

**AMENDMENT NO. 5 TO THE
CEMENT MASONS HEALTH AND WELFARE TRUST FUND
FOR NORTHERN CALIFORNIA**

**ACTIVE AND RETIRED PLAN RULES AND REGULATIONS
AMENDED AND RESTATED MARCH 1, 2015**

The undersigned Chairman and Co-Chairman of the Board of Trustees of the Cement Masons Health and Welfare Trust Fund for Northern California hereby certify that at a meeting of said Board duly and regularly held on **December 11, 2020** the following changes to the Cement Masons Health and Welfare Trust Fund for Northern California Active and Retired Plan were adopted effective **December 11, 2020**:

1. A new subsection x is added to Article VIII, Section 1. Exclusions, as follows:

- x. Illness, injury, disease or other condition for which a third party (or parties) is or may be liable or legally responsible by reason of an act, omission, or insurance coverage of that third party (or parties). See Article VII, Section 8 for Conditional Coverage for Third Party Injury or Illness.

2. Article IX, Section 8 is restated to read as follows:

Section 8. Conditional Coverage Regarding Third Party Illness or Injury

- a. The Plan does not cover medical or other related expenses due to illness, injury or disease caused by third parties. However, if an Eligible Individual has an illness, injury, disease or other condition for which a third party may be liable or legally responsible by reason of an act or omission, or insurance coverage of that third party, the Fund will provide coverage for Hospital, medical or other related expenses, on a loan basis only, provided the Eligible Individual satisfies the following requirements:

- (1) An Eligible Individual must agree in writing to reimburse the Fund for payment of Hospital, medical or other related expenses made by the Fund on behalf of the Eligible Individual by signing the Plan's "Reimbursement Agreement," or any other documents required by the Fund, prior to payment of any claims by the Fund, which are related to the illness, injury, disease or other condition. The Eligible Individual must direct their attorney to also sign the Reimbursement Agreement and to reimburse the Fund first, before all others, from any settlement or other recovered amounts, regardless of the source. Reimbursement shall be made without deduction for the Eligible Individual's attorney's fees.

The Fund may withhold the processing of benefits pending the return of a fully executed Reimbursement Agreement.

- (2) An Eligible Individual must diligently prosecute any claims for damages against the third party, his insurance carrier, guarantor or other indemnitor or by reason of uninsured or underinsured motorist coverage or any other source of third party recovery.
 - (3) The Fund may require the Eligible Individual and their attorney to submit periodic reports regarding the status of such claims as a condition of continued eligibility for benefits. Failure to furnish such reports, or otherwise cooperate with the Fund, may result in automatic termination of the Fund's advancement of medical coverage.
- b. The Fund will have an automatic priority lien against the proceeds the Eligible Individual receives by way of judgment, arbitration, award, settlement or otherwise, including proceeds from the Eligible Individual's own uninsured or underinsured motorist coverage, in connection with or arising out of any claim for or any right to any damages by the Eligible Individual against the third party or any other source of third party recovery for the full amount of the benefits paid by the Fund. The Eligible Individual and their attorney agree to:
 - (1) Take no action that would waive, impair or interfere with the Fund's right to reimbursement;
 - (2) Consent to an equitable lien/constructive trust which exists in favor of the Fund;
 - (3) Hold any recovery or settlement in trust for the benefit of the Fund; and
 - (4) Execute any documents necessary to secure reimbursement to the Fund and provide any documents requested.
- c. The Fund's lien is limited to the Eligible Individual's recovery from the third party, regardless of how that recovery is classified, allocated or held. The Fund's right to reimbursement will not be affected, reduced or eliminated by the make whole doctrine, comparative fault, common fund doctrine nor the fact or inference that the recovery does not specifically include medical expenses.
- d. The Fund shall have the option, in its sole discretion, to litigate a claim against the third party or parties to recover its lien, whether or not the Eligible Individual has initiated any action and whether or not the Eligible Individual consents. In the event the Fund brings a legal action or proceeding to enforce its lien, the Fund shall be entitled to recover all costs incurred, including reasonable attorney's fees.
- e. If the Eligible Individual fails to reimburse the Fund as required by the Reimbursement Agreement or manifests an intent to breach the Reimbursement Agreement, the Board, in its sole discretion, may take any action necessary to recover the amounts paid on behalf of the Eligible Individual including, but not limited to, taking legal action, offsetting

current payments against future benefits, ceasing payments of benefits and any other actions reasonably required to secure reimbursement.

12/29/2021

Date

DocuSigned by:

Brian Gardner

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Mr. Brian Gardner – Chairman

12/30/2021

Date

DocuSigned by:

Greg Levy

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Mr. Greg Levy – Co-Chairman