

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of the last date set forth in the signature lines below (the “Effective Date”), by and between Tuxis Lima LLC (“Property Owner”), and the Elida Local School District Board of Education (“Board of Education”). The Property Owner and the Board of Education may be referred to jointly herein as the “Parties” or individually as a “Party.”

WHEREAS, the Board of Education filed a complaint against valuation for tax year 2021 (“Complaint”) with the Allen County Board of Revision (“BOR”), being case number 2021-G25-4-000129-RG, requesting an increase in the value of certain real property located at 2090 N. Cable Road, Lima, OH 45805 and identified on the records of the Allen County, Ohio, Auditor as parcel number 36-2310-02-017.000 (collectively, the “Subject Property”);

WHEREAS, counsel for the Property Owner has filed an entry of appearance in this case;

WHEREAS, after considering the potential for increase or decrease in real estate taxes of the Subject Property as a result of the prosecution of the pending valuation Complaint and future challenges to the value of the Subject Property, the Parties have mutually agreed to resolve the pending Complaints upon the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein, the Parties agree as follows:

1. Withdrawal of Complaint in Pending BOR Case. Upon the execution of this Agreement by the Parties and receipt of the Direct Payment by the Board of Education c/o Counsel for the Board of Education identified in Section 2, the Board of Education shall execute and file with the BOR a withdrawal of the Complaint for the Subject Property for tax year 2021. The Property Owner shall execute and file with the BOR a withdrawal of any counter-complaint or notice of appearance for the Subject Property for tax year 2021.
2. Direct Payments to Board of Education. Upon the Board of Education’s execution of this Agreement, the Property Owner shall pay a direct payment to the Board of Education in the amount of **Twelve-Thousand, Three-Hundred, Seventy-Two Dollars and 97/100 Cents (\$12,372.97)** (“First Direct Payment”). This shall constitute tax revenue foregone by the Board of Education for tax years 2021 as a result of the withdrawal of the Board of Education’s Complaint.

Not later than February 15, 2023, the Property Owner shall pay a second direct payment to the Board of Education in the amount of **Twelve-Thousand, Three-Hundred, Seventy-Two Dollars and 97/100 Cents (\$12,372.97)** (“Second Direct Payment”).

In the event the BOR finds, or the Allen County Auditor certifies, a value for tax year 2021 that is greater than the current tax year 2021 value (\$1,603,600), the Property Owner shall be entitled to a refund of a portion of the First Direct Payment to be calculated as follows: the BOR’s or Auditor’s tax year 2021 certified value minus the current tax year 2021 value (\$1,603,600), multiplied by thirty-five percent (35%), the product of which is multiplied by the Board of Education’s effective tax rate for the applicable tax year. However, in no

event shall the Board of Education's refund obligation exceed the amount of the First Direct Payment.

In the event the BOR finds, or the Allen County Auditor certifies, a value for tax year 2022 that is greater than the current tax year 2021 value (\$1,603,600), the Second Direct Payment shall not be \$12,372.97, but shall instead be calculated as follows: \$2,500,000 (the parties' agreed as-if value) minus the BOR's or Auditor's tax year 2022 value, multiplied by thirty-five percent (35%), the product of which is multiplied by the Board of Education's effective tax rate for the applicable tax year. If this amount is less than or equal to zero (0), the applicable Direct Payment(s) shall not be required.

The Direct Payments set forth in this Section shall be made in the form of a check payable to the Elida Local School District Board of Education and delivered to counsel for the Board of Education at the following address: Mitchell L. Stith, Scott Scriven LLP, 250 East Broad Street, Suite 900, Columbus, Ohio 43215.

3. No Filing Provision. The Parties and their successors, heirs, assigns, agents, board members, tenants, and attorneys shall not file, or cause to be filed, an original Board of Revision complaint for tax years 2021, 2022, or 2023 unless: (a) the Subject Property was sold in an arm's length transaction after January 11, 2022; (b) the Subject Property lost value due to some casualty; (c) a substantial improvement was added to the Subject Property; and/or (d) an increase or decrease of at least fifteen percent in the Subject Property's occupancy has had a substantial economic impact on the Subject Property (collectively, the "Statutory Grounds").

Notwithstanding the foregoing, in the event the Property Owner fails to make any required Direct Payment by March 1 of the applicable calendar year (e.g., March 1, 2023 for tax year 2022), the Board of Education reserves the right to file an original Board of Revision complaint for the applicable tax year. If a complaint is filed with respect to the Subject Property for an applicable tax year pursuant to this Section, no payment shall be required under Section 2 for that tax year or any subsequent tax year, and any payment made under Section 2 for the applicable tax year(s) to which such complaint relates shall be refunded. It is the understanding and intent of the Property Owner and the Board of Education that, absent a complaint filed for Statutory Grounds, the Board of Education shall receive its share of property tax revenue on the Subject Property at a value of \$2,500,000 through a combination of the Ohio property tax system and the Direct Payments from the Property Owner for each of the applicable tax years set forth in this Agreement.

4. General Provisions.

- a. In the event any provision or term of this Agreement is found to be void or unenforceable to any extent and for any reason, it is the agreed upon intent of the parties hereto that all remaining provisions or terms of this Agreement shall remain in full force and effect to the maximum extent permitted and that this Agreement shall be enforceable as if such void or unenforceable provision or term had never been a part hereof.

- b. This Agreement sets forth the entire Agreement between the Parties and fully supersedes any and all other prior agreements or understandings between the Parties pertaining to the subject matter hereof. No provision of this Agreement may be modified, waived, or discharged unless the waiver, modification or discharge is agreed to in writing and signed by the Parties. No agreements, or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either Party that are not set forth expressly in this Agreement.
- c. This Agreement shall be interpreted and construed in accordance with the laws of the State of Ohio. Exclusive jurisdiction and venue shall be in Allen County, Ohio. Should the Board of Education have to initiate legal action to enforce the Direct Payment provision set forth in Section 2 of this Agreement, the Property Owner, including any successor, heir or assign of the Property Owner, shall indemnify and hold the Board of Education harmless for any legal fees, costs, and/or expenses associated with such legal action.
- d. Each Party acknowledges that it has had an opportunity to review and revise this Agreement and the normal rule of construction to the effect that ambiguities in an agreement are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.
- e. The Parties represent and warrant that the individuals executing this Agreement do so with the authority to bind the Property Owner and the Board of Education.
- f. This Agreement may be executed in counterparts, each of which when so executed shall be an original; but all such counterparts shall together constitute one and the same instrument.
- g. The Parties agree that this Agreement, or counterparts as provided herein, may be executed, and transmitted via facsimile and shall, when so executed and transmitted, be valid as though an original.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have duly executed this Agreement by their signature below:

PROPERTY OWNER
TUXIS LIMA LLC

BOARD OF EDUCATION
ELIDA LOCAL SCHOOL DISTRICT

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

Date: _____