

IN THE COURT OF CLAIMS OF OHIO

TRANSAMERICA BUILDING COMPANY, INC.,

Plaintiff,

v.

OHIO SCHOOL FACILITIES COMMISSION,

Defendant/Third-Party Plaintiff,

v.

STEED HAMMOND PAUL, INC. dba SHP LEADING DESIGN,

Third-Party Defendant,

and

LEND LEASE (US) CONSTRUCTION INC.,

Third-Party Defendant/Third (Fourth) Party Plaintiff,

v.

G. STEPHENS, INC.,

Third-Party (Fourth-Party) Defendant.

Case No. 2013-00349

Judge Patrick M. McGrath

Referee Samuel Wampler

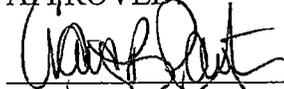
CONSENT JOURNAL ENTRY
APPROVING PARTIAL SETTLEMENT AGREEMENT, RELEASE
AND COVENANT NOT TO SUE

The Court, upon motion of Lend Lease (US) Construction Inc. ("Lend Lease"), with the consent and approval of the Ohio School Facilities Commission ("OSFC"), and being fully advised as to the premises, approves and confirms the Settlement Agreement, Release, and Covenant Not to Sue entered into by and between OSFC and Lend Lease. The Court ORDERS the claims of the Ohio School Facilities Commission against Lend Lease be DISMISSED with prejudice. The Counterclaims of Lend Lease against OSFC are dismissed with prejudice. Each party shall bear its own costs. The Court further holds all pleadings as to Lend Lease are hereby closed. No interest shall be paid on the amount of the settlement.

Date

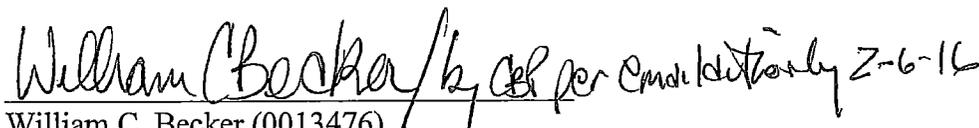
JUDGE, COURT OF CLAIMS OF OHIO

APPROVED:



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George Carr, Of Counsel
Attorney for Third-Party (Fourth-Party) Defendant G. Stephens, Inc.

SETTLEMENT AGREEMENT, RELEASE & COVENANT NOT TO SUE

This SETTLEMENT AGREEMENT, RELEASE & COVENANT NOT TO SUE (hereinafter referred to as the "Agreement"), is made by and among:

A. Ohio School Facilities Commission (OSFC), including its agents, attorneys, servants, partners, directors, members, officers, employees, legal and equitable successors, assigns and all affiliates (hereinafter collectively referred to as "OSFC"); and Ohio Facilities Construction Commission (OFCC), including its agents, attorneys, servants, partners, directors, members, officers, employees, legal and equitable successors, assigns and all affiliates (hereinafter collectively referred to as "OFCC"); and

B. Lend Lease (US) Construction Inc. fka Bovis Lend Lease, Inc., including its agents, attorneys, servants, partners, parents, directors, members, officers, employees, legal and equitable successors, assigns and all affiliates (hereinafter collectively referred to as "Lend Lease").

This Agreement is intended by the parties to be interpreted by a Court required to so interpret this Agreement as being the broadest form of release, waiver and covenant not to sue cognizable under law, except as may be expressly limited by this Agreement.

I. DEFINITIONS.

A. SETTLING PARTIES

"Settling Parties" shall mean Lend Lease, OFCC and OSFC.

B. THE PROJECT

The "Project" means the construction project at Morse Road, Columbus, Ohio, known as the "School and Residential Facilities for the Ohio State School for the Blind and Ohio School for the Deaf" that commenced in 2009.

C. CLAIM OR CLAIMS

"Claim" or "Claims" shall mean any direct or indirect past, present, or future, fixed or contingent, matured or unmatured, liquidated or unliquidated claims, causes of action, cross-claims, liabilities, rights, demands (including letter-demands, notices, or inquiries from any person), penalties, assessments, damages, requests, suits, lawsuits, costs (including attorneys' fees and expenses), actions, administrative proceedings, or orders of whatever nature, character, type or description, whenever and however occurring, whether at law or in equity, and whether sounding in tort or contract or any statutory or common law claim or remedy of any type including all claims, duties, causes of action, demands, duties to defend, duties to indemnify, obligations, liabilities, rights, damages, whether known or unknown, asserted or unasserted, whether at law or in equity, or of any type, nature, or description whatsoever, including, but without in any way limiting the generality of the foregoing, any and all Claims asserted or which could have been asserted by OSFC against Lend Lease, as well as those asserted or which could have been asserted by Lend Lease against OSFC, in the civil action pending in the Ohio Court of Claims, captioned *TransAmerica Bldg. Co., Inc. v. Ohio School Facilities Comm., et al.*, bearing Case No. 2013-00349, and in the civil action pending in the Ohio Court of Claims, captioned *Jutte Elec., Ltd. v. Ohio Facilities Constr.*

Comm., et al., bearing Case No. 2014-00318 (hereinafter together referred to as the "Actions") and/or arising out of the Project, except as may be limited by this Agreement.

D. DATE OF SETTLEMENT

"Date of Settlement" shall be the date upon which the last party executes this Agreement.

II. AGREEMENT AMONG THE SETTLING PARTIES.

WHEREAS disputes existed amongst the Settling Parties and other entities, resulting in the filing of claims in the civil action pending in the Ohio Court of Claims, captioned *TransAmerica Bldg. Co., Inc. v. Ohio School Facilities Comm., et al.*, bearing Case No. 2013-00349, and in the civil action pending in the Ohio Court of Claims, captioned *Jutte Elec., Ltd. v. Ohio Facilities Constr. Comm., et al.*, bearing Case No. 2014-00318; and

WHEREAS TransAmerica and Jutte have filed the Actions against OSFC and OFCC, respectively, seeking payment of the contract balance, and also seeking compensation in the approximate amount of four million dollars (\$4,000,000) and one million two hundred thousand dollars (\$1,200,000) respectively, for delays, disruption, disputed extra work, interest, and other claims TransAmerica and Jutte allege to possess, on their own or through various of their subcontractors, relative to the Project; and

WHEREAS OSFC, OFCC, TransAmerica, and Jutte may possess other Claims in connection with the Project that have either not matured or have not yet been asserted; and

WHEREAS OSFC and OFCC have asserted Third-Party claims against Lend Lease for contribution and indemnification, as well as for breach of contract; and

WHEREAS Lend Lease has asserted a counterclaim against OFCC and OSFC for additional services performed by Lend Lease in connection with the Project; and

WHEREAS the Settling Parties may possess other Claims against each other that have either not matured or have not yet been asserted; and

WHEREAS the Settling Parties desire to avoid the expense, inconvenience, and distraction of these disagreements and, by this Agreement, intend to adopt by way of compromise and accord and without admission of any fact or of liability by either party, a full and final settlement as to all Claims asserted or which could have been asserted by:

- (i) OSFC and OFCC against Lend Lease with respect to the Project;
- (ii) Lend Lease against OSFC and OFCC with respect to the Project.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Settling Parties agree as follows:

1. OSFC and OFCC hereby release any and all direct or indirect Claims, causes of action, demands, duties to defend, duties to indemnify, obligations, liabilities, rights, damages, whether known or

unknown, asserted or unasserted, whether at law or in equity, or of any type, nature, or description whatsoever arising out of any relationship between the Settling Parties with respect to the Project, except as specifically limited by Paragraph 3 and Paragraph 10 of this Agreement.

2. Lend Lease hereby releases any and all direct or indirect Claims, causes of action, demands, duties to defend, duties to indemnify, obligations, liabilities, rights, damages, whether known or unknown, asserted or unasserted, whether at law or in equity, or of any type, nature, or description whatsoever, against OSFC and OFCC, arising out of any relationship between them with respect to the Project, except as specifically set forth in Paragraph 3 and Paragraph 10 of this Agreement.

3. Notwithstanding anything contained in this Agreement, the Settling Parties each retain all claims for indemnification and contribution, and all affirmative defenses, counterclaims and third-party claims against each other in response to any timely filed action that may be brought against any of the Settling Parties by any third party for personal injury or property damage arising out of the Project. The Settling Parties expressly represent that they are unaware of any such personal injury or property damage claims at this time, and are reserving their rights solely in the event any such claim is made in the future.

4. Subject to the release of the total Settlement Amount as described below and as may be limited by this Agreement, the Settling Parties agree that all direct or indirect Claims be and are hereby released and/or dismissed with prejudice against each other, without costs, in consideration of the following:

- (i) Payment by Lend Lease to OSFC in the total amount of five hundred thousand dollars (\$500,000).
- (ii) Lend Lease shall make payment to OSFC in the amount set forth immediately above (hereinafter referred to as the "Settlement Amount") within thirty (30) days following the Date of Settlement and formal approval of the Agreement by the Attorney General, whichever is later.

5. Payment of the Settlement Amount listed in Paragraph 4(i) of this Agreement shall be made by check, wire transfer, attorney trust account check, cashier's check, bank check, insurance check or certified check made payable to "Treasurer, State of Ohio," and delivered to William Becker, Esq., Assistant Attorney General, at 150 East Gay Street, 18th Floor, Columbus, Ohio 43215-3192.

6. The Settling Parties make no representations regarding the Federal or State tax consequences of any of the payments referred to herein and shall not be responsible for any tax liability, interest or penalty incurred by the other Party, which in any way arises out of or is related to said payment. The Settling Parties understand and agree that each party shall bear their own attorneys' fees and costs in connection with this Agreement.

7. It is understood by the Parties that the facts upon which this Agreement is made may prove to be other than or different from the facts now known by either of them or believed by either of them to be true. Each of the Parties expressly accepts and assumes the risk of the facts proving to be different, and each of the Parties agree that all the terms of this Agreement shall be in all respects effective and not subject to termination or rescission of reason of any such difference in facts.

8. The Parties agree that the terms of this Agreement bind the Parties and their assigns and legal and equitable successors in interest.

9. The Parties acknowledge and agree that this Agreement shall not be binding on any of the Parties until it has been duly presented to the Ohio Attorney General, as required by Ohio Revised Code § 2743.15(A) and Rule 7(A) of the Rules of the Court of Claims, for the Attorney General's approval, and the Ohio Attorney General has approved the Agreement. The Parties further acknowledge that the signature of the Assistant Attorney General on this Agreement is on behalf of OSFC and is not to be construed as the approval of the Attorney General. If the Attorney General shall fail or refuse to approve the Agreement, it shall be null and void and without any force or effect, and none of the Parties shall be bound by it.

10. The Parties acknowledge and agree that this Agreement shall not be binding on any of the Parties until it has been duly presented to the Ohio Court of Claims as required by Ohio Revised Code § 2743.15(A) and Rules 7(A) and (B) of the Rules of the Court of Claims, for the Court's approval, and the Court has approved the Agreement. If the Court shall fail or refuse to approve the Agreement, it shall be null and void and without any force or effect, and none of the Parties shall be bound by it.

11. Simultaneously with the execution of this Agreement, counsel for the Parties shall execute Consent Orders of Dismissal in the form attached as **Exhibits A and B** (hereinafter the "Consent Order"). The Consent Order shall be executed in counterparts by counsel for each Settling Party and delivered to Lend Lease's counsel contemporaneously with the execution of this Agreement. The Consent Order shall be held in escrow by Lend Lease's counsel until receipt of the signature on behalf of Lend Lease and payment of the Settlement Amount by Lend Lease. Within ten (10) days of receipt of Lend Lease's signature and payment by Lend Lease of the Settlement Amount, Lend Lease's counsel shall submit the Consent Order to the Court and shall copy counsel for all parties to the Actions on the submission to the Court. Within five (5) days of receipt of the filed Consent Order, counsel for Lend Lease shall transmit a copy of the executed and filed Consent Order to counsel for all parties to the Litigation.

12. Except for actions to enforce their rights under this Agreement, and except as set forth herein, the Settling Parties covenant not to sue the attorneys, agents, representatives, shareholders, servants, partners, parents, directors, members, officers, employees, legal and equitable successors, assigns and any affiliates of any Settling Party with respect to any and all Claims including those of which the Settling Parties are not aware and those not mentioned in this Agreement, but only to the extent such claims pertain to or arise out of the Claims asserted by Lend Lease and OSFC in this Action.

III. NATURE OF AGREEMENT AND INTERPRETATION

A. WHO IS BOUND.

The Settling Parties are bound by this Agreement. Anyone who succeeds to rights and responsibilities of the Settling Parties, such as their legal and equitable successors and assigns, are also bound. This release is made for the benefit of the Settling Parties and all who succeed to their rights and responsibilities, such as their legal and equitable successors and assigns.

B. NO ADMISSION OF LIABILITY OR FAULT.

The execution of this Agreement is not an admission of liability by the Settling Parties or their agents, representatives, members or officers nor shall it be construed as recognition of the merits of any of the Claims asserted. By executing this release, no party is acknowledging any liability or breach of any duty or obligation to the other and this Agreement merely represents a compromise of disputed claims.

C. CONSTRUCTION.

This is a General Release. This Agreement is intended by the parties to be interpreted by a Court required to so interpret this Agreement as being the broadest form of release cognizable under law except as may be limited by this Agreement.

D. ADVICE OF COUNSEL.

By their execution of this Agreement or any and all counterparts hereof, each of the Settling Parties does hereby expressly acknowledge that they have executed the same freely and voluntarily and they have had the opportunity to seek and obtain advice of counsel, accountants and financial advisors of their choice, regarding the effect of the execution and delivery of this Agreement or a counterpart of it. They have each had adequate opportunity to investigate and assess all of the facts and circumstances relevant to the decision to enter into this Agreement and are not relying on any express or implied representation, warranty or promise except only as expressly contained in this Agreement to the contrary.

E. GOVERNING LAW.

This Agreement shall be governed by the laws of the State of Ohio, as applied to agreements executed and services performed entirely in Ohio. In any legal action relating to this Agreement, the Settling Parties and their affiliates seeking the benefit of any of the provisions hereof each agrees and consents to the exercise of, and submit themselves to, the exclusive jurisdiction over it by a state or federal court in or having venue in Ohio. If legal action is commenced by any party to enforce or compel another party's obligations under this Agreement, the party seeking such enforcement or compliance shall be entitled to recover its reasonable attorneys' fees incurred in obtaining such enforcement or compliance from the non-compliant party.

F. ASSIGNMENT.

Neither this Agreement nor any of the rights or benefits created hereunder may be assigned by either party without the prior written consent of each Settling Party, which consent shall not be unreasonably withheld, provided however, that this paragraph shall not prohibit any assignment by either party by merger, consolidation, or operation of law, or to any entity that succeeds to all or substantially all of such party's assets, but this Agreement shall be binding upon all such assigns of such party.

G. RIGHTS.

The parties to this Agreement represent and warrant that they are the sole owners of the claims released and the rights compromised in this Agreement, and they have not sold, transferred, conveyed or assigned the same, or any interest or portion thereof to any third party. This Agreement is intended to confer rights

and benefits only with respect to the parties, who disavow any intention to create any rights or benefits in third parties under or in relation to this Agreement.

H. MODIFICATION.

There shall be no modification of this Agreement except by writing signed by the Settling Parties. No natural person, firm, corporation, partnership, proprietorship, joint venture, organization, limited liability company, governmental agency or entity, nonprofit organization, trade association, group of natural persons, or other association separately identifiable, whether or not such association has a separate juristic existence in its own right, as well as their legal and equitable successors in interest, heir, executor, administrator, trustee in bankruptcy, or receiver of any such entity is or shall be authorized to orally amend, change, supplement, vary or waive any of the terms hereof, either explicitly or implicitly, and the parties agree not to rely on any oral amendment, change, supplement, variation or waiver, notwithstanding any provision of governing law that may allow for oral modification.

I. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement and understanding between the Settling Parties with respect to the matters addressed herein and supersedes all prior communications and negotiations among the parties.

J. COUNTERPARTS.

This Agreement may be executed in counterparts which, when taken together, shall constitute but one agreement.

K. SEVERABILITY.

If any term, provision, covenant or condition in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be effected, impaired or invalidated as a result of such decision.

L. INADMISSIBILITY OF AGREEMENT.

This Agreement has been entered in reliance upon the provisions of Rule 408 of the Ohio Rules of Evidence, which precludes introduction of evidence regarding settlement negotiations in any legal proceeding. Evidence relating to the negotiation, terms, or facts of this Agreement shall not be admissible by any Party in any legal proceeding, except to enforce this Agreement or as otherwise contained herein.

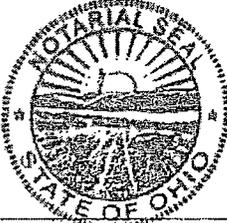
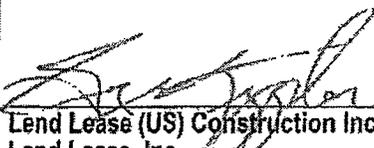
M. NON-DISPARAGEMENT.

The Parties agree that neither will disparage the other, and neither will make any statement to any third party that could reasonably be foreseen to cause harm to the personal or professional reputation of the other, its business, members, employees, officers, directors, or executives. Furthermore, the ability of Lend Lease to submit proposals for future work on projects financed or owned in whole or in part by OSFC and/or the Ohio Facilities Construction Commission shall not be negatively affected by virtue of Lend Lease's work on the Project or participation in this Agreement. This provision shall not apply to statements

made under oath if testimony is completed pursuant to lawful subpoena or court order or as necessary to enforce the terms of this Agreement

IV. SIGNATURES

By executing this Agreement, each party declares, affirms and warrants that it understands and agrees to all provisions thereof. **IN WITNESS WHEREOF**, the following parties have hereunto set their hands and seals:

<p style="text-align: center;">ACKNOWLEDGMENT (to Agreement, Release and Covenant Not to Sue)</p> <p>STATE OF <u>Ohio</u> } COUNTY OF <u>Franklin</u> } SS</p> <p>On this <u>18th</u> day of <u>January</u>, 20<u>16</u>, before me the subscriber, a Notary Public of Attorney at Law of the State of <u>Ohio</u>, personally appeared a representative of Lend Lease (US) Construction Inc., authorized to execute this Agreement, who I am satisfied is the individual named in and subscribing to the foregoing instrument, and he or she, or they, being by me duly sworn, acknowledged, deposed and said that he, she, or they, signed, sealed and delivered the same on his or her own behalf as his or her voluntary act and deed for the uses and purposes therein expressed.</p> <p>IN WITNESS WHEREOF, I have signed and sealed this acknowledgment the day and year first above written.</p> <p style="text-align: center;"><i>Anne L. Watson</i></p> <p>AFFIX SEAL:</p> <div style="text-align: center;"><p>ANNE L. WATSON Notary Public, State of Ohio My Commission Expires 11/02/16</p></div>	<p style="text-align: center;"> Lend Lease (US) Construction Inc. fka Bovis Lend Lease, Inc.</p> <p>Print Name: <u>GEORGE KEPLER</u></p> <p>Title: <u>SVP</u></p>
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ACKNOWLEDGMENT
(to Agreement, Release and Covenant Not to Sue)

STATE OF Ohio)
COUNTY OF Franklin)SS

On this 29th day of January, 2016, before me the subscriber, a Notary Public or Attorney at Law of the State of Ohio, personally appeared a representative of OSFC, authorized to execute this Agreement, who I am satisfied is the individual named in and subscribing to the foregoing instrument, and he or she, or they, being by me duly sworn, acknowledged, deposed and said that he, she, or they, signed, sealed and delivered the same on his or her own behalf as his or her voluntary act and deed for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have signed and sealed this acknowledgment the day and year first above written. Carolyn L. McClure

AFFIX SEAL:



Carolyn L. McClure
Notary Public, State of Ohio
My Commission Expires 02-01-2020

David M. Williamson
Ohio School Facilities Commission/Ohio
Facilities Construction Commission

Print Name: DAVID M. WILLIAMSON

Title: Executive Director

Per authority of OFCC
Resolution No. _____

Per authority of OFCC
Resolution No. _____