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 17 LIBERTY MUTUAL INSURANCE COMPANY and  
 18 WEST AMERICAN INSURANCE COMPANY

19 UNITED STATES DISTRICT COURT  
 20 EASTERN DISTRICT OF CALIFORNIA

22 HEIGHT STREET SKILLED CARE, LLC,  
 23 Plaintiffs,  
 24 v.  
 25 LIBERTY MUTUAL INSURANCE  
 26 COMPANY, a Massachusetts Corporation;  
 27 WEST AMERICAN INSURANCE  
 COMPANY, an Indiana Corporation; and  
 DOES 1 to 20, inclusive,  
 28 Defendants.

Case No. 1:21-cv-01247-JLT-CDB

**STIPULATED PROTECTIVE ORDER**

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action might involve production of confidential, proprietary, or private  
3 information for which special protection from public disclosure and from use for any purpose  
4 other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate  
5 to and petition the Court to enter the following Stipulated Protective Order. The parties  
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses  
7 to discovery and that the protection it affords from public disclosure and use extends only to the  
8 limited information or items that are entitled to confidential treatment under the applicable legal  
9 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this  
10 Stipulated Protective Order does not entitle them to file confidential information under seal;  
11 Local Rule 141 sets forth the procedures that must be followed and the standards that will be  
12 applied when a party seeks permission from the Court to file material under seal.

13 Notwithstanding the terms and conditions of this Stipulated Protective Order, all persons  
14 and/or entities hereto (including Parties to the Action as well as any executing Non-Party to the  
15 Action) shall fully comply with any other court order or applicable law.

16 B. GOOD CAUSE STATEMENT

17 This action may involve trade secrets and other confidential, proprietary, or private  
18 information for which special protection from public disclosure and from use for any purpose  
19 other than prosecution of this action is warranted. Such confidential and proprietary materials  
20 and information consist of, among other things, confidential business or financial information,  
21 information regarding confidential business practices, or other confidential research,  
22 development, or commercial information, information otherwise generally unavailable to the  
23 public, or which may be privileged or otherwise protected from disclosure under state or federal  
24 statutes, court rules, case decisions, or common law.

25 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of  
26 disputes over confidentiality of discovery materials, to adequately protect information the parties  
27 are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary  
28 uses of such material in preparation for and in the conduct of trial, to address their handling at

1 the end of the litigation, and serve the ends of justice, a protective order for such information is  
2 justified in this matter. It is the intent of the parties that information will not be designated as  
3 confidential for tactical reasons and that nothing be so designated without a good faith belief that  
4 it has been maintained in a confidential, non-public manner, and there is good cause why it should  
5 not be part of the public record of this case.

6 2. DEFINITIONS

7 2.1 Action: *Height Street Skilled Care, LLC v. Liberty Mutual Insurance Company,*  
8 *et al.*, United States District Court for the Eastern District of California, Case No. 1:21-cv-01247-  
9 JLT-CDB.

10 2.2 Challenging Party: a Party or Non-Party that challenges the designation of  
11 information or items under this Order.

12 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
13 generated, stored or maintained) or tangible things that constitute private business information,  
14 as specified above in the Good Cause Statement, and as specified above in the Good Cause  
15 Statement.

16 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support  
17 staff).

18 2.5 Designating Party: a Party or Non-Party that designates information or items that  
19 it produces in disclosures or in responses to discovery as “HIGHLY CONFIDENTIAL” or  
20 “CONFIDENTIAL.”

21 2.6 Disclosure or Discovery Material: all items or information, regardless of the  
22 medium or manner in which it is generated, stored, or maintained (including, among other things,  
23 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
24 responses to discovery in this matter.

25 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent  
26 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or  
27 as a consultant in this Action.

28

1           2.8    “HIGHLY CONFIDENTIAL” Information or Items: Information (regardless of  
2 how it is generated, stored or maintained) or tangible things that qualify for protection under  
3 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

4           2.9    House Counsel: attorneys who are employees of a party to this Action. House  
5 Counsel does not include Outside Counsel of Record or any other outside counsel.

6           2.10   Non-Party: any natural person, partnership, corporation, association or other legal  
7 entity not named as a Party to this action.

8           2.11   Outside Counsel of Record: attorneys who are not employees of a party to this  
9 Action but are retained to represent or advise a party to this Action and have appeared in this  
10 Action on behalf of that party or are affiliated with a law firm that has appeared on behalf of that  
11 party, and includes support staff.

12          2.12   Party: any party to this Action, including all of its officers, directors, employees,  
13 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

14          2.13   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
15 Material in this Action.

16          2.14   Professional Vendors: persons or entities that provide litigation support services  
17 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
18 organizing, storing, or retrieving data in any form or medium) and their employees and  
19 subcontractors.

20          2.15   Protected Material: any Disclosure or Discovery Material that is designated as  
21 “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL.”

22          2.16   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
23 Producing Party.

24    3.    SCOPE

25           The protections conferred by this Stipulation and Order cover not only Protected Material  
26 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
27 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
28 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

1 However, the protections conferred by this Stipulation and Order do not cover the following  
2 information: (a) any information that is in the public domain at the time of disclosure to a  
3 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
4 a result of publication not involving a violation of this Order, including becoming part of the  
5 public record through trial or otherwise; and (b) any information known to the Receiving Party  
6 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
7 obtained the information lawfully and under obligation of confidentiality to the Designating  
8 Party. Any use of Protected Material at trial shall be governed by the orders of the trial judge.  
9 This Order does not govern the use of Protected Material at trial.

10 4. DURATION

11 Even after final disposition of this litigation, the confidentiality obligations imposed by  
12 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
13 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
14 claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after  
15 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this  
16 Action, including the time limits for filing any motions or applications for extension of time  
17 pursuant to applicable law.

18 5. DESIGNATED PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
20 or Non-Party that designates information or items for protection under this Order must take care  
21 to limit any such designation to specific material that qualifies under the appropriate standards.  
22 The Designating Party must designate for protection only those parts of material, documents,  
23 items or oral or written communications that qualify so that other portions of the material,  
24 documents, items or communications for which protection is not warranted are not swept  
25 unjustifiably within the ambit of this Order.

26 Mass, indiscriminate or routinized designations are prohibited. Designations that are  
27 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
28 unnecessarily encumber the case development process or to impose unnecessary expenses and

1 burdens on other parties) may expose the Designating Party to sanctions. If it comes to a  
2 Designating Party's attention that information or items that it designated for protection do not  
3 qualify for protection, that Designating Party must promptly notify all other Parties that it is  
4 withdrawing the inapplicable designation.

5       5.2     Manner and Timing of Designations. Except as otherwise provided in this Order  
6 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
7 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly  
8 so designated before the material is disclosed or produced.

9       Designation in conformity with this Order requires:

10       (a)     for information in documentary form (e.g., paper or electronic documents, but  
11 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
12 Party affix at a minimum, the legend "HIGHLY CONFIDENTIAL" or "CONFIDENTIAL"  
13 (hereinafter "CONFIDENTIALITY legend"), to each page that contains protected material. If  
14 only a portion of the material on a page qualifies for protection, the Producing Party also must  
15 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

16       A Party or Non-Party that makes original documents available for inspection need not  
17 designate them for protection until after the inspecting Party has indicated which documents it  
18 would like copied and produced. During the inspection and before the designation, all of the  
19 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL" or  
20 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and  
21 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
22 protection under this Order. Then, before producing the specified documents, the Producing Party  
23 must affix the "CONFIDENTIALITY legend" to each page that contains Protected Material. If  
24 only a portion of the material on a page qualifies for protection, the Producing Party also must  
25 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

26       (b)     for testimony given in depositions that the Designating Party identifies the  
27 Disclosure or Discovery Material on the record, before the close of the deposition all protected  
28 testimony.

1 (c) for information produced in some form other than documentary and for any other  
2 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
3 or containers in which the information is stored the legend “HIGHLY CONFIDENTIAL” or  
4 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the  
5 Producing Party, to the extent practicable, shall identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
7 designate qualified information or items does not, standing alone, waive the Designating Party’s  
8 right to secure protection under this Order for such material. Upon timely correction of a  
9 designation, the Receiving Party must make reasonable efforts to assure that the material is  
10 treated in accordance with the provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
13 confidentiality at any time that is consistent with the Court’s Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
15 process under Local Rule 251(b).

16 6.3 The burden of persuasion in any such challenge proceeding shall be on the  
17 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass  
18 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party  
19 to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality  
20 designation, all parties shall continue to afford the material in question the level of protection to  
21 which it is entitled under the Producing Party’s designation until the Court rules on the challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
24 or produced by another Party or by a Non-Party in connection with this Action only for  
25 prosecuting, defending or attempting to settle this Action. Such Protected Material may be  
26 disclosed only to the categories of persons and under the conditions described in this Order.  
27 When the Action has been terminated, a Receiving Party must comply with the provisions of  
28 section 13 below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a location and  
2 in a secure manner that ensures that access is limited to the persons authorized under this Order.

3 7.2 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. Unless  
4 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving  
5 Party may disclose any information or item designated “HIGHLY CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well  
7 as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose  
8 the information for this Action;

9 (b) the officers, directors, and employees (including House Counsel) of the  
10 Receiving Party to whom disclosure is reasonably necessary for this Action;

11 (c) Experts (as defined in this Order) of the Receiving Party to whom  
12 disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment  
13 and Agreement to Be Bound” (Ex. A);

14 (d) the Court and its personnel;

15 (e) court reporters and their staff;

16 (f) professional jury or trial consultants, mock jurors, and Professional  
17 Vendors to whom disclosure is reasonably necessary for this Action and who have signed the  
18 “Acknowledgment and Agreement to Be Bound” (Ex. A);

19 (g) the author or recipient of a document containing the information or a  
20 custodian or other person who otherwise possessed or knew the information;

21 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
22 Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that  
23 the witness sign the form attached as Ex. A hereto; and (2) they will not be permitted to keep any  
24 confidential information unless they sign the “Acknowledgment and Agreement to Be Bound”  
25 (Ex. A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of  
26 transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be  
27 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
28 under this Stipulated Protective Order;



1 (i) any mediator or settlement officer who may be utilized in connection with  
2 this Action, and their supporting personnel, mutually agreed upon by any of the parties engaged  
3 in settlement discussions;

4 (j) any other person that the Designating Party agrees to in writing; and

5 (k) any person designated by the Court in the interest of justice, upon such  
6 terms as the Court may deem proper.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
8 LITIGATION

9 If a Party is served with a subpoena or a court order issued in other litigation that compels  
10 disclosure of any information or items designated in this Action as “HIGHLY  
11 CONFIDENTIAL” or “CONFIDENTIAL,” that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification shall include  
13 a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
15 the other litigation that some or all of the material covered by the subpoena or order is subject to  
16 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;  
17 and

18 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
19 Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served with the  
21 subpoena or court order shall not produce any information designated in this action as “HIGHLY  
22 CONFIDENTIAL” or “CONFIDENTIAL” before a determination by the court from which the  
23 subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The  
24 Designating Party shall bear the burden and expense of seeking protection in that court of its  
25 confidential material and nothing in these provisions should be construed as authorizing or  
26 encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

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1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
2 LITIGATION

3 (a) The terms of this Order are applicable to information produced by a Non-Party in  
4 this Action and designated as “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL.” Such  
5 information produced by Non-Parties in connection with this litigation is protected by the  
6 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
7 prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to produce a  
9 Non-Party’s confidential information in its possession, and the Party is subject to an agreement  
10 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

11 (1) promptly notify in writing the Requesting Party and the Non-Party that  
12 some or all of the information requested is subject to a confidentiality agreement with a Non-  
13 Party;

14 (2) promptly provide the Non-Party with a copy of the Stipulated Protective  
15 Order in this Action, the relevant discovery request(s), and a reasonably specific description of  
16 the information requested; and

17 (3) make the information requested available for inspection by the Non-Party,  
18 if requested.

19 (c) If the Non-Party fails to seek a protective order from this court within 14 days of  
20 receiving the notice and accompanying information, the Receiving Party may produce the Non-  
21 Party’s confidential information responsive to the discovery request. If the Non-Party timely  
22 seeks a protective order, the Receiving Party shall not produce any information in its possession  
23 or control that is subject to the confidentiality agreement with the Non-Party before a  
24 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
25 burden and expense of seeking protection in this court of its Protected Material.

26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
28 Material to any person or in any circumstance not authorized under this Stipulated Protective

1 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
2 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
3 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
4 made of all the terms of this Order, and (d) request such person or persons to execute the  
5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
7 MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
9 produced material is subject to a claim of privilege or other protection, the obligations of the  
10 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
11 provision is not intended to modify whatever procedure may be established in an e-discovery  
12 order that provides for production without prior privilege review. Pursuant to Federal Rule of  
13 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of  
14 a communication or information covered by the attorney-client privilege or work product  
15 protection, the parties may incorporate their agreement in the stipulated protective order  
16 submitted to the court.

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
19 seek its modification by the Court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
21 Order, no Party waives any right it otherwise would have to object to disclosing or producing  
22 any information or item on any ground not addressed in this Stipulated Protective Order.  
23 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
24 material covered by this Protective Order.

25 12.3 Filing Protected Material. Without written permission from the Designating Party  
26 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
27 the public record in this action any Protected Material without complying with Local Rule 141.  
28 A Party that seeks to file under seal any Protected Material must comply with Local Rule 141.

1 Protected Material may only be filed under seal pursuant to a court order authorizing the sealing  
2 of the specific Protected Material at issue. If a Party's request to file Protected Material under  
3 seal is denied by the Court, then the Receiving Party may file the information in the public record  
4 unless otherwise instructed by the Court.

5 12.4 Use of Protected Material at Trial: The Parties shall meet and confer regarding the  
6 procedures for use of Protected Materials at trial and shall move the Court for entry of an  
7 appropriate order. The use of designated materials at trial shall be governed by the orders of the  
8 trial judge.

9 12.5 Counsel Bound by Protective Order: Counsel agree to be bound by the terms set  
10 forth herein with regard to any Protective Materials that have been produced before the Court  
11 signs this Stipulation and Protective Order.

12 12.6 New Parties: Any new party to the Action who has not executed this Stipulation  
13 and Protective Order as of the time it is presented to the Court for signature may thereafter  
14 become a Party to this Stipulation and Protective Order by its Counsel's signing and dating a  
15 copy of Ex. A attached hereto, and filing the same with the Court, and serving copies of such  
16 signed and dated copy upon the other Parties to this Stipulation and Protective Order.

17 13. FINAL DISPOSITION

18 After the final disposition of this Action, as defined in paragraph 4, within 60 days of a  
19 written request by the Designating Party, each Receiving Party must return all Protected Material  
20 to the Producing Party or destroy such material. As used in this subdivision, "all Protected  
21 Material" includes all copies, abstracts, compilations, summaries, and any other format  
22 reproducing or capturing any of the Protected Material. Whether the Protected Material is  
23 returned or destroyed, the Receiving Party must submit a written certification to the Producing  
24 Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that  
25 (1) identifies (by category, where appropriate) all the Protected Material that was returned or  
26 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
27 compilations, summaries or any other format reproducing or capturing any of the Protected  
28 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all

1 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
2 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
3 consultant and expert work product, even if such materials contain Protected Material. Any such  
4 archival copies that contain or constitute Protected Material remain subject to this Protective  
5 Order as set forth in Section 4 (DURATION).

6 14. VIOLATION

7 Any violation of this Order may be punished by appropriate measures including, without  
8 limitation, contempt proceedings and/or monetary sanctions.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 SIGNATURE PAGE FOLLOWS.

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Dated: November 22, 2024

EARLY SULLIVAN WRIGHT GIZER & McRAE  
LLP

By: /s/ Peter Scott  
Eric P. Early  
Peter Scott  
Attorneys for Plaintiffs  
HEIGHT STREET SKILLED CARE, LLC

777n

Dated: November 22, 2024

MAYNARD NEXSEN LLP

By: /s/ Nicholas J. Boos  
Nicholas J. Boos  
Attorneys for Defendant  
LIBERTY MUTUAL INSURANCE  
COMPANY and  
WEST AMERICAN INSURANCE  
COMPANY

IT IS SO ORDERED.

Dated: November 25, 2024

  
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Stipulated Protective Order that was issued by the  
United States District Court for the Eastern District of California on November 25, 2024, in the  
case of *Height Street Skilled Care, LLC v. Liberty Mutual Insurance Company, et al.*, Case No.  
1:21-cv-01247-JLT-CDB. I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order and I understand and acknowledge that failure to so comply could expose me to  
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in  
any manner any information or item that is subject to this Stipulated Protective Order to any person  
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern  
District of California for enforcing the terms of this Stipulated Protective Order, even if such  
enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with this action  
or any proceedings related to enforcement of this Stipulated Protective Order.

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

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

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