

JOINT INVESTIGATION, PURSUIT AND ALLOCATION AGREEMENT

1. **Parties:** This **JOINT INVESTIGATION, PURSUIT AND ALLOCATION AGREEMENT** (this "*Agreement*") is entered into as of March __, 2020 (the "*Effective Date*") by and between **CITY OF SAINT PAUL** (the "*Insured*") and **THE TRAVELERS INDEMNITY COMPANY** ("*Travelers*"). The Insured and Travelers are collectively referred to as the "*Parties*."

2. **Recitals:**
 - a. On or about November 16, 2019, the Insured sustained losses stemming from a fire (the "*Incident*"); and,
 - b. The Insured has made a certain claim (the "*Claim*") upon Travelers for coverage under policy number KTK-CMB-257T2662-2-19 (the "*Policy*") for the losses the Insured sustained as a result of the Incident; and,
 - c. The Claim is currently being adjusted by Travelers; and,
 - d. In connection with the Claim, Travelers may (in the future) make payments to or on behalf of the Insured for the covered losses the Insured sustained as a result of the Incident, and any such payments would be legally recoverable ("*Recoverable Covered Losses*") from the party or parties who bear responsibility for the Incident ("*Responsible Parties*"); and,
 - e. As a result of the Incident, the Insured incurred losses that were not covered or reimbursed under the Policy, and the Parties agree that the Insured's deductible loss in the amount of \$250,000.00 may be legally recoverable ("*Recoverable Non-Reimbursed Losses*") from the Responsible Parties; and
 - e. Travelers and the Insured desire to investigate the Incident and, if appropriate and in the event of future Recoverable Covered Losses, jointly pursue their respective claims for the Recoverable Covered Losses and Recoverable Non-Reimbursed Losses (collectively, "*Total Recoverable Losses*") and to allocate any recovery obtained from

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the Responsible Parties, whether through settlement, criminal restitution order, or any other means ("*Recovery*"), as set forth below.

3. **Consideration:**

In consideration of the mutual promises contained herein, the Parties hereby agree to jointly and cooperatively investigate and pursue their respective claims under the terms set forth below.

4 **Agreement to Pursue:**

- a. **Joint Retention of Counsel:** The Parties agree to jointly retain the services of Jessica Allen, Esq. and Pfefferle Kane LLP ("*Joint Counsel*") to represent their interests, investigate the Incident, and if appropriate and in the event of future Recoverable Covered Losses, pursue liability claims against the Responsible Parties, as outlined herein ("*Joint Pursuit*"). The Parties understand that they are each entitled to be represented by independent counsel to pursue their separate interests in this matter. Nevertheless, the Parties expressly agree to investigate and (if appropriate and in the event of future Recoverable Covered Losses) pursue their claims in accordance with this Agreement, and expressly waive all conflicts of interest necessary for such investigation and Joint Pursuit.
- b. **Disclaimer of Parties:** With regard to the Joint Pursuit and as to all matters related to this Agreement, the Parties make no representations, guarantees or warranties regarding the Joint Pursuit, the liability of the Responsible Parties, or the potential for obtaining a Recovery through the Joint Pursuit. The Parties expressly understand that the Joint Pursuit may result in no Recovery.
- c. **Pursuit of Claims:** The Parties agree that the Joint Pursuit will include the interests of the Insured in the Recoverable Non-Reimbursed Losses, as well as the subrogated interests of Travelers in the Recoverable Covered Losses. The Parties expressly

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acknowledge that this Agreement does not contemplate filing suit, and the Parties intend for Travelers to resolve the claims for Total Recoverable Losses through negotiation with the Responsible Parties without resorting to litigation. Should the Parties later agree to file suit against the Responsible Parties, such an agreement will be set forth in a separate agreement.

- d. **Control of Joint Pursuit:** Travelers shall have the exclusive right (i) to develop, plan and direct the substantive strategy for the Joint Pursuit, (ii) to enter into, on behalf of the Parties hereto, any settlement it deems appropriate and advisable under the circumstances for all or any part of the Total Recoverable Losses; and (iii) to abandon and/or not pursue all or any portion of the Joint Pursuit if Travelers deems it appropriate to do so.

5. **Expenses Payment/Reimbursement And Recovery Allocation:**

- a. **Payment Of Expenses:** Travelers shall advance all mutually beneficial expenses associated with the investigation and Joint Pursuit ("*Pursuit Expenses*"), including, but not limited to, expert witness and consultant (whether internal or external to Travelers) fees, fees for services provided by specialized employees of The Travelers Indemnity Company, and expenses/fees for approved testing evidence storage, models and exhibits. Pursuit Expenses **do not include** the following types of expenses:

1. Parties' travel expenses (including, without limitation, transportation, lodging, and meal expenses);
2. Salaries, staff, and other such overhead expenditures;
3. Non-Joint Counsel attorney's fees, such as any fees of a Party's personal attorney (these non-Joint Counsel attorney's fees shall be borne by the Party incurring same, and neither Party shall be obligated to reimburse any of such fees); and

- b. **Allocation of Recovery Upon Final Resolution:** For purposes of this Agreement, (i) the term "*Gross Recovery*" shall mean the total Recovery, if any, before deduction

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for Pursuit Expenses, and (ii) the term “*Net Recovery*” shall mean the sum remaining after Pursuit Expenses have been deducted from the Gross Recovery. The Parties agree that any Recovery will be allocated in the following manner:

1. Travelers shall be reimbursed for the Pursuit Expenses from the first dollar of the Gross Recovery.
 2. Joint Counsel shall be entitled to a contingency fee of 25% of the Net Recovery if the matter is resolved without filing suit.
 3. The Parties will share in the remaining Net Recovery on a pro-rata basis in accordance with the proportionate ratio of mutually agreed legally recoverable damages sustained by each Party.
- c. **Waiver of Right of Priority**: In allocating recovery funds under this Agreement, the Parties expressly waive all rights and entitlement to a priority of the right of recovery, whether such right extends by way of the Policy or otherwise.
- d. **Waiver of Right of Waive Claims**: To the extent that the Policy permits the Insured to waive the Parties’ Joint Pursuit claims against one or more Responsible Parties, the Insured expressly waives such right.
6. **General Provisions and Conditions**:
- a. **Confidentiality**: The Parties agree that any and all confidential information exchanged in connection with the Joint Pursuit shall be designated “Confidential Joint Pursuit Information,” and that neither Party shall disclose such information to third parties without the express written consent of the other Party.
 - b. **Binding Effect and Assignment**: This Agreement shall be binding upon the officers, directors, principals, agents, representatives, heirs, employees, affiliates and assigns of each Party, but in no event may this Agreement be assigned to any Party without the express written consent of all Parties hereto.

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- c. **No Impact On Adjustment Of Claim:** Notwithstanding anything contained in this Agreement to contrary, this Agreement pertains solely to the subrogation/third party investigation/recovery aspect of the Claim. Nothing contained in this Agreement shall be deemed a promise or obligation on the part of Travelers in connection with its adjustment of the Claim.
- d. **Integration:** To the extent this Agreement is inconsistent with any other verbal or written agreement between the Parties, this Agreement supersedes such other agreement. Should any term, condition or provision of this Agreement be held to be invalid, the remainder of the Agreement shall remain in full force and effect.
- e. **Participation of Parties:** The Parties acknowledge that they have each had the opportunity to review the Agreement and to seek the advice of independent attorneys (not associated with counsel designated in the Agreement) with regard to their respective rights and interests, including those related to the waiver of any conflict of interest that exists or that may arise between the Parties at any time during the Joint Pursuit with respect to the amount of damages legally recoverable against the Responsible Parties. The language of this Agreement shall not be presumptively construed against any Party hereto.
- f. **Applicable Law:** The Parties agree that the law of the State of Minnesota applies to an interpretation of this Agreement. In the event a dispute arises with regard to the enforcement of this Agreement, the parties agree to select an arbiter licensed, approved and/or competent to resolve the dispute under Minnesota law. Any such arbitration shall be held in Minnesota under the Commercial Arbitration Rules of the American Arbitration Association.
- g. **Execution in Counterparts:** This Agreement may be executed in counterparts. A copy of the original of this Agreement shall have the same force as the original.

[Remainder of Page Intentionally Left Blank / Signature Page Follows]

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Travelers and the Insured have signified their assent to this Agreement as of the Effective Date by executing this Agreement where indicated below.

CITY OF ST. PAUL

By: _____
Name: _____
Title: _____
Duly Authorized

By: _____
Name: _____
Title: _____
Duly Authorized

By: _____
Name: _____
Title: _____
Duly Authorized

By: _____
Name: _____
Title: _____
Duly Authorized

THE TRAVELERS INDEMNITY COMPANY

By: _____
Name: _____
Title: _____
Duly Authorized

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