

## RECOUPMENT AND SUBROGATION AGREEMENT

This Recoupment and Subrogation Agreement (“Agreement”) is entered into between the Union Construction Workers Health Plan and Trust (the “Plan”) and the undersigned Participant or Eligible Dependent in the Plan (collectively the “Undersigned”), and the Undersigned’s attorney (if the Undersigned has counsel).

### REPRESENTATIONS AND WARRANTIES

The Undersigned makes the following representations and warranties to induce the Plan’s execution of this Agreement:

1. The Undersigned is a Covered Member or Eligible Dependent under the Plan and as such is entitled to certain benefits under the Plan. If the Eligible Dependent is a minor, the Undersigned is the parent or legal guardian of the minor and is capable of binding the minor to the terms of this Agreement.

2. The Plan provides that its benefits are secondary to any payments from other sources from which the Undersigned may receive payment for injuries or medical expenses covered under the Plan.

3. The Undersigned suffered a loss or injury on or about \_\_\_\_\_ and may be entitled to certain benefits under the Plan. The following information relates to this loss:

a. Description of how and where the loss occurred:

b. Names and addresses of the other parties involved:

c. Names and addresses of the persons responsible for or at fault for this loss:

d. Name and address of the other party's insurance carrier:

e. Name and address of my casualty and liability insurance carrier:

f. Name and address of my attorney:

4. The amount to be recovered from the alleged tortfeasor(s) or any other insurer for injuries and costs for which the Undersigned is seeking payment from the Plan cannot be determined at this time.

5. No settlement has been made by the Undersigned with any tortfeasor or insurer that may be legally responsible (in tort or contract) to pay for medical expenses incurred as a result of the Undersigned's loss or injury and no release has been given to anyone in connection with the losses or injuries which are the subject of this Agreement.

#### AGREEMENT

In consideration of amounts paid or to be paid by the Plan, a self-funded plan, to the Undersigned or on his/her behalf to any medical provider or other health care entity, the Undersigned:

1. agrees to repay to the Plan any amounts that the Undersigned receives from any alleged tortfeasor(s), insurer, workers' compensation system, governmental fund or any other source paid as a result of the Undersigned's loss or injury, up to the amount of benefits paid by the Plan to the Undersigned or on behalf of the Undersigned to any medical provider or other health care entity;

2. agrees that on failure to reimburse the Plan for amounts advanced to the undersigned, the Plan may exercise all of its rights to be reimbursed, including, but not limited to, bring suit against the Undersigned for reimbursement;

3. assigns to the Plan any and all claims, demands and contractual rights the Undersigned may have against any other person(s) or entity(s) ("Responsible Person(s)") arising from or related in any way to the Undersigned's loss or injury, and agrees that the Plan is substituted

in the place of the Undersigned against such Responsible Person(s) to the extent of the amount paid by the Plan as a result of such loss or injury;

4. agrees to notify the Plan within ninety (90) days of the signing of this Agreement of the name and address of the Undersigned's attorney, if any, that has been retained to make a claim, or if necessary, to file such lawsuit against the Responsible Person(s). The Undersigned may not grant his or her attorney a security interest or similar right in any recovery from the tortfeasor, any insurer, any governmental fund or system including workers' compensation, or any other source. The Undersigned's attorney's compensation shall be decided upon between the Undersigned and the Undersigned's attorney. The decided upon fee will fully compensate the attorney for representing the Undersigned's and the Plan's interests in recovering from the Responsible Person(s);

5. agrees that the compensation to be paid to the Undersigned's attorney shall not exceed one-third of the Plan's share of any recovery actually received by the Undersigned from any source, as long as the Plan's recovery does not exceed \$7,500.00. However, where the Plan's share of any recovery actually received by the Undersigned from any source(s) exceeds a collective total of \$7,500.00, the amount of compensation that the Undersigned's attorney shall receive for protecting the Plan's interests shall be negotiated between the Undersigned's attorney and the Plan's Trustees;

6. agrees to notify the Plan, in writing, within ninety (90) days of the execution of this Agreement of the name and address of any alleged tortfeasor(s) responsible for the Undersigned's injuries or losses if this information is not supplied at the time of execution of this Agreement;

7. agrees to supply the Plan, within ninety (90) days of the execution of this Agreement, with a true and accurate copy of any insurance policies that the Undersigned believes may provide coverage for the injuries or losses sustained by the Undersigned;

8. agrees that the Plan may at any time notify the Responsible Person(s), the Undersigned's attorney, or any other person or entity of this Agreement;

9. agrees to promptly make claims against the Responsible Person(s), and, if necessary, to commence and prosecute a lawsuit against such Responsible Person(s) with all due diligence;

10. agrees that the Plan shall have an absolute right, at its discretion, to intervene in any action or suit filed by or on behalf of the Undersigned against the party responsible for the Undersigned's injuries or illness;

11. agrees that if the Undersigned opposes or takes any action to prevent the Plan from intervening in any action or suit, the Undersigned will have breached his or her obligations to the Plan and the Plan may exercise all of its rights, including seeking damages for the breach and/or suspending any pending or future claims of the Undersigned;

12. agrees not to name the Plan as a party to any action or suit against the party responsible for the Undersigned's injuries or illness without the Plan's prior written consent;

13. agrees that if the Undersigned fails to make a claim or file a lawsuit against the Responsible Person(s) within six months prior to the running of the applicable statute of limitations for such claim, the Undersigned authorizes the Plan to sue, compromise or settle in the Undersigned's name all such claims and to execute releases and endorse checks or drafts given in settlement of such claims in the name of the Undersigned;

14. agrees to cooperate fully with the Plan in the prosecution of claims and to attend court and to testify as the Plan or its counsel deems necessary;

15. agrees that no settlement will be made or release given for claims arising out of the Undersigned's loss or injury without prior written consent of the Plan;

16. agrees that the Plan's Rights of Subrogation, Recoupment and Reimbursement as those rights are described in this Agreement and in the Summary Plan Description, are not affected by the manner in which any monetary recovery or settlement was designated (e.g., pain and suffering, non-economic loss, loss of consortium, etc.). Further, the Undersigned agrees that the Plan's rights are not affected even if the Undersigned has not been fully compensated for the injuries sustained or illness incurred;

17. agrees that if the recovery from the Responsible Person(s) is insufficient to fully compensate the Undersigned for his/her losses (including but not limited to medical expenses, lost past and future wages and pain and suffering) and the Plan for its payments, the Undersigned may petition the Plan in writing for a reduction of the Plan's Subrogation, Recoupment or Reimbursement Rights;

18. agrees that the Plan is entitled to a lien against any amounts the Undersigned receives or will receive from any source as a result of his/her injuries up to the amount of benefits paid by the Plan to the Undersigned or on behalf of the Undersigned to any medical provider or other health care entity;

19. agrees that the Plan's lien is a first priority claim and lien against any recovery and must be paid before any other claims, including claims by the Undersigned for damages or claims by the Undersigned's attorney;

20. agrees that any proceeds from a settlement or judgment up to the full amount of the Plan's lien shall be held in trust (constructive trust or equitable lien) by the Undersigned or the Undersigned's attorneys or agents for the benefit of the Plan;

21. agrees that the Plan shall have an absolute right at its discretion, to being an equitable action or suit naming the Undersigned, the Undersigned's attorney or agents seeking restitution in equity to enforce the constructive trust or equitable lien and recover money obtained by the Undersigned;

22. agrees that if (a) the Undersigned receives an award, settlement, damages or payments from the responsible party, and (b) it is the opinion of any treating physician or retained expert of the Undersigned that it is more likely than not (i.e., greater than 50% likelihood) that the Undersigned will require any treatment or therapy after the Undersigned signs a release ("future treatment"), then the Eligible Person agrees not to make a claim for such future treatment with the

Plan when such future treatment is ultimately rendered. The Undersigned may, however, petition the Plan in writing to cover a claim for such future treatment. Further, the Undersigned may make a claim for the portion of such future treatment that exceeds the net amount received by the Undersigned from the responsible party. The “net amount received” equals the total amount of any award, settlement, damages or payments received from the responsible party less (a) the Undersigned’s costs and attorneys’ fees incurred prior to the signing of any release and (b) the amount received by the Plan in satisfaction of its rights under this Agreement and the Subrogation, Recoupment and Reimbursement sections of the Summary Plan Description. Prior to signing any release, the Undersigned must provide the Plan with written evidence that the Undersigned is more likely than not required to undergo future treatment;

23. agrees that the terms of this Agreement do not limit any of the Plan’s rights pursuant to the Subrogation, Recoupment and Reimbursement sections of any summary plan description or other Plan document;

24. agrees that if the Undersigned fails to fulfill any terms of this Agreement, the Undersigned is liable for the Plan’s attorneys’ fees and costs incurred in enforcing the terms of this Agreement, including the collection of the Plan’s portion of the proceeds held by the Undersigned or the Undersigned’s agents or attorneys;

25. agrees that the Undersigned’s failure to fulfill any obligations created by this Agreement authorizes the Plan, among other things, to cease payment of any benefits, related or unrelated to injuries or illness caused by a third party, to which the Undersigned may be entitled to under the Plan;

26. agrees that the Undersigned’s attorney has no right to any compensation from the Plan, by way of reduction or offset against the amount of the Plan’s lien or otherwise, if the Undersigned or the Undersigned’s attorney fails to sign this Agreement or fails to fulfill any term of this Agreement;

27. agrees that this Agreement shall be binding upon the Undersigned’s heirs, executors, administrators, next-of-kin and assigns;

28. agrees that this Agreement shall be binding upon Undersigned’s attorney and agents;

29. agrees that in the event the Plan pays or advances any medical expenses on behalf of a minor, that this Agreement is a contract for necessities;

30. agrees that if any provision of this Agreement is declared unlawful or otherwise unenforceable that the offending provision may be separately struck from this Agreement and that the Agreement may be otherwise enforceable according to its terms;

31. agrees that this Agreement becomes effective and binding upon the Undersigned’s execution of this Agreement and the payment by the Plan of any benefits after the Undersigned’s execution of this Agreement to either the Undersigned or on behalf of the Undersigned to any medical provider or other health care entity, regardless of whether this Agreement has been signed by the Plan;

32. agrees that all actions and proceedings to enforce this Agreement or the Plan's Rights of Subrogation, Recoupment and Reimbursement must be filed and prosecuted in the United States District Court of the District in which the Plan is administered.

IN WITNESS WHEREOF, the Undersigned has read the foregoing Agreement and agrees to its terms on the date and year set forth below.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Plan Participant, Eligible Dependent or Parent  
or Guardian of Eligible Minor Dependent

Date: \_\_\_\_\_

Union Construction Workers Health Plan and  
Trust

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for the Plan Participant, Eligible  
Dependent or Parent or Guardian of Eligible  
Minor Dependent

Date: \_\_\_\_\_