

RELEASE AND SETTLEMENT AGREEMENT

("SETTLEMENT AGREEMENT")

For and in consideration of the sum of Eighty Thousand Dollars and no/00 Dollars (\$80,000.00) the receipt and sufficiency of which is hereby acknowledged, and for and in consideration of the other covenants and agreements entered into herein, **Marci J. Kieffer ("Plaintiff" or "Kieffer")**, individually and on behalf of her respective heirs, beneficiaries, executors, administrators, attorneys, agents, successors, legal representatives, personal representatives, and assigns; (hereinafter "RELEASOR") do hereby release and forever discharge the **Elida Local Board of Education ("Defendant" or "Elida Local")** and its respective parents, subsidiaries, predecessors, successors, affiliates, assigns, employees, independent contractors, lessors, lessees, brokers, shippers, insurers, coinsurers, reinsurers, agents, directors, officers, executives, associates, attorneys, representatives, owners, members shareholders, and all corporations and entities who may be jointly and severally liable with them and their respective heirs, beneficiaries, executors, administrators, attorneys, agents, successors, legal representatives, personal representatives, and assigns and corporations and entities who may be jointly and severally liable with it; **HYLANT ADMINISTRATIVE SERVICES** and its parents, subsidiaries, predecessors, successors, affiliates, assigns, employees, including its drivers, independent contractors, lessors, lessees, brokers, shippers, insurers, coinsurers, reinsurers, agents, directors, officers, executives, associates, attorneys, representatives, owners, shareholders, and all corporations and entities who may be jointly and severally liable with it; (collectively hereinafter "RELEASEES") of and from any and all actions, claims, demands, and causes of action for damages that the RELEASORS have, may have, and/or claim to have, known or unknown, past, present, or future, on or by reason of any matter, including without limiting the generality of the foregoing, any claim, action, cause of action, and demand arising from the incident that occurred on December 7, 2022 (hereinafter "INCIDENT"). The RELEASOR and RELEASEES are collectively referred to herein as the "PARTIES."

The PARTIES, with the advice and consent of their respective counsel, agree to all of the terms, conditions, and requirements of this SETTLEMENT AGREEMENT as follows:

I. RELEASE

In consideration of the payments, promises and indemnity provided for herein, RELEASOR does hereby release, acquit and forever discharge the RELEASEES of and from any and all past, present or future claims in law or in equity arising out of the INCIDENT that were brought or could have been brought.

It is intended that the RELEASOR is releasing all claims or claims that could have been made, whether made or not, based upon, or in any manner relating to the INCIDENT, including without limitation, any and all known and unknown claims for damages, injury, loss, and/or benefits whether founded in fact or in law, and all other claims asserted, or which might have been asserted.

II. UNKNOWN DAMAGES

RELEASOR understands that she, including her eventual successors in interest, heirs, executors, administrators, assigns, personal representatives, insurers, beneficiaries, survivors and next of kin, may have suffered damages that are unknown to RELEASOR at present and that unknown complications of the present known damages may arise, develop, or mature in the future. RELEASOR acknowledges that the consideration received for this SETTLEMENT AGREEMENT is intended to and does release and discharge any claims by RELEASOR in regard to such unknown or future complications, including effects or consequences thereof; and regardless of mistake of fact or mistake of law, RELEASOR and her eventual successors in interest, heirs, executors, administrators, assigns, personal representatives, insurers, beneficiaries, survivors and next of kin do hereby waive any rights to assert in the future any claims against the RELEASEES that are known, not known or suspected, relating to the INCIDENT, even though if such claims were known, such knowledge would materially affect the terms of this SETTLEMENT AGREEMENT.

The RELEASOR expressly acknowledges and agrees that the damages which the RELEASOR claims or may have sustained may be permanent and progressive, that recovery may be uncertain and indefinite, and that any such damages and/or losses may not now be fully known and may be more numerous and more serious than now believed. In making this settlement, the RELEASOR relies wholly upon her own judgment, in conjunction with the assistance of counsel, and she has not been influenced to any extent whatsoever by any representation or statement of any attorney, claim agent, or representative of the RELEASEES.

III. CONSIDERATION AND PAYMENT

In consideration of the release of liability as set forth in Section I above and the other agreements, representations, promises, and covenants in this SETTLEMENT AGREEMENT, the RELEASEES hereby agree to pay to and for the benefit of RELEASOR the amount of Eighty Thousand and no/00 Dollars (\$80,000). Payments due at the time of settlement will be made within thirty (30) days of receipt by counsel for all RELEASEES of this SETTLEMENT AGREEMENT fully signed by RELEASOR.

Payment will be issued in the form of a check made payable to Plaintiff Marci J. Kieffer and Dyer, Garofalo, Mann, and Schultz in the amount of Eighty Thousand Dollars \$80,000.00.

IV. RELEASORS' SOLE RESPONSIBILITY FOR ALL LIENS, SUBROGATION CLAIMS AND/OR INVOICES INCURRED DUE TO THE INCIDENT

The RELEASOR hereby represents and warrants that, as provided in this SETTLEMENT AGREEMENT, all existing subrogation claims and outstanding invoices and bills incurred in connection with the INCIDENT have been or will be defended, satisfied and/or compromised by RELEASOR. The RELEASOR hereby represents and warrants that to the extent any health insurance plan and/or third-party administrators related to the same hold any existing liens related to the INCIDENT, including IDHS and/or CMS, such liens have been resolved and settled by the RELEASOR and to the extent required by law. RELEASOR expressly warrants and represents that any such subrogation claims, and outstanding invoices and bills addressed in this paragraph are and will be RELEASORS' sole responsibility.

The RELEASOR agrees to defend, indemnify, and hold harmless the RELEASEES from and against all liens, subrogation claims, and any and all claims for loss of services, care, companionship or consortium, alleged as a result of, or arising out of, the INCIDENT, including, but not limited to, any subrogation or lien claims of any medical insurance carrier for RELEASOR, any subrogation or lien claims of Medicare, Medicaid, Medicare Part C, Medicare Part D, any hospital liens, doctor liens, medical liens, child support liens, attorney liens, work comp liens, ERISA liens, employer's liens, Social Security liens, personal injury protection (PIP) liens, judgment liens, unpaid medical bills and/or insurance subrogation liens, regardless of whether arising under tort law, contract law, state law, or federal law and regardless of whether asserted by a state or federal agency.

V. MEDICARE

Marci J. Kieffer warrants and represent that she is not a current Medicare beneficiary, she does not have a reasonable expectation of being a Medicare beneficiary in the next five (5) years. Because she is not a current Medicare beneficiary, Marci J. Kieffer believes that she has not received medical items and services related to the INCIDENT which were paid or may have been paid by Medicare and/or a Medicare Advantage Plan, but if she has, then this obligation must be paid by the RELEASOR out of the Settlement Amount.

The PARTIES expressly understand and acknowledge that by entering into this Agreement, the RELEASEES do not intend to shift responsibility to the Medicare Trust Fund for medical items or services which may be related to the INCIDENT. No portion of the settlement amount is being specifically allocated for future medical treatment. The RELEASOR warrants and represents that no medical expenses will be incurred in the future that are the responsibility of Medicare and/or a Medicare Advantage Plan and no medical services will be rendered in the future that arise from the INCIDENT that could be attributed to

or paid by a secondary payer. In the unexpected event that such expenses are inadvertently incurred, the RELEASOR agrees that she will not file any claim with Medicare or Medicaid for any medical care or treatment related to the injuries or medical conditions alleged by RELEASOR to have arisen from the INCIDENT..

The RELEASOR has been informed, advised, and afforded the opportunity to seek legal counsel regarding the Centers for Medicare & Medicaid Services (CMS) Memoranda on future medical information, dated September 29, 2011 (CMS Memo), and has elected to receive the settlement amount without a formal allocation to be set aside to pay for future medical benefits related to the INCIDENT. The RELEASOR further understands and acknowledges that it is her responsibility to pay for any necessary future medical treatment that may be related to the INCIDENT out of the proceeds of the settlement. Absent further guidance by CMS, through Regulations, Rules or Memoranda, no legal basis remains to withhold the lump sum distribution and RELEASEES have completed the obligation to consider Medicare's interest with this payment that forecloses any reimbursement claim(s) for items and services related to the INCIDENT made after the date of this Agreement.

The RELEASOR acknowledges 42 U.S.C. §1395y(b)(3)(A) and agree to waive the private cause of action that has accrued or may accrue against the RELEASEES for medical items and services related to the INCIDENT incurred before or after the date of this Agreement.

VI. NO ADMISSION OR CONCESSION

All undertakings and representations in this SETTLEMENT AGREEMENT have been agreed to by the PARTIES solely for the purpose of effectuating a voluntary settlement of the aforementioned claims and other disputes among them and shall not be deemed to constitute an admission or concession by any person for any purpose, nor shall such undertakings and agreements, or this SETTLEMENT AGREEMENT itself, be deemed to constitute a waiver of any legal position with regard to matters or persons outside the scope of this SETTLEMENT AGREEMENT. The PARTIES agree that none of the terms of this SETTLEMENT AGREEMENT, nor any aspect of its negotiation or performance, shall be used in any manner by any person in any past, present, or future action or proceedings as evidence of the rights, duties, or obligations of RELEASORS and/or RELEASEES under any statute, contract, policy of insurance or reinsurance.

VII. DISMISSAL OF CLAIMS AND COVENANT NOT TO SUE

The Parties, including Releasors and Releasees to this litigation will dismiss with prejudice all claims currently pending in the Allen County Court of Common Pleas in the case *Kieffer v. Elida Local Board of Education*, bearing Case No. CV 2024 0031 will be dismissed with prejudice at Releasees costs. The

RELEASOR agrees and hereby covenants not to sue RELEASEES and RELEASEES' insurers for claims related to the INCIDENT.

VIII. REPRESENTATIONS AND WARRANTIES

The RELEASOR represents and warrants that she has been fully advised by her own separate and independent counsel, she has read this SETTLEMENT AGREEMENT, and fully agrees to the same. The RELEASOR further represents that she has full authority to enter into this SETTLEMENT AGREEMENT.

In entering into this SETTLEMENT AGREEMENT, the RELEASOR represents that the advice of an attorney, of her choice, concerning the legal and income tax consequences, if any, of SETTLEMENT AGREEMENT, has been received; and, that the terms of the SETTLEMENT AGREEMENT have been completely read and explained by her attorney; and, further, that the terms of this SETTLEMENT AGREEMENT are fully understood and voluntarily accepted by RELEASORS.

All amounts received by Plaintiff pursuant to this Agreement shall constitute damages on account of bodily injury, personal physical injuries, and/or physical sickness or disease within the meaning of Section 104(1)(2) of the Internal Revenue Code of 1986. Plaintiff acknowledges and agrees that Releasees made no representations regarding the tax consequences of any amounts received by Plaintiff pursuant to this Agreement.

The RELEASOR represents and warrants that no other person or entity have, or have had, any interest in the claims, demands, obligations, or causes of action referred to in this SETTLEMENT AGREEMENT except as otherwise set forth herein; and, that RELEASOR has the sole right and exclusive authority to execute this SETTLEMENT AGREEMENT and to receive or direct payment of the sum specified in it; and, also that none of the claims, demands, obligations or causes of action referred to in this SETTLEMENT AGREEMENT have been sold, assigned, transferred, conveyed or otherwise disposed of by RELEASOR.

IX. SUCCESSORS IN INTEREST

This SETTLEMENT AGREEMENT shall bind the RELEASOR, her future estates, and each of her eventual heirs, executors, administrators, successors, assigns, personal representatives, insurers, beneficiaries, survivors, and next-of-kin.

X. ATTORNEY FEES AND COSTS

The PARTIES hereto agree to bear all of their own attorney fees and costs arising from the INCIDENT, this SETTLEMENT AGREEMENT, any future litigation, and from the actions of their own counsel in connection with the litigation, this SETTLEMENT AGREEMENT, and all other aspects of any litigation. Any court costs assessed by the Allen County Clerk of Courts will be borne by RELEASEES.

XI. COMPLETE AGREEMENT

The PARTIES agree that this SETTLEMENT AGREEMENT expresses the full and complete settlement of all claims. The RELEASOR acknowledges and agrees that no other representation, promise, or agreement, of any nature whatsoever, has been made to or with them, and that this document contains the entire agreement between the PARTIES hereto. Regardless of the adequacy of the compensation and consideration, it is understood that the SETTLEMENT AGREEMENT is intended to avoid litigation; that there is absolutely no agreement on the part of any or all of the PARTIES to make any payment or do any act or thing other than that which is herein expressly stated and clearly agreed to; and, that all terms of this SETTLEMENT AGREEMENT are important parts of this contract and are binding upon all PARTIES hereto.

XII. HEADINGS

The headings to the sections and paragraphs of this SETTLEMENT AGREEMENT are for convenience only and shall not be used to limit, expand or interpret the language within that section or paragraph and is subject to continuing jurisdiction to enforce the terms of this Settlement Agreement by the Honorable Judge Jeffrey L. Reed, Allen County Common Pleas Court previously designated as Case No. CV 2024 0031.

XIII. GOVERNING LAW

This SETTLEMENT AGREEMENT shall be construed and interpreted in accordance with the laws of the State of Ohio.

XIV. ACKNOWLEDGEMENTS AND SIGNATURES

The RELEASOR expressly represents that, prior to signing this SETTLEMENT AGREEMENT on the last page of the document, she has read it, she understands its terms and conditions, she was given an opportunity to consult with her attorney who explained it to them, and she voluntarily signed it of her own free will without any coercion or undue influence.

[Signature Page to Follow]

IN WITNESS WHEREOF, RELEASOR Marci J. Kieffer has executed this SETTLEMENT AGREEMENT
as his free act and deed on the _____ day of _____, 2025.

Marci J. Kieffer

WITNESSES:
