, former Participating Employers and former Participating Employees are giving up their rights to any trial regarding any claims or disputes. The Federal Arbitration Act shall govern the interpretation, enforcement, and all proceedings relating to this arbitration provision.

If any Claimant is unable to informally resolve a claim or dispute related to or arising out of an Adoption Agreement, including any addendum or attachment hereto, the Claimant may initiate arbitration by giving written notice of the claim to the Plan Administrator, within the time prescribed by the state or federal statute of limitations applicable to the claim on which arbitration is being sought, but in no event later than the Limitations Period as set forth in the Trust Agreement. If the claim or dispute involves an adverse benefit determination or a denied benefit claim, then the Claimant must first exhaust the claims procedures of the third-party insurance issuers, or the Trust Funds' claims procedures, whichever is applicable. In cases involving the Trust Funds' claims procedures, the request for arbitration must be submitted in writing to the Plan Administrator within sixty (60) days of receipt of the adverse action. Except as provided by law, neither the Trustees nor any Claimant shall assert class action or representative action claims against the other, whether in arbitration or otherwise, which actions are hereby waived; a Claimant shall only submit their own individual claims in arbitration and will not seek to represent the interests of any other person. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules & Procedures. In the event the parties involved in the dispute are unable to agree upon the identity of the arbitrator, the arbitrator shall be appointed by JAMS. With respect to any adverse benefit determination or denied benefit claim, the arbitrator will consider (1) whether the Trustees or their designee were in error upon an issue of law, (2) whether they acted arbitrarily or capriciously in the exercise of their discretion, or (3) whether their findings of fact were supported by substantial evidence. The decision of the arbitrator shall be final and binding on the parties and may be enforced in any court of competent jurisdiction. The expenses of arbitration will be borne equally by the parties. The parties agree that the prevailing party in any such arbitration shall be entitled to recover its reasonable attorneys' fees and costs and other non-reimbursable arbitration expenses, including witness fees, travel expenses and investigation expenses. Notwithstanding the forgoing, either party may go to a court of competent jurisdiction in San Diego County, California to obtain interim injunctive relief or to enforce the arbitration dispute mechanism herein.

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The sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and U.S. federal courts having within their jurisdiction the location of the Trust Fund's principal place of business. Any dispute, claim or controversy arising out of or relating to the enforcement, interpretation or validity of this provision, including the determination of the scope of applicability of this provision to arbitrate, shall be determined by arbitration in San Diego County, California before a single arbitrator.

The parties to this Adoption Agreement are as follows:

**RESTAURANT INDUSTRY HEALTH
AND WELFARE TRUST FUND**

PARTICIPATING EMPLOYER

By: _____
Authorized Representative

Name of Controlling Business Entity

Printed Name

Business Entity in Control Group
Joint Venture/Partnership

Title

Business Entity in Control Group
Joint Venture/Partnership

Date

Business Entity in control Group
Joint Venture/Partnership

By: _____
Authorized Representative

Printed Name

Title

Date

PARTICIPATING EMPLOYER INFORMATION

TYPE OF BUSINESS ENTITY Check one:

Corporation

Sole Proprietorship

S Corporation

Joint Venture

Partnership

Limited Liability Company

Legal Business Name of Controlling Entity

DBA (if any)

Employer Identification Number

Approximate Number of Employees

Address

Telephone Number

Facsimile Number

Contact Person (Print)

E-mail Address

Legal Business Name of Entity in Control Group

DBA (if any)

Employer Identification Number

Approximate Number of Employees

Address

Telephone Number

Facsimile Number

Contact Person (Print)

Email Address

Legal Business Name of Entity in Control Group

DBA (if any)

Employer Identification Number

Approximate Number of Employees

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