

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (the “**Agreement**”), is made and entered into by and between Elkay Manufacturing Company. (“**Elkay**”), EMC Insurance as subrogee of Linn-Mar Community School District (“**Insurer**”); and Linn-Mar Community School District (“**Owner**”). Elkay, Insurer, and Owner are referred to herein collectively as the “**Parties**” and each individually as a “**Party**.”

RECITALS

- A. Insurer alleges that Elkay designed, manufactured, and/or marketed Elkay bottle filler, model LZWSR-1D (the “**Products**”) that were defective and/or failed (the “**Incident**”) on or about April 1, 2024 causing property damage to real property and improvements thereto located at 2999 10th St., Marion IA 53202 (the “**Premises**”) owned by Owner and insured by Insurer.
- B. Elkay denies Insurer’s allegations and any liability to Insurer or Owner relating to the Products or the Incident.
- C. The Parties have agreed to resolve their dispute and any claims against Elkay arising out of the Incident on the terms set forth herein.

AGREEMENT

1. Payment. Elkay will pay Insurer the sum of \$7,750.00 (“**Settlement Payment**”). Elkay will issue the Settlement Payment by check made payable to EMC Insurance and mailed on or before 30 days receipt of signed release.

2. Release. Insurer and Owner, each on their own behalf and on behalf of all affiliated entities, predecessors, successors, assigns, attorneys, agents, representatives, insurers, and anyone claiming through them (collectively, the “**Releasors**”), fully and forever release, dismiss, and discharge Elkay and its parents, subsidiaries, affiliated entities, predecessors, successors, assigns, officers, directors, board members, shareholders, members, employees, attorneys, agents, representatives and insurers (the “**Releasees**”) of and from any and all past, present and future claims, demands, obligations, actions, causes of action, suits, damages, costs, expenses and compensation whatsoever of any nature, whether known or unknown, asserted or unasserted, arising out of or relating to the Incident, including but not limited to all claims for economic loss arising out of or relating to any Products used, installed, or located at the Premises (collectively, “**Released Claims**”). In giving this release, Insurer and Owner agree and acknowledge that they assume the risk that the facts or law may be other than they believe them to be.

Waiver of California Civil Code Section 1542. Releasors acknowledge that they have been advised by their respective counsel and understand there is a risk that they may have claims which are unknown and unanticipated at the time this Agreement is signed, and that any claims that are known or should be known may become more serious than they now anticipate or expect (the “**Unknown and Unexpected Claims**”). Releasors hereby expressly waive all rights they may have in the Unknown and Unexpected Claims. California *Civil Code* Section 1542

provides as follows:

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.

Releasors understand California *Civil Code* Section 1542 and expressly waive its provisions. It is acknowledged and understood by Releasors that the foregoing waiver of the provisions of Section 1542 of the California *Civil Code* was separately bargained for.

3. Indemnification and Judgment Reduction. Insurer and Owner jointly and severally shall indemnify, defend and hold Releasees harmless from any and all claims or losses arising out of or relating to the Incident and/or Released Claims, including but not limited to, any claim which may hereafter be instituted, presented or affected by or on behalf of any Releasor, or by any other person seeking contribution, indemnification, or subrogation in connection therewith. Insurer and Owner further agree that in the event that they, or either of them, obtains a judgment, award, and/or recovery against any other party (“**Non-Settling Party**”) or settles any claim with any Non-Settling Party arising out of or relating to the Released Claims, and in the further event that any Non-Settling Party prevails on any claim against the Releasees, or any of them, directly or indirectly arising from or relating to the Released Claims, including, but not limited to, claims for subrogation, contribution, indemnification, attorneys’ fees, litigation costs, or any other type or nature of legal or equitable relief (collectively, “**Non-Settled Claims**”), Insurer and Owner shall voluntarily reduce any such judgment, award, recovery, settlement recovery, and/or claim against such Non-Settling Party and/or shall return or reimburse any collected judgment, settlement recovery, or other monies paid to either of them by the Non-Settling Party in the amount that Releasees otherwise would have to pay the Non-Settling Party as a result of the Non-Settled Claims to the point where the Non-Settling Party’s claim against the Releasees is satisfied and extinguished entirely. Insurer and Owner shall attempt by reasonable measures to minimize the possibility of and/or mitigate the value of the Non-Settled Claims against the Releasees. In furtherance of this obligation, the Insurer and Owner represent and warrant that if they, or either of them, settles with any Non-Settling Party for any claims directly or indirectly arising from or relating to the Released Claims, then they will use reasonable efforts to obtain from such Non-Settling Party an agreement to waive or release any and all Non-Settled Claims that the Non-Settling Party may have against the Releasees.

4. Costs and Fees. Each Party shall be responsible for its own costs and attorneys’ fees in connection with the Incident and the drafting and negotiation of this Agreement. In the event of any dispute between the Parties to enforce the terms of this Agreement, the prevailing party shall be entitled to recover the reasonable and necessary attorneys’ fees and court costs incurred in such litigation.

5. No Admission of Liability. The Parties understand and agree that this settlement is a compromise of disputed claims and that this Agreement shall not be construed as, or be deemed to be, evidence of an admission or concession of any liability, obligation, or damage whatsoever.

6. Representations and Warranties.

6.1 Each Party represents and warrants as follows:

A. That this Agreement constitutes a contract and has been carefully reviewed by such Party prior to its execution.

B. That such Party has completely read and understands the terms of this Agreement, and that after having the opportunity to consult with counsel of its own choosing, such Party voluntarily accepts the terms.

C. That each signatory hereto has the full power and authority to execute this Agreement on behalf of the respective party for whom he or she is executing this Agreement.

D. The consideration received by such Party for this Agreement is fair, reasonable, sufficient, just and adequate and constitutes lawful consideration supporting its execution of this Agreement.

E. That such Party has not sold, assigned, encumbered, or transferred any claim or cause of action that, but for such assignment, encumbrance or transfer, would have been released hereunder, and that no other person or entity has, or has had at any time in the past, any interest in the claims released by this Agreement or any claims, demands, or obligations arising therefrom.

6.2 In addition, Insurer represents and warrants that it has the sole right and exclusive authority to receive any sums specified in this Agreement and that “neither Owner nor any other insurer” has any interest or claim in the proceeds of this settlement.

7. Confidentiality. The Parties shall keep and maintain confidential all provisions of this Agreement, provided, however, that the Parties may disclose the terms of this Agreement to (a) to employees or agents that need to know the terms for business reasons; (b) accountants and taxing authorities; (c) attorneys for the purpose of seeking legal advice; (d) in any action to enforce this Agreement; (e) if such disclosure is required by law, by order of a court, or by a government agency; or (f) if the Parties otherwise agree in writing.

8. Severability. If any covenant, condition, term, or provision contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, in whole or in part, the validity of the remaining covenants, conditions, terms, and provisions contained in this Agreement, and the validity of the remaining part of any term or provision held to be partially invalid, illegal, or unenforceable, shall in no way be affected, prejudiced, or disturbed.

9. Construction. This Agreement has been jointly drafted by the Parties and shall not, on the basis of authorship, be construed in favor of or against any Party. Each Party has had the opportunity to consult with legal counsel of its choice prior to execution of this Agreement and this Agreement has been executed freely and voluntarily by such Party.

10. Entire Agreement. This Agreement contains the sole, complete, and entire agreement and understanding of the Parties concerning the matters contained herein and may not be altered, modified, or changed in any manner except by a writing duly executed by the Parties to this Agreement. All prior and contemporaneous discussions and negotiations have been, and are, merged and integrated in and superseded by this Agreement. No promise or inducement has been offered or made except as herein set forth. And, except as expressly stated herein, this Agreement is executed without reliance upon any statement or representation by any other party or its agent.

11. Binding Effect. All of the terms, covenants, warranties, and representations herein shall be binding upon the Parties, and their respective heirs, assigns, officers, directors, agents, shareholders, members, principals, employees, successors and predecessors in interest, and all persons, firms, and legal entities legally responsible for the actions of the Parties hereto.

12. Waiver. No waiver by any Party hereto of any breach of any term or provision of this Agreement shall be binding unless such waiver is made in writing and signed by the Party intending to waive enforcement of said breach. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

13. Headings. The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision.

14. Multiple Copies or Counterparts. The original and one or more copies of this Agreement may be executed by one or more of the Parties hereto. In such event, all such executed copies shall have the same force and effect as the executed original and all such counterparts taken together shall have the effect of a fully executed original. Facsimiles or scanned versions of signatures by the Parties shall be treated as originals.

15. Further Documents. The Parties agree to execute such additional documents and perform such further acts as may be reasonably necessary to effectuate the purposes and provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

ELKAY PEX, INC.

INSURER

By: _____

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

OWNER

Printed: Katie Lowe Lancaster, Board President
Linn-Mar Community School District

Dated: _____