

## **AFL HOTEL AND RESTAURANT WORKERS HEALTH AND WELFARE TRUST FUND**

### **LOAN AGREEMENT**

I understand that as a result of an injury or illness which may have been due to a third party, as reported on the attached Accident Information Report, the AFL Hotel and Restaurant Workers Health and Welfare Trust Fund, hereinafter referred to as the "Trust Fund," has no obligation to pay any benefits. As such, I am hereby requesting an advance or loan from the Trust Fund in the amount of the payment of benefits connected to this injury or illness.

I also understand that if payments of benefits are provided in connection with the above mentioned injury or illness, it shall be considered only as an advance or loan in accordance with Section 18.3 of the Trust Fund Comprehensive Medical Plan Document (Self-Funded), (effective April 1, 1997). I agree to promptly reimburse 100% of the advance or loan to the Trust Fund, without any deduction for legal fees incurred, or paid by or on behalf of myself, or for my eligible dependents ("Covered Dependents") from any recovery received pursuant to such injury or illness, no matter how characterized or whether by suit, settlement, compromise or otherwise, including recovery from any under-insured or uninsured motorist coverage, even if the award or settlement does not make me or my Covered Dependents whole, or does not specifically include medical expenses, whether received by me, my Covered Dependents, or any other person or party for me or my Covered Dependents. If and when there is a recovery on or settlement of the third party claim, all payments cease and 100% reimbursement of all amounts so advanced (without any offset for attorney's fees) is required. If less than the full amount paid by the Trust Fund is received from a third party, the Trust Fund shall be paid the amount so received. I also agree to promptly reimburse the Trust Fund for any legal fees incurred or paid by the Trust Fund to secure reimbursement of the advance or loan. I hereby agree to pay my own attorney's fees directly and not out of the gross proceeds from litigation. I hereby expressly reject the "Collateral Source Rule," the "Make Whole" Doctrine, the "Common Fund" Doctrine, and §663-10, Hawaii Revised Statutes, as amended.

I hereby authorize and direct my attorney to notify PSWA, as Claims Administrator for the Trust Fund, of any claim, action or lawsuit filed on my behalf and/or for my Covered Dependents as a result of the occurrence. I or my attorney will notify PSWA immediately upon receiving any settlement or payment resulting from such a claim, however classified or allocated. I hereby further give an irrevocable lien on any such claim, action or lawsuit to the Trust Fund against that portion of the proceeds of any settlement, judgment or verdict which may be paid to me or my Covered Dependents, or any other person or party holding such proceeds for me or my Covered Dependents, as the result of injuries or illness for which I and/or my Covered Dependents have been treated by reason of the occurrence, or for any other injuries or illnesses in connection therewith, which is due for said benefits paid by the Plan, even if the settlement, judgment or verdict does not make me or my Covered Dependents whole or does not include medical expenses.

I hereby authorize the Trust Fund to intervene in, and/or become a party in, any third party litigation in order to recover the full amount of benefits paid and attorney's fees and expenses incurred.

I agree that if reimbursement is not made as stated above and in accordance with Section 18.3 of the Trust Fund Comprehensive Medical Plan Document (Self-Funded), (effective April 1, 1997), the Trust Fund may, at its sole option, take any legal and/or equitable action to recover the amount that was paid for me or my Covered Dependents' injury or illness (including any legal expenses incurred or paid by the Trust Fund), and/or may offset future benefit payments by the amount of such reimbursement (including any legal expenses incurred or paid by Trust Fund).

I further agree that I will not rescind this Agreement, and that any attempted rescission will not be honored by my attorney. I hereby instruct that, in the event another attorney is substituted in this matter I

will immediately notify PSWA and, the new attorney shall honor this Agreement and shall execute a new agreement promising to honor this Loan Agreement. Failure on the part of any substituting attorney to do so shall constitute a breach of this Agreement. In the event of any litigation concerning the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to an award of its attorneys' fees and costs.

By signing this Loan Agreement, I am requesting that my attorney promise to hold any proceeds received from a third party, as herein described, in a constructive trust for the benefit of the Trust Fund and no distribution of any proceeds be made until arrangements to repay the Trust Fund's claims have been approved by the Trust Fund. I hereby direct my attorney or attorneys, or any person or entity holding proceeds on my behalf, to pay over such proceeds to the Trust Fund. I understand that obtaining my attorney's agreement to hold such proceeds in a constructive trust for the benefit of the Trust Fund is required before the Plan pays any benefits connected to the injury or illness.

I understand that this Loan Agreement must be completed, fully executed and returned to PSWA within one hundred eighty (180) days from the above date of this Loan Agreement and that if not, the Trust Funds' loan/advance provision will not be available to me and no payments will be made by the Trust Fund. TIME IS OF THE ESSENCE.

I represent that I have carefully read and fully understand all of the provisions of this Loan Agreement and the effect of the lien on my entitlement to the proceeds of any payment from a third party.

Name of Participant (PLEASE PRINT)

Participant's Signature

Date

Name(s) of Covered Dependent(s)

Age(s)

Signature of Covered Dependent(s) (if age 18 or older)

Date

The undersigned being attorney of record for the above participant and/or Covered Dependents in connection with the above injury or illness, does hereby agree to observe all terms of the above Agreement and at the request of my client and as a condition for the above advance or loan of benefit payments , agrees to hold in trust for the Trust Fund such sums from the gross proceeds of any settlement, judgment or verdict to the extent of all claims and bills paid in connection with and as a result of the above-referenced occurrence by the Trust Fund, and agrees not to distribute such proceeds until arrangements to repay the Trust Fund have been approved by the Trust Fund, and to promptly inform PSWA in writing of a substituted attorney, if any.

Attorney's Name (PLEASE PRINT)

Attorney's Signature

Date