

WAIVER OF SUBROGATION

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This Waiver of Subrogation (this "**Waiver**") is made as of [EFFECTIVE DATE] (the "**Effective Date**") by and between:

[FIRST PARTY LEGAL NAME], a [STATE] [ENTITY TYPE], of [FIRST PARTY ADDRESS] ("**First Party**"); and
[SECOND PARTY LEGAL NAME], a [STATE] [ENTITY TYPE], of [SECOND PARTY ADDRESS] ("**Second Party**").

First Party and Second Party are each a "**Party**" and together the "**Parties**."

Recitals. The Parties have entered into, or are entering into, [DESCRIBE THE UNDERLYING RELATIONSHIP, e.g. a lease dated [DATE], a construction contract, a service agreement] (the "**Underlying Agreement**"). In connection with the Underlying Agreement, each Party maintains, or will maintain, insurance covering its property and operations. The Parties wish to allocate the risk of insured loss to their respective insurers and to prevent those insurers from later seeking reimbursement from the other Party by way of subrogation. In consideration of the mutual promises below, the Parties agree as follows.

1. Definitions

1.1 Subrogation. "**Subrogation**" means the right of an insurer, after paying a claim to its insured, to step into the insured's shoes and pursue recovery from a third party that caused or contributed to the loss.

1.2 Covered Loss. "**Covered Loss**" means any loss or damage to property, or any other loss, that is covered by a Party's insurance policy described in Section 2, to the extent of that coverage, arising out of or relating to the Underlying Agreement.

1.3 Waiving Party. "**Waiving Party**" means the Party whose insurer would otherwise hold a right of subrogation for a Covered Loss, and "**Protected Party**" means the other Party against whom that right would be asserted.

1.4 Policies. "**Policies**" means the insurance policies identified in Section 2, together with any renewals or replacements.

2. Insurance Maintained by the Parties

2.1 First Party insurance. First Party maintains, or will maintain, the following coverage: [DESCRIBE COVERAGE, e.g. commercial property, general liability, builder's risk], with carrier [CARRIER], policy number [POLICY NUMBER], limits [LIMITS].

2.2 Second Party insurance. Second Party maintains, or will maintain, the following coverage: [DESCRIBE COVERAGE], with carrier [CARRIER], policy number [POLICY NUMBER], limits [LIMITS].

2.3 Obligation to maintain. Each Party will keep its Policies in force throughout the term of the Underlying Agreement and will not allow coverage relevant to a Covered Loss to lapse without notifying the other Party.

2.4 Endorsement required. Each Party will obtain from its insurer an endorsement, consent, or policy provision permitting the waiver of subrogation in Section 3, and will provide the other Party with evidence of that endorsement on request.

3. Mutual Waiver of Subrogation

3.1 First Party waiver. First Party, on behalf of itself and its insurers, waives all rights of recovery and subrogation against Second Party and its officers, employees, and agents for any Covered Loss, to the extent the loss is covered by First Party's Policies, even if the loss was caused by the negligence of Second Party.

3.2 Second Party waiver. Second Party, on behalf of itself and its insurers, waives all rights of recovery and subrogation against First Party and its officers, employees, and agents for any Covered Loss, to the extent the loss is covered by Second Party's Policies, even if the loss was caused by the negligence of First Party.

3.3 Limits of the waiver. Each waiver applies only to the extent of the insurance proceeds actually available for the Covered Loss. It does not waive a Party's own liability for any portion of a loss that is not covered, including deductibles, self-insured retentions, or amounts in excess of policy limits, except as the Parties separately agree.

3.4 Exclusions. This Waiver does not apply to loss or damage caused by a Party's gross negligence or willful misconduct, except to the extent applicable law and the Policies permit a waiver in those circumstances.

4. Insurer Consent and Cooperation

4.1 No prejudice to coverage. Each Party represents that it has confirmed, or will confirm, that this Waiver does not void or impair its coverage, and that its insurer permits the waiver.

4.2 Cooperation. Each Party will reasonably cooperate with the other in obtaining and documenting the required insurer consents and endorsements.

4.3 Notice of denial. If an insurer declines to permit the waiver, the affected Party will promptly notify the other Party so the Parties can address the gap.

5. Relationship to the Underlying Agreement

5.1 Supplement. This Waiver supplements the Underlying Agreement. If the Underlying Agreement contains an insurance or waiver-of-subrogation provision, this Waiver is read together with it, and the more protective waiver controls to the extent of any conflict, unless the Underlying Agreement expressly states otherwise.

5.2 No reduction of duties. Nothing in this Waiver reduces any insurance, indemnity, or defense obligation a Party owes under the Underlying Agreement, except the specific subrogation rights waived here.

5.3 Term. This Waiver is effective for the term of the Underlying Agreement and any period during which a Covered Loss may arise from acts or events occurring during that term.

6. Representations and Warranties

6.1 Authority. Each Party represents that it has full authority to enter into this Waiver and that the signer is authorized to bind it.

6.2 Accuracy of insurance information. Each Party represents that the insurance information in Section 2 is accurate as of the Effective Date and will update the other Party if it materially changes.

6.3 No conflicting waiver. Each Party represents that it has not granted a conflicting waiver or assignment that would defeat the waivers in Section 3.

7. Indemnification for Breach

7.1 Breach of waiver duties. If a Party's failure to obtain a required endorsement, or its allowing coverage to lapse, causes the other Party to bear a loss that would otherwise have been covered, the breaching Party will indemnify the other Party for that loss, to the extent of the coverage that would have applied.

7.2 Procedure. The Party seeking indemnification will give prompt written notice and reasonable cooperation, and the indemnifying Party may participate in resolving the matter.

7.3 Limit. Indemnification under this Section is limited to the amount of insurance proceeds that would have been available but for the breach.

8. General Provisions

8.1 Governing law and venue. This Waiver is governed by the laws of the State of [STATE], without regard to conflict-of-laws rules, and the Parties recognize that the enforceability of a waiver of subrogation and any anti-indemnity statute may vary by jurisdiction and by line of insurance. The Parties submit to the exclusive jurisdiction of the state and federal courts located in [COUNTY, STATE].

8.2 Entire agreement. Together with the Underlying Agreement, this Waiver is the entire agreement between the Parties on its subject and supersedes prior discussions on subrogation. It may be amended only by a writing signed by both Parties.

8.3 Severability. If any provision is unenforceable, the remaining provisions stay in effect, and the waivers are to be read as broadly as the law allows.

8.4 No waiver of other rights. A Party's failure to enforce a provision is not a waiver of that or any other provision.

8.5 Counterparts and electronic signature. This Waiver may be signed in counterparts and by electronic signature, each of which is an original and all of which together form one agreement.

IN WITNESS WHEREOF, the Parties have executed this Waiver as of the Effective Date.

FIRST PARTY

SECOND PARTY

Signature: _____

Signature: _____

Printed name: [NAME]

Printed name: [NAME]

Title: [TITLE]

Title: [TITLE]

Date: _____

Date: _____

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