

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") dated as of November 1, 2005 ("the effective date") is entered among the Board of Education of Gavin School District No. 37, Lake County, Illinois, a corporate body politic ("Gavin"), Boller Construction Company, Inc., an Illinois corporation ("Boller"), and Legat Architects, Inc., an Illinois professional corporation ("Legat").

### RECITALS

1. Boller was the general contractor for the construction of Gavin Central School (the "School"). Legat was the architect of record for the original design of the School.
2. Construction of the School was completed in 1996.
3. During February 2004, Gavin discovered that a number of long span wood trusses at Modules A and C of the School had exhibited cracks in the bottom chords. Subsequent investigation indicated that some 52 additional trusses exhibited cracking.
4. On April 7, 2004, the Lake County Regional Office of Education issued an order condemning Gavin based upon the then current conditions and ordered Gavin to make such repairs or alterations as necessary to bring the School into full compliance with the applicable provisions of the Health/Life Safety Code for Public Schools.
5. The School has not been used for its intended school purposes since April 2004. During that time, students and faculty have been relocated.
6. On September 7, 2004, Gavin filed its complaint against Boller and Legat in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, which proceeding is styled *Board of Education of Gavin School Board No. 37 v. Legat Architects, Inc. and Boller Construction, Inc.*, Case No. 04 L 719 ("the Lawsuit").

7. Gavin has alleged in the Lawsuit that defective designs and construction have resulted in defective wood trusses, steel trusses, steel beams, masonry walls, life safety issues, sprinkler system, electrical system, and other systems and building components.

8. Boller and Legat have denied the allegations that Gavin has raised in the Lawsuit. They deny any responsibility for the alleged design and construction defects at the School.

9. Boller and Legat subsequently filed third-party and amended third-party complaints against various sub-consultants, suppliers, and subcontractors in the Lawsuit. At least one of those subcontractors has filed a fourth-party complaint against various entities in the Lawsuit.

10. Boller and Legat have developed and submitted various structural repair designs for the School that have been approved by Gavin's consultants and by the Lake County Regional Office of Education.

11. The Lake County Regional Office of Education has issued or is prepared to issue a building permit based on the repair designs submitted by Legat and Boller.

12. The Parties wish to provide for the repair and reopening of Gavin Central School as soon as possible and to resolve their differences without the cost, expense, and uncertainties of further litigation among them.

13. Each of the Parties have had the advice and benefit of counsel, and have agreed to resolve all disputed issues in the manner set forth herein so that they may avoid the uncertainties and costs of further litigation.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual undertakings contained herein and for other valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The understandings set forth above are incorporated in this section as though fully set forth.
2. Performance of Repairs. Boller shall perform repairs to the School pursuant to the Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment is a Stipulated Sum between Gavin and Boller dated November 1, 2005 (the "Construction Contract") and that certain Abbreviated Standard Form of Agreement Between Owner and Architect, between Gavin and Legat, dated November 1, 2005 (the "Architect Contract"). The Construction Contract and Architect Contract are incorporated by reference as though fully set forth herein. Boller shall have no rights or obligations under the Architect Contract except as expressly set forth herein. Legat shall have no rights or obligations under the Construction Contract except as expressly set forth herein.
3. Project Inspector. Legat and Boller shall pay for a full-time project inspector of Gavin's choice but reasonably acceptable to Legat and Boller, to review the Work for completeness and for compliance with the plans and specifications as further set forth in Article 17 of the General Conditions to the Construction Contract.
4. Subsequent Inspections. Legat shall provide subsequent inspections of the long span wood trusses on the following schedule, at no cost to Gavin: 6-month anniversary of completion; 1-year anniversary of completion; 2-year anniversary of completion; 3-year anniversary of completion; 5-year anniversary of completion; 10-year anniversary of completion;

and 20-year anniversary of completion. All subsequently discovered cracks in the long span wood trusses shall be reported immediately to Gavin, each of the Parties hereto, and to Wiss, Janney, Elstner Associates, Inc. c/o John Duntemann. Legat and Boller shall provide engineered repairs of any future cracked wood trusses similar in design to the repairs identified in the drawings which are part of the Construction Contract.

5. Future Repair Escrow. Legat and Boller shall jointly fund a wood truss repair escrow account in the amount of \$10,000 from which future wood truss repairs, if any, shall be funded. The account shall be established at a bank mutually agreed to by the Parties ("Bank") in the name of Gavin. Gavin shall reimburse Boller and Legat for costs of designing and repairing wood trusses from the fund upon request. Legat and Boller will replenish the fund if it is depleted.

6. Payment. Boller and Legat shall pay Gavin the total sum of \$600,000 as follows:

Boller and Legat shall cause to be paid to Gavin ten installments of \$60,000 per year, interest free. The first \$60,000 installments shall be due on January 29, 2006. Each installment shall be made on January 29 of the following year until a total of \$600,000 is paid. Boller and Legat shall be jointly and severally liable for the payment of each annual installment.

7. Option for Cash. Gavin may opt to perform certain work by its forces in exchange for cash. Gavin may select work scopes from the attached Exhibit A for deletion from the Construction Contract scope of work. Boller and Legat shall jointly pay Gavin the corresponding amount for each item selected, as set forth in Exhibit A at substantial completion of the repair work. Gavin shall select all work scopes that it wishes to perform in exchange for cash on or before November 15, 2005. Gavin's performance of each such scope of work must

not delay the Certificate of Occupancy or impact Boller's performance of its work under the Construction Contract.

8. Assignment of Claims against Subcontractors. Gavin hereby assigns to Boller any and all of Gavin's rights, title and interests in all claims, and causes of action, whether known or unknown against any person, entity or contractor that is or may be liable (except Legat and entities in privity with Legat) under any theory including tort or contract or otherwise, for the injuries and damages that Gavin is alleged to have incurred in the Lawsuit.

9. Assignment of Claims against Consultants. Gavin hereby assigns to Legat any and all of Gavin's rights, title and interests in all claims, and causes of action, whether known or unknown against any person, entity or consultant that is or may be liable (except Boller and entities in privity with Boller) under any theory including tort or contract or otherwise, for the injuries and damages that Gavin is alleged to have incurred in the Lawsuit.

10. Cooperation in Litigation. Gavin shall provide reasonable assistance to Boller and or Legat in connection with Boller's or Legat's continued prosecution of the Amended Third Party Complaint and Gavin's assigned claims in the Lawsuit, which assistance may include upon Boller's or Legat's reasonable request and upon such terms and conditions as may prevent unreasonable burdens or costs to Gavin, meeting and consulting with Boller and/or Legat, producing documents in Gavin's possession, custody or control, and providing depositions and or trial testimony

11. Joint and Mutual Release. As a material inducement to each of the Parties to enter this Agreement, each of the Parties, on behalf of itself, its predecessors, successors, assigns, insurers, present and previous shareholders, agents, directors, officers, employees and representatives hereby irrevocably, unconditionally and fully releases, acquits, and forever

discharges each of the other Parties and each of their predecessors, successors, assigns, insurers, present and previous attorneys, shareholders, agents, directors, officers, employees, and representatives from: any and all charges, complaints, claims, demands, actions, causes of actions, liabilities, obligations, promises, agreements, controversies, damages (including without limitation special, consequential and punitive damages, together with lost profits), suits, rights, costs, losses, debts and expenses of every nature and kind whatsoever whether known or unknown, whether based in contract, tort, statute or otherwise, and whether now existing or hereafter arising as a direct or indirect result of any acts, omissions, or events occurring to the date of this Agreement which any of the Parties had or now have or may have in the future and which arise out of the Project or the Lawsuit. Notwithstanding anything set forth in this paragraph to the contrary, Gavin does not release any of the actions, causes of actions, or claims which Gavin hereby has assigned to Boller under this Agreement. This joint and mutual release shall become effective upon execution of this Agreement.

12. The Parties' Representations and Warranties. Each of the Parties acknowledges, represents and warrants to each of the other Parties that each Party owns 100% of all claims which that Party has raised in the Lawsuit and which arise out of the design and construction work at the School and that no Party has assigned, hypothecated, sold or transferred any rights, titles or interests in any such claims which that Party has asserted or could assert against any of the other Parties in the Lawsuit except as such claims may be assigned in this Agreement.

13. Governing Law, Jurisdiction and Venue. This Agreement shall be construed in all respects in accordance with and governed by the laws and decisions of the State of Illinois. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Each of the Parties acknowledges that this

Agreement is being entered by each Party in partial consideration of each Party's right to enforce in the State of Illinois and in Lake County the terms and provisions hereunder. Each of the Parties consents to jurisdiction in the State of Illinois and the exclusive venue in the Circuit Court for the Nineteenth Judicial Circuit, Lake County, Illinois for such purposes. Each of the Parties waives any and all rights to contest jurisdiction and venue of the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, over the Parties for the purposes of enforcing this Agreement and all related documents delivered in connection with the Agreement.

14. Counterparts. This Agreement may be executed in counterparts by the respective Parties, and each such counterpart shall be deemed an original document. All such counterparts shall be construed together and shall constitute one instrument.

15. Complete Agreement. Except for the Settlement Agreement between Boller and Legat, this Agreement, and the contracts referenced herein, embody and constitute the final and entire understanding among the Parties with respect to the settlement and release of claims contemplated herein. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision of this Agreement may be waived, modified, amended, discharged or terminated, except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought and then only to the extent set forth in such instrument. This Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements or statements.

BOARD OF EDUCATION OF GAVIN  
SCHOOL DISTRICT NO. 37, LAKE  
COUNTY, ILLINOIS

BOLLER CONSTRUCTION COMPANY,  
INC.

By: Barbara Mende  
Its: President

By: Robert Boller  
Its: CEO

LEGAT ARCHITECTS, INC.

By: Hayne Michels  
Its: President