

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Release”) is entered into by INSURER; SAN MATEO COUNTY SCHOOLS INSURANCE GROUP and its member LOS LOMITAS ELEMENTARY SCHOOL DISTRICT; and THE CITY OF MENLO PARK, CALIFORNIA and is effective as of the date of execution of this document. In consideration of the recitals and promises contained herein, the parties agree as follows:

SECTION 1. DEFINITIONS

1.1 “INSURER” shall mean and refer to: (1) LEXINGTON INSURANCE COMPANY (2) its officers, directors, administrators, agents, employees, assignees, predecessors, successors, subsidiaries, and divisions.

1.2 “MENLO PARK” shall mean and refer to: (1) the City of Menlo Park, California and (2) any and all of its insurers, Councilmembers, officers, directors, shareholders, affiliates, administrators, agents, employees, assignees, predecessors, successors, trustees, subsidiaries, and divisions.

1.3 “INSURED” shall mean and refer to: (1) SAN MATEO COUNTY SCHOOLS INSURANCE GROUP and its member LOS LOMITAS ELEMENTARY SCHOOL DISTRICT; and (2) its officers, directors, agents, employees, assignees, predecessors, successors, affiliates, subsidiaries, and divisions OR heirs, successors, and assigns.

1.4 “Parties” shall refer to the following individuals or entities, which may also be referred to individually herein as a “Party”: INSURER, INSURED, and MENLO PARK

1.5 The “LOSS SITE” shall refer to La Entrada Middle School, 2020 Sharon Road, Menlo Park, California where the INCIDENTS wer discovered.

1.6 “INCIDENTS” shall mean the water leak/flooding at the LOSS SITE on or about October 25, 2018 and November 29, 2018.

1.7 “Settlement Amount” shall mean \$1,050,000 (One Million Fifty Thousand) dollars compromised of settlements of \$825,000 for the October 25, 2018 loss and \$225,000 for the November 29, 2018 loss.

SECTION 2. RECITALS

2.1 INSURER retained Grotefeld Hoffmann to represent their interests regarding a subrogation claim, asserting that MENLO PARK was responsible for damages arising from the INCIDENT at the INSURED’s LOSS SITE.

2.2 INSURED incurred a deductible of \$250,000 related to the October 25, 2018 loss.

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2.3 MENLO PARK denies the allegations asserted against it and further denies that it committed any misconduct, wrongdoing, or any other actionable conduct.

2.4 INSURER, INSURED, and MENLO PARK now desire to resolve any and all claims arising out of, or in any way connected with, the INCIDENT giving rise to the claims asserted by INSURER and/or INSURED, relating to the INCIDENT.

SECTION 3. PAYMENT

3.1 Subject to approval by the City Council and Bay Cities Joint Powers Insurance Authority (BCJPIA) Board of Directors, MENLO PARK by and through BCJPIA will pay to INSURER the sum of \$1,050,000 (One Million Fifty Thousand) dollars. Each insurer's contribution to the settlement is as follows: The checks shall be sent to Grotefeld Hoffmann, 311 South Wacker Drive, Suite 1500, Chicago, Illinois 60606. The checks shall be payable to "LEXINGTON INSURANCE COMPANY a/s/o SMCSIG and its member LOS LOMITAS ELEMENTARY SCHOOL DISTRICT: A W-9 will be provided with the executed release. Payment shall be within 30 Days of City Council and Bay Cities Joint Powers Insurance Authority Board of Directors approval of this settlement.

3.2 INSURER will provide a prorated return of INSURED'S deductible interest pursuant to INSURED'S insurance policy from the settlement proceeds related to the October 25, 2018 loss less applicable fees and costs.

3.3 The payment herein specified constitutes the settlement and compromise of a disputed claim and is not to be construed as an admission of liability on the part of MENLO PARK and all liability is denied. The payment is made by way of compromise and for the sole purpose of terminating all controversy related to the INCIDENT.

3.4 The Parties hereby agree that the foregoing payments are the individual obligations of each paying Party and are not joint obligations of the Parties.

SECTION 4. RELEASE

4.1 In exchange for the considerations set forth herein, INSURER and INSURED hereby irrevocably release and forever discharge MENLO PARK from any and all of their claims, demands, and causes of action of any nature whatsoever arising out of the INCIDENT, including but not limited to claims for property damage, loss of use, consequential or incidental damages, past, present or future damages, whether known or unknown, and whether based on tort, contract, statute, indemnification, contribution or other legal theories of recovery of claims for damages.

4.2 The release in Section 4.1 specifically includes any and all claims, whether or not known or suspected to exist, and whether or not specifically or particularly described herein, arising out of or related to the INCIDENT. INSURER and INSURED expressly waive any rights they may have under the provisions of California Civil Code § 1542, which states:

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A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

4.3 INSURER and INSURED warrant and represent that they own the claims released herein and that they have not assigned, conveyed, or transferred in any way the released claims described in Paragraphs 2.1, 4.1 and 4.2 above. This Release is intended to, and INSURER and INSURED warrant and represent that they will – to the extent described in Paragraph 4.1 and 4.2, above – dispose of all liability of MENLO PARK to INSURER and INSURED including, but not limited to, all claims, liens, and subrogated interests arising out of the INCIDENT.

SECTION 5. FEES, EXPENSES, AND LIENS

5.1 Each Party agrees to pay HIS/HER/THEIR/ITS own expenses, costs, and fees, including legal fees, incurred in relation to the INCIDENT, the loss handling to date, and the Release.

5.2 INSURER is responsible for satisfying any liens arising out of the INCIDENT, except that INSURER is not responsible for satisfying any liens incurred by or on behalf of MENLO PARK or HIS/HER/THEIR/ITS insurers or other third parties outside of INSURER's control. INSURER, as claimant, further acknowledges that this Release is written notice of settlement of claimant's third-party liability claim, pursuant to California Business and Professions Code Section 6149.5

SECTION 6. WAIVER AND SEVERABILITY

6.1 No waiver of any breach of any term or provision of this Release shall be construed to be, or shall be, a waiver of any other breach of this Release. No waiver shall be binding unless in writing and signed by the Party or Parties waiving the breach.

6.2 Should any provision of this Release be found invalid, void, or otherwise unenforceable, the remaining provisions of this Release shall remain in effect, enforceable and binding to the extent permissible under the agreement and the law.

SECTION 7. ENTIRE AGREEMENT

7.1 This document is an integrated agreement and contains the entire agreement of the Parties. This Release may be amended or modified only by an agreement in writing executed in the same manner as this Agreement.

SECTION 8. GOVERNING LAW, ENFORCEMENT, AND VENUE

8.1 This Release shall be interpreted and construed in accordance with governed and enforced in all respects by the laws of the State of California. This Release and the settlement

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herein shall not be interpreted as a concession of liability by MENLO PARK, or any other party, for the INCIDENT or any other condition concerning the LOSS SITE.

8.2 If any action, lawsuit, or proceeding is instituted to enforce, interpret or evade the terms of this Release, the prevailing Party shall be entitled to reasonable attorneys' fees and costs and other litigation expenses. Venue in any such proceeding shall reside exclusively in the Superior Court of the State of California for San Mateo.

8.3 The San Mateo County Superior Court shall have jurisdiction over the Parties to enforce the terms of this Release and the Parties' settlement until performance in full of the terms of the settlement pursuant to California Code of Civil Procedure § 664.6.

SECTION 9. COUNTERPARTS

9.1 This Release may be executed in any number of counterparts, and with facsimile or email signatures, with the same effect as if each Party hereto had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

SECTION 10. CONSTRUCTION

10.1 The Parties have each reviewed this Release and have been provided the opportunity to revise this Release. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Release.

SECTION 11 NO RELIANCE OR THIRD-PARTY RIGHTS

11.1 The Parties understand and represent that this Release is not made in reliance upon any inducement, statement, promise or representation other than those contained within this Release.

11.2 Nothing in this Release is intended to, or shall, convey any rights or benefits on any person or entity not identified and set forth herein by name or by reference. Nothing in this Release is intended to or shall discharge any obligation or liability of any person or entity not identified and set forth herein by name or by reference.

SECTION 12. REPRESENTATION, COMPREHENSION, AND CAPACITY

12.1 By entering into this Release, the Parties represent that each has relied upon the legal advice of the attorney of their choice.

12.2 The Parties further represent that the terms of this Release have been completely read and explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted.

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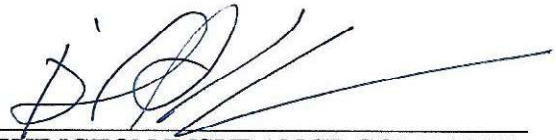
12.3 The Parties further represent and warrant that each has the right and authority to execute this Release in their representative capacity.

SECTION 13 COOPERATION

13.1 The Parties will cooperate with one another as necessary to implement this Release.

SIGNATURE PAGES

Dated: 6/9/2021



LEXINGTON INSURANCE COMPANY

Daniel J. Krolkowski
(Print name)

Dated: _____

SAN MATEO COUNTY SCHOOLS
INSURANCE GROUP

(Print name)

Dated: _____

CITY OF MENLO PARK

(Print name)

SIGNATURE PAGES

Dated: _____

LEXINGTON INSURANCE COMPANY

(Print name)

Dated: 6/7/2021



SAN MATEO COUNTY SCHOOLS
INSURANCE GROUP

Craig Schweikhard

(Print name)

Dated: _____

CITY OF MENLO PARK

(Print name)

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SIGNATURE PAGES

Dated: _____

LEXINGTON INSURANCE COMPANY

(Print name)

Dated: _____

SAN MATEO COUNTY SCHOOLS
INSURANCE GROUP

(Print name)

Dated: 7/29/2021

DocuSigned by:
Starla Jerome-Robinson
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CITY OF MENLO PARK

Starla Jerome-Robinson

(Print name)