

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Settlement Agreement”) dated as of July \_\_, 2018 (the “Effective Date”) is made and entered into by and among the BOARD OF EDUCATION OF PLEASANTDALE SCHOOL DISTRICT 107 (the “Board” or “PSD”) and KIEFER SPECIALTY FLOORING, INC., D/B/A KIEFER USA (“Kiefer”) (collectively, the “Parties”).

### **WITNESSETH**

**WHEREAS**, in 2007, Gilbane Building Company and the Board entered into a contract for Gilbane to serve as the Construction Manager for certain additions and renovations at Pleasantdale Middle School in Illinois (the “Gilbane Contract” or “Project”); and

**WHEREAS**, Gilbane entered into a separate contract with Kiefer Specialty Flooring, Inc. (“Kiefer”) for Kiefer to, among other things, install a new gymnasium floor at Pleasantdale Middle School as part of the Project (the “Kiefer Contract”); and

**WHEREAS**, the Board has discovered a blistering and de-bonding defect in the southeast quadrant of the gymnasium floor allegedly arising out of the work of Kiefer on the Project (the “Issue”), and the Board has asserted a pre-lawsuit claim and demand against Kiefer pursuant to the Kiefer Contract and its rights at law and in equity, which claims, rights, and causes of action have been assigned to the Board by Gilbane; and

**WHEREAS**, this Settlement Agreement has been agreed to solely for the purpose of compromising disputed claims, and any payment or provision made pursuant to the Settlement Agreement is not to be construed as an admission of responsibility, wrongdoing, unlawful conduct, or liability whatsoever on the part of Kiefer, which expressly denies any responsibility, wrongdoing, unlawful conduct, or liability whatsoever.

**NOW THEREFORE**, for good and valuable consideration and mutual promises as described fully in this Settlement Agreement, the legality and sufficiency of which is hereby acknowledged by the Parties, it is hereby agreed between the Parties as follows:

#### **I. REPRESENTATIONS AND WARRANTIES**

- a. All Parties to this Settlement Agreement represent and warrant that it is validly authorized and empowered to settle the claims, actions and remedies that are the subject of this Settlement Agreement and execute this Settlement Agreement under the applicable laws of the State of Illinois. All Parties to this Settlement Agreement further represent and warrant that no assignment of any right, demand, cause of action or other claim covered by this Settlement Agreement has been made to any individual, firm, corporation, or any other entity whatsoever.
- b. All Parties to this Settlement Agreement represent and warrant that they understand and agree that the consideration set forth herein is the entire and only consideration for this Settlement Agreement, and it is intended that this Settlement Agreement be complete and not be subject to any claim of mistake of law or fact, that the

Settlement Agreement expresses a full and complete settlement of liability claimed and denied between the Parties to this Settlement Agreement.

- c. All Parties to this Settlement Agreement represent and warrant that they have read this instrument and understand the terms and contents hereof.
- d. All Parties to this Settlement Agreement represent and warrant that they had the opportunity to seek the advice and representation of counsel of their own selection with regard to these matters, and have done so. The Parties to this Settlement Agreement further acknowledge that they have read and understand the Settlement Agreement and legal effect thereof.
- e. All Parties to this Settlement Agreement represent and warrant that they have not relied upon any representation or statement made by any other party with respect to the facts of this lawsuit.

## **II. CONSIDERATION AND TERMS**

- a. Kiefer agrees to directly pay the sum of fifteen thousand dollars and zero cents (\$15,000.00) (the “Settlement Sum”) to the Board within thirty (30) days after execution of this Settlement Agreement by the Parties.
- b. The Board and Kiefer, for and in consideration of receipt of the Settlement Sum hereby releases and forever discharges each other and their respective predecessors, successors, parents, subsidiaries, affiliates, related companies, and member corporations and companies, and all of their past, present, and future owners, partners, officers, directors, stockholders, shareholders, insurers, coinsurers, reinsurers, representatives, servants, employees, subsidiaries, affiliates and partners from all claims and demands, actions, and causes of action, at law, in equity or otherwise, arising prior to the date of this Settlement Agreement, including, without limitation, claims which have arisen or which may arise from the gymnasium floor blistering and de-bonding defect Issue identified at the Project. The parties intend this paragraph to constitute a general release of all claims that were or could have been asserted by the parties against each other, and it should be so construed.
- c. The Parties agree to complete any ordinary course paperwork, and execute any documentation, required to give effect to this Settlement Agreement.
- d. This constitutes the entire agreement between the Parties with respect to the resolution of the Parties’ claims and denials related to the Issue, and the Parties agree, that except as set forth herein, that no representations, warranties, or promises have been made or relied upon by any party hereto.
- e. No provision of this Settlement Agreement may be waived, modified, or amended except by written agreement by the Parties.
- f. The failure of a party to insist upon strict adherence to any obligation of this Settlement Agreement shall not be considered a waiver or deprive the party of the

right thereafter to insist upon strict adherence to that term or any other term of the Settlement Agreement. No waiver by the Parties of any failure to keep or perform any covenant or condition hereof shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant or condition.

- g. If any provision of the Settlement Agreement is held to be invalid, void, or unenforceable, the remainder of the provisions will remain in full force and effect and will in no way be affected, impaired or invalidated. The Parties to this Settlement Agreement agree that to the extent that any provision of the Settlement Agreement could be more narrowly drawn so as not to be invalid, void, or unenforceable, then it shall be so narrowly drawn without invalidating the remaining provisions of this Settlement Agreement.
- h. This Settlement Agreement shall be construed in all respects in accordance with and governed by the laws and decision of the State of Illinois without regard to its choice of law provisions. Each of the Parties consents to exclusive jurisdiction in the State of Illinois and the exclusive venue in the Circuit Courts of Illinois or the U.S. District Court, Northern District of Illinois, Eastern Division, as permitted by applicable law. Each of the Parties waives any and all rights to contest jurisdiction and venue.
- i. This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail will have the same effect as an original signature.
- j. The foregoing promises and commitments by the Board are expressly conditioned upon the receipt of payment, including the receipt of any check or wire transfer, and on that check or transfer clearing so that the funds comprising the Settlement Sum are actually received and possessed by the Board and/or its bank or other financial representative.

**III. SIGNATURES**

**KIEFER SPECIALTY FLOORING, INC.**

**D/B/A KIEFER USA**

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

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

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

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Notary Public, State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**THE BOARD OF EDUCATION OF PLEASANTDALE SCHOOL DISTRICT 107**

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

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

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

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Notary Public, State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_