

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement is made by and between the Village of Orland Park (the “Village”) and Lexington Insurance Company (“Lexington”) (sometimes referred to collectively herein as the “Parties”).

RECITALS

A. Lexington issued a policy containing General Liability coverage to the Village under Policy No. 015438275, effective from January 1, 2012 to January 1, 2013 (the “Lexington Policy”). The General Liability Coverage Part of the Lexington Policy reflects a \$2,000,000 annual aggregate limit and a \$2,000,000 each Occurrence limit subject to a \$100,000 Self-Insured Retention (“SIR”), with claim expenses and defense costs eroding the \$100,000 SIR.

B. The Village, on behalf of itself and its employees, tendered a Complaint filed on June 27, 2012, a First Amended Complaint filed on December 7, 2012, and a Second Amended Complaint filed on September 23, 2013 by Plaintiff Joseph McGreal (“McGreal”) in the matter captioned *Joseph S. McGreal v. Village of Orland Park, et al.*, Case No. 1:12-cv-05135, pending in the United States District Court for the Northern District of Illinois (the “Underlying Lawsuit”), to Lexington for defense and indemnification under the Lexington Policy.

C. The Original Complaint in the Underlying Lawsuit named the Village, Joseph Mitchell, Troy Siewart, Timothy McCarthy, Anthony Farrell, Scott Malmborg, James Bianchi, Brian West, Thomas Kenealy, Timothy McCormick, and Patrick Duggan as party Defendants. The law firm of Klein Thorpe & Jenkins, Ltd. was initially retained, with Lexington’s knowledge, approval, and consent, to defend the Village and all the aforesaid individuals relative to the Original Complaint in the Underlying Lawsuit. Pursuant to its SIR obligation, the Village

immediately commenced payment of invoices from Klein Thorpe & Jenkins, Ltd. relative to its work on behalf of the Village and all the aforesaid individuals in the Underlying Lawsuit.

D. The First Amended Complaint in the Underlying Lawsuit, filed on December 7, 2012, named the Village and Joseph Mitchell, Timothy McCarthy, Anthony Farrell, Scott Malmborg, James Bianchi, Thomas Kenealy, and Patrick Duggan in both their individual and official capacities as party Defendants, and terminated Troy Siewert, Brian West, and Timothy McCormick as party Defendants.

E. On or about December 17, 2012, Defendants James Bianchi and Timothy McCarthy retained the law firm of Rothschild Barry & Myers, LLP to defend them relative to the First Amended Complaint in the Underlying Lawsuit. Rothschild Barry & Myers, LLP's retention was occasioned by McGreal's pursuit of punitive damages against Defendants James Bianchi and Timothy McCarthy in their individual capacities in the Underlying Lawsuit, which Defendants James Bianchi and Timothy McCarthy alleged entitled them to defense counsel of their own choosing at Lexington's expense upon the Village's satisfaction of the SIR for Lexington Policy. Pursuant to its ongoing SIR obligation and beginning on or about September 30, 2012, and continuing through on or about December 31, 2017, the Village paid certain invoices of Rothschild Barry & Myers, LLP relative to its work in the Underlying Lawsuit identified in the attached EXCEL Spreadsheet that is labeled and incorporated by reference into this Release and Settlement Agreement as Exhibit 1.

F. Lexington avers that Rothschild Barry & Myers, LLP's retention as defense counsel for Defendants James Bianchi and Timothy McCarthy occurred without its knowledge, approval, and consent. For its part, the Village avers that Lexington was promptly notified of Rothschild Barry & Myers, LLP's retention as defense counsel for Defendants James Bianchi and Timothy

McCarthy and failed to timely object to the said retention or that firm's involvement on behalf of Defendants James Bianchi and Timothy McCarthy in the Underlying Lawsuit.

G. On or about September 4, 2013, Defendant Joseph Mitchell retained the law firm of Laner Muchin to defend him relative to the First Amended Complaint in the Underlying Lawsuit. Laner Muchin's retention was occasioned by McGreal's pursuit of punitive damages against Defendant Joseph Mitchell in his individual capacity in the Underlying Lawsuit, which Defendant Joseph Mitchell alleged entitled him to defense counsel of his own choosing at Lexington's expense upon the Village's satisfaction of the SIR for Lexington Policy. Pursuant to its SIR obligation and beginning on or about December 1, 2012, and continuing through on or about May 1, 2015, the Village paid certain invoices of Laner Muchin relative to its work in the Underlying Lawsuit identified in the attached EXCEL Spreadsheet that is labeled and incorporated by reference into this Release and Settlement Agreement as Exhibit 1.

H. Lexington avers that Laner Muchin's retention as defense counsel for Defendant Joseph Mitchell occurred without its knowledge, approval, and consent. For its part, the Village avers that Lexington was promptly notified of Laner Muchin's retention as defense counsel for Defendant Joseph Mitchell and failed to timely object to the said retention or that firm's involvement on behalf of Defendant Joseph Mitchell in the Underlying Lawsuit.

I. The Second Amended Complaint in the Underlying Lawsuit, filed on September 23, 2013, named the Village and Joseph Mitchell, Timothy McCarthy, Anthony Farrell, Scott Malmberg, James Bianchi, Thomas Kenealy, and Patrick Duggan only in their individual capacities as party Defendants.

J. On or about September 26, 2013, Defendant Thomas Kenealy retained the law firm of Hervas Condon & Bersani, P.C. to defend him relative to the Second Amended Complaint in

the Underlying Lawsuit. Hervas Condon & Bersani, P.C.'s retention was occasioned by McGreal's pursuit of punitive damages against Defendant Thomas Kenealy in his individual capacity in the Underlying Lawsuit, which Defendant Thomas Kenealy alleged entitled him to defense counsel of his own choosing at Lexington's expense upon the Village's satisfaction of the SIR for Lexington Policy. Pursuant to its SIR obligation and beginning on or about September 30, 2013, and continuing through on or about July 31, 2014, the Village paid certain invoices of Hervas Condon & Bersani, P.C. relative to its work in the Underlying Lawsuit identified in the attached EXCEL Spreadsheet that is labeled and incorporated by reference into this Release and Settlement Agreement as Exhibit 1.

K. Lexington avers that Hervas Condon & Bersani, P.C.'s retention as defense counsel for Defendant Thomas Kenealy occurred without its knowledge, approval, and consent. For its part, the Village avers that Lexington was promptly notified of Hervas Condon & Bersani, P.C.'s retention as defense counsel for Defendant Thomas Kenealy and failed to timely object to the said retention or that firm's involvement on behalf of Defendant Thomas Kenealy in the Underlying Lawsuit.

L. The Village eventually satisfied its SIR obligation through its payment of the invoices from Klein Thorpe & Jenkins, Ltd. relative to its work in the Underlying Lawsuit. The Village thereafter demanded that Lexington reimburse it pursuant to the Lexington Policy for the reasonable attorneys' fees and expenses it incurred through payment of the invoices from Rothschild Barry & Myers, LLP, Laner Muchin, and Hervas Condon & Bersani, P.C. for those firms' work in the Underlying Lawsuit totaling FIVE HUNDRED EIGHTY-FIVE THOUSAND NINE HUNDRED SIXTY-SEVEN AND 68/100 DOLLARS (\$585,967.68) as identified in Exhibit 1 to this Release and Settlement Agreement.

M. Notwithstanding any disagreement between them concerning the retention of Rothschild Barry & Myers, LLP, Laner Muchin, and Hervas Condon & Bersani, P.C. as defense counsel in the Underlying Lawsuit, the Village's right to reimbursement under the Lexington Policy for its payment of the invoices from Rothschild Barry & Myers, LLP, Laner Muchin, and Hervas Condon & Bersani, P.C. identified in Exhibit 1 to this Release and Settlement Agreement and the reasonableness and necessity of the attorneys' fees and expenses the Village incurred through its payment of the invoices from Rothschild Barry & Myers, LLP, Laner Muchin, and Hervas Condon & Bersani, P.C. identified in Exhibit 1 to this Release and Settlement Agreement, the Village and Lexington jointly desire to avoid the cost of litigation regarding any dispute concerning these issues to be adjudicated in a declaratory judgment or other action.

N. The Parties, by and through their legal representatives, have engaged in good faith settlement negotiation as to the issues of the retention of Rothschild Barry & Myers, LLP, Laner Muchin, and Hervas Condon & Bersani, P.C. as defense counsel in the Underlying Lawsuit, the Village's right to reimbursement under the Lexington Policy for its payment of the invoices from Rothschild Barry & Myers, LLP, Laner Muchin, and Hervas Condon & Bersani, P.C. identified in Exhibit 1 to this Release and Settlement Agreement and the reasonableness and necessity of the attorneys' fees and expenses the Village incurred through its payment of the invoices from Rothschild Barry & Myers, LLP, Laner Muchin, and Hervas Condon & Bersani, P.C. identified in Exhibit 1 to this Release and Settlement Agreement.

O. The Parties have agreed to settle their dispute regarding the issues of the retention of Rothschild Barry & Myers, LLP, Laner Muchin, and Hervas Condon & Bersani, P.C. as defense counsel in the Underlying Lawsuit, the Village's right to reimbursement under the Lexington Policy for its payment of the invoices from Rothschild Barry & Myers, LLP, Laner Muchin, and

Hervas Condon & Bersani, P.C. identified in Exhibit 1 to this Release and Settlement Agreement and the reasonableness and necessity of the attorneys' fees and expenses the Village incurred through its payment of the invoices from Rothschild Barry & Myers, LLP, Laner Muchin, and Hervas Condon & Bersani, P.C. identified in Exhibit 1 to this Release and Settlement Agreement for the total sum of FOUR HUNDRED NINETY THOUSAND AND NO/100 DOLLARS (\$490,000.00) paid to the Village by Lexington.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the covenants below, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Village and Lexington hereby agree as follows:

1. Lexington agrees to pay the total sum of FOUR HUNDRED NINETY THOUSAND AND NO/100 DOLLARS (\$490,000.00) ("the Settlement Amount") to the Village no later than thirty (30) days after Lexington receives: (1) a fully executed copy of this Release and Settlement Agreement; and (2) payment instructions and a signed W-9 form for the Village.

2. In consideration of payment of the Settlement Amount by Lexington to the Village noted herein, the Village, for itself and its respective officers, trustees, directors, partners, members, stockholders, employees, principals, agents, controlling persons, parent companies, subsidiaries and affiliates, and all related entities of any kind or nature, predecessors, successors and assigns, agrees to forever release Lexington and its respective officers, directors, partners, members, stockholders, employees, principals, agents, controlling persons, parent companies, subsidiaries and affiliates, reinsurers, third party administrators and all related entities of any kind or nature, predecessors, successors and assigns from any and all claims, demands, liabilities, obligations, losses, damages and causes of action that the Village ever had, now has, or in the

future may have, whether fixed or contingent, liquidated or not, known or unknown, suspected or unsuspected, based on, arising out of, or directly or indirectly relating to the Village's claim for reimbursement under the Lexington Policy with respect to its payment of the invoices from Rothschild Barry & Myers, LLP, Laner Muchin, and Hervas Condon & Bersani, P.C. for the Underlying Lawsuit identified in Exhibit 1 to this Release and Settlement Agreement ("the Released Matters").

3. For the avoidance of any doubt, the Parties acknowledge and agree that any rights, claims, actions, suits, demands or causes of action arising out of, related to, in connection with or regarding: (1) Lexington's payment of invoices from Rothschild Barry & Myers, LLP, Laner Muchin, and Hervas Condon & Bersani, P.C. relative to their work in the Underlying Lawsuit and which are not identified in Exhibit 1 to this Release and Settlement Agreement; and (2) Lexington's payment of invoices from Klein Thorpe & Jenkins, Ltd. relative to its work in the Underlying Lawsuit shall not constitute Released Matters under this Release and Settlement Agreement.

4. This Release and Settlement Agreement incorporates and supersedes all of the Parties' prior negotiations, representations, understandings, and discussions in respect to resolution of the Village's dispute with Lexington over the Village's claim for reimbursement under the Lexington Policy with respect to its payment of the invoices from Rothschild Barry & Myers, LLP, Laner Muchin, and Hervas Condon & Bersani, P.C. for the Underlying Lawsuit identified in Exhibit 1 to this Release and Settlement Agreement, and represents the Parties' full and only Agreement to resolve that issue.

5. The Parties agree that if any portion of any paragraph of this Release and Settlement Agreement is found to be unenforceable or prohibited, the remainder of that paragraph, if any, and

the Release and Settlement Agreement as a whole shall not be affected and shall remain in full force and effect.

6. The Parties agree that this Release and Settlement Agreement shall not be construed in favor of any particular Party to the Agreement but shall be construed as if it were drafted by all Parties to the Agreement.

7. The Parties hereby represent and warrant that it/they are the sole owner(s) of all pending, future, legal, equitable, fixed, contingent, matured, unmatured, liquidated, unliquidated, or known or unknown claims, obligations, rights, allegations, demands, suits or causes of action which are intended to be released and which are in fact released pursuant to this Release and Settlement Agreement and that no other person or entity has any interest in any and all pending, future, legal, equitable, fixed, contingent, matured, unmatured, liquidated, unliquidated, known or unknown claims, obligations, rights, allegations, demands, suits or causes of action which the Parties intend to and do release pursuant to this Release and Settlement Agreement.

8. The Parties recognize that this Release and Settlement Agreement is made in the spirit of compromising disputed claims, and that it shall not be deemed or offered or described as an admission of liability, insurance coverage or wrongdoing by any Party hereto.

9. This Release and Settlement Agreement shall be governed by the law of Illinois.

10. By signature below, each of the Parties hereto acknowledge that it has read this Release and Settlement Agreement; that it understands all of the terms of this Release and Settlement Agreement; that it has executed this Release and Settlement Agreement voluntarily and with full knowledge of its meaning or consequences; that it has had sufficient opportunity to consult with counsel as to the significance and meaning of this Release and Settlement Agreement;

and that this Release and Settlement Agreement is executed without reliance upon any other statement or representation of the Parties.

11. This Release and Settlement Agreement may be signed in counterparts which, when put together, will create an entire document. Signatures sent by facsimile or electronic mail will be considered “originals.”

IN WITNESS WHEREOF, this Release and Settlement Agreement has been read and signed in duplicate originals by the duly authorized representatives of the Parties.

VILLAGE OF ORLAND PARK

By: _____

Print Name: _____

Its: _____

Dated: _____

LEXINGTON INSURANCE COMPANY

By: _____

Print Name: _____

Its: _____

Dated: _____

	<u>Hervas, Condon & Bersani</u>	<u>Laner, Muchin</u>	<u>Rothschild, Barry & Myers</u>
	<i>Kenealy</i>	<i>Mitchell</i>	<i>McCarthy</i>
9/30/2012			1,512.50
9/30/2012			275.00
10/31/2012			1,870.00
11/30/2012			550.00
12/1/2012		1,770.00	
12/31/2012			770.00
1/1/2013		495.00	
1/31/2013			3,795.00
2/1/2013		600.00	
2/28/2013			495.00
3/1/2013		1,800.00	
3/31/2013			6,228.75
4/1/2013		2,325.00	
5/1/2013		1,125.00	
6/1/2013		825.00	
7/1/2013		225.00	
8/1/2013		300.00	
8/31/2013			5,850.78
9/1/2013		5,663.90	
9/30/2013	1,824.50		6,325.00
10/1/2013		1,653.10	
10/31/2013	2,516.71		9,326.50
11/1/2013		5,456.46	
11/30/2013	3,864.87		
12/1/2013		6,600.30	
12/31/2013	1,086.50		12,265.00
1/1/2014		7,536.05	
1/31/2014			1,887.90
2/1/2014		2,550.00	
2/28/2014	8,895.91		24,187.90
3/1/2014		17,413.74	
3/31/2014	9,185.40		11,456.50
4/1/2014		6,559.70	
4/30/2014	14,257.60		
5/1/2014		29,570.77	
5/31/2014	1,969.70		21,413.33
6/1/2014		6,909.05	
6/30/2014	4,191.60		7,350.15
7/1/2014		9,691.74	
7/31/2014	4,993.38		10,601.25
8/1/2014		10,803.27	
8/31/2014			11,364.20

	<u>Hervas, Condon & Bersani</u>	<u>Laner, Muchin</u>	<u>Rothschild, Barry & Myers</u>
	<i>Kenealy</i>	<i>Mitchell</i>	<i>McCarthy</i>
9/1/2014		7,717.59	
9/30/2014			10,204.99
10/1/2014		14,874.40	
11/1/2014		7,552.30	
11/30/2014			26,988.65
12/1/2014		9,080.90	
12/31/2014			22,557.95
1/1/2015		530.60	
1/31/2015			17,940.20
2/28/2015			16,983.95
4/1/2015		138.60	
4/13/2015			24,841.41
4/30/2015			1,151.00
5/1/2015		58.75	
5/31/2015			20,622.30
6/30/2015			16,374.98
8/31/2015			1,305.00
10/27/2015			385.00
4/30/2016			5,570.54
5/31/2016			6,792.50
6/30/2016			15,523.75
7/31/2016			7,198.64
8/31/2016			247.50
9/30/2016			8,827.50
10/31/2016			22,137.50
11/30/2016			2,172.50
12/31/2016			4,730.00
3/31/2017			577.50
4/30/2017			165.00
5/31/2017			55.00
6/30/2017			55.00
7/31/2017			178.75
9/30/2017			110.00
11/30/2017			646.25
12/31/2017			1,487.17
	<u>52,786.17</u>	<u>159,826.22</u>	<u>373,355.29</u>