

Attachment F

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SETTLEMENT AGREEMENT

This Settlement Agreement and Release of Claims (the “Agreement”) shall be effective as of the date on which the last party hereto executes and dates the same (the “Effective Date”). This Agreement is entered by and among the parties listed below to formalize their resolution of the matters described herein.

RECITALS

California Evidence Code Section 622

A. WHEREAS, on or about April 7, 2016, The Don Chapin Co., Inc., a California corporation (“Chapin”) entered into a written contract with Signature York Highlands, LLC (“Signature”) for the construction of certain improvements at certain real property commonly known as the York Highlands subdivision;

B. WHEREAS Chapin furnished the work which is the subject of this Agreement (the “Work”) from approximately May 11, 2016 to January 16, 2018;

C. WHEREAS Chapin billed Signature \$5,781,537.53 for the Work, and Signature paid a total of \$5,203,383.78 to Chapin for the Work;

D. WHEREAS the amount billed by Chapin included work performed by Seatec Underground Utilities, Inc. (“Seatec”) for the benefit of Signature;

E. WHEREAS, on March 13, 2018, Chapin recorded a Claim of Mechanics Lien pursuant to Civil Code § 8400, *et seq.* as Document Number 2018010495 in the Office of the Monterey County Recorder, for the amount of \$578,153.75, with interest accruing at 10.00% per annum from and after January 2, 2018, along with \$10,146.81 in attorney fees and costs, continuing to accrue (the “Chapin Lien”);

F. WHEREAS, on May 22, 2018, Seatec recorded a Claim of Mechanics Lien pursuant to Civil Code § 8446 as Document Number 2018022569 in the Office of the Monterey County Recorder, for the amount of \$102,888.05, with interest accruing at 10.00% per annum from and after May 22, 2018, as well as \$103.00 in costs (the “Seatec Lien” and together with the Chapin Lien collectively referred to herein as the “Chapin/Seatec Mechanics Liens”);

G. WHEREAS, subsequent to the recording of the Seatec Lien, Seatec received a payment in the amount of \$43,152.96 reducing the amount of the Seatec Lien to \$61,947.68;

H. WHEREAS, on May 29, 2018, Chapin filed a Complaint for Breach of Contract; Common Counts; to Foreclose on a Mechanics’ Lien and Injunctive Relief styled as *Monterey County Superior Court Case No. 18CV001948* (the “Chapin Action”);

I. WHEREAS, on August 16, 2018, Seatec filed a Complaint for Foreclosure of Mechanics Lien; Common Counts; and Breach of Contract styled as *Monterey County Superior*

Court Case No. 18CV003121 (the “Seatec Action” and together with the Chapin Action collectively referred to herein as the “Chapin/Seatec Actions”);

J. WHEREAS United Security Bank, a California banking corporation, hereinafter ("USB"), and Monterey County Bank, a California banking corporation, hereinafter ("MCB" and together with USB collectively referred to herein as “Banks”), as participating banks, along with several other banks, sought approval from the County of Monterey, a political subdivision of the State of California hereinafter ("County") to re-subdivide lots in previous phases of the Monterra Ranch Subdivision (Monterey County PLN 100020), which lots had been acquired by the Banks as a result of foreclosures;

K. WHEREAS the County approved the resubdivision (PLN 100020) by County Board of Supervisors Resolutions numbered 11-342 and 12-038. As a condition of the County's approval to re-subdivide the lots to create Tract 1513, commonly known as "the York Highland Resubdivision" (the "Resubdivision"), a Subdivision Improvement Agreement, ("SIA") (incorporated herein by this reference), was executed by the County, USB and MCB and recorded on May 31, 2012, in the Office of the Monterey County Recorder as Official document number 2012031807;

L. WHEREAS the County required the SIA in compliance with the California Subdivision Map Act, and Monterey County Ordinances and Regulations, in order to guaranty the completion of the infrastructure required to support the Resubdivision project, including payment of the contractors performing the infrastructure work. The total security the County required to be pledged to it for such purpose was approximately \$15,601,684.00. Paragraph 2 of the SIA provides, in relevant part:

“2. Substitute Security. OWNERS shall at all times guarantee performance of this AGREEMENT by furnishing to COUNTY good and sufficient security acceptable to COUNTY and in conformity with the Subdivision Laws on forms approved by COUNTY and by maintaining said security for the purposes and in the amounts as follows:

a. **New Deeds of Trust.** New subordinated deeds of trust in favor of the County of Monterey in the form attached hereto as Exhibit D and incorporated herein by reference ("Subordinated Deeds of Trust") shall be recorded concurrently with the recordation of the final map for the RESUBDIVISION. A first deed of trust for Lots 3, 4 and 5 in the form attached hereto as Exhibit E shall also be recorded in favor of the County of Monterey concurrently with the recordation of the final map for the RESUBDIVISION. These Subordinated Deeds of Trust and first deed of trust for Lots 3, 4 and 5 shall secure the amount of 100% of the estimated cost of the Improvements to guarantee construction and installation of all the Improvements, plus 50% of the estimated costs of the Improvements to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for

the Improvements required to be constructed or installed pursuant to this AGREEMENT...”

M. WHEREAS, on May 31, 2012, a First Deed of Trust naming MCB as Trustor and the County as beneficiary was recorded in the Office of the Monterey County Recorder as Official document number 2012031831, encumbering MCB Lots 3, 4 and 5;

N. WHEREAS, on November 20, 2017, Chapin invoiced Signature for \$578,153.75, the amount Chapin claimed as retention withheld by Signature as security for Chapin’s performance under the construction contract of April 7, 2016 ("Chapin Claim"), which included an amount owed to Seatec. On December 20, 2017, the date said Chapin Claim was due, Signature did not pay the Chapin Claim and thereby breached its agreement with CHAPIN by failing to pay the Chapin Claim for the work performed. Said Chapin Claim has not been paid and remains due and owing at present;

O. WHEREAS, on March 9, 2021, County, Chapin and Seatec entered into an AGREEMENT TO ASSIGN A DEED OF TRUST AND THE BENEFITS AND RIGHTS RELATED THERETO, hereinafter (the "Assignment Agreement");

P. WHEREAS, pursuant to the Assignment Agreement, the County executed and recorded a partial assignment of the First Deed of Trust from MCB as Trustor to the County as beneficiary, recorded in the Office of the Monterey County Recorder as Official document number 2012031831 (the “County Deed of Trust”), by assigning from the County Deed of Trust Monterey County APNs: 259-261-003-000 and 259-261-004-000 (“Lots 3 and 4”) to CHAPIN and all rights under the County Deed of Trust and the SIA to foreclose upon said lots to satisfy the obligation owed to it and Seatec;

Q. WHEREAS, on March 17, 2021, Chapin gave notice of County’s assignment to Chapin of all of County’s interest in and to Lots 3 and 4 that the County acquired under the County Deed of Trust;

R. WHEREAS, on June 23, 2021, USB, lender of record on the real property secured by the Chapin/Seatec Mechanics Liens, filed a Cross-Complaint for Judicial Foreclosure against Chapin and Signature alleging the superiority of deeds of trust held by USB in relation to the Chapin Lien, along with other causes of action against other individuals and entities styled as *Monterey County Superior Court Case No. 18CV003339* (the “USB Action” and together with the Chapin Action and Seatec Action collectively referred to herein as the “Actions”);

S. WHEREAS, Chapin, Signature, USB, and Seatec, hereinafter referred to as “the Parties,” along with other entities and individuals are also involved in other related litigation surrounding the development of the York Highlands subdivision;

T. WHEREAS, the Parties and others have been working toward a global settlement, resolving all issues in the various actions;

U. WHEREAS the Parties desire to resolve the Chapin/Seatec Mechanics Liens and the Actions as part of the global resolution of all claims between the various parties; and

V. WHEREAS, pursuant to the Parties' negotiations of a global settlement, an agreement has been reached between Chapin, Seatec, Signature, and USB to resolve the Chapin/Seatec Mechanics Liens and the Actions as set forth in this Agreement;

NOW, THEREFORE, be it resolved that the following represents the agreement of the parties in consideration for the promises and performance described herein.

AGREEMENT

1. Cash Payment; Release of Seatec Lien. On or before August 17, 2021, USB will make a cash payment of \$300,000.00 to Chapin via wire transfer, on Signature's behalf, as a protective advance under one of the loans made by USB to Signature, designation of which shall be at USB's discretion. Chapin and Seatec agree that, upon receipt of USB's \$300,000.00 payment to Chapin, Chapin, within three (3) business days of receipt of the USB payment, will pay Seatec in full and final satisfaction of the Seatec Lien. Within five (5) business days of Seatec's receipt of the payment from Chapin, Seatec shall assign all right title an interest to its Mechanics Lien to Chapin.

2. Balance Due by Signature. As of August 17, 2021, pursuant to the provisions of California Civil Code Sections 8812(a), 8818(a) and 8818(b), Signature owes Chapin , inclusive of attorney fees and costs, \$1,265,054.63. Reducing this amount by the USB payment in Paragraph 1 leaves a total amount due from Signature to Chapin of \$965,054.63 (the "Signature Balance").

3. Balance Due by USB Upon Signature's Default. USB and Chapin dispute whether USB and MCB are contractually bound to issue payment to Chapin for work performed on the York Highlands subdivision. However, for the purposes of settlement, USB agrees to guarantee a minimum payment in the principal amount of \$975,409.75 plus interest on said balance accruing at 10% per annum from and after August 18, 2021, to the date of payment (the "USB Guarantee Amount") to Chapin in satisfaction of the Chapin/Seatec Mechanics Liens. After payment of the \$300,000 to Chapin under Paragraph 1, the USB Guarantee Amount shall be reduced to \$675,409.75. If, at any time, USB acquires fee title to one or more Secured Lots, Chapin shall, upon payment and receipt of the USB Guarantee Amount per lot, release any remaining Chapin/Seatec Mechanics Liens on said Secured Lots.

4. Signature Payments for Release of Mechanics Lien, Per Lot. The Chapin/Seatec Mechanics Liens encumber seven lots within the York Subdivision owned by Signature, commonly known as Lots 2, 6, 8, 9, 10, 11 and 12 (singularly a "Secured Lot" and collectively, the "Secured Lots"). Upon the sale of each Secured Lot, Signature shall pay \$137,864.95 per lot plus interest accrued at 10% per annum accruing from and after August 18, 2021, plus any interest accrued on the remaining entire amount left owing, until the date of payment (the "Signature Lot Payment"). In exchange for the receipt of each Signature Lot Payment, Chapin shall provide to Signature a Release of the Chapin/Seatec Mechanics Liens, executed in the presence of a notary public, in the form attached hereto as **Exhibit A**, with respect to each Secured Lot sold and each Signature Lot Payment made, for recording in the Official Records of Monterey County.

5. Balance Secured by County Deed of Trust. Provided that the USB Guarantee Amount plus accrued interest is paid to Chapin, the Parties agree that the amount

secured by the County Deed of Trust on Lots 3 and 4 is limited to \$289,644.88 plus interest accruing at 10% per annum from and after August 18, 2021, until paid in full (the “Remaining Balance”). USB reserves the right to make a payment as a protective advance under the loans from USB to Signature or otherwise in the full amount of the Remaining Balance, and, upon receiving payment in full of the Remaining Balance at any time, Chapin shall reconvey the County Deed of Trust back to the County to be held by the County under the terms of the SIA for York Highlands.

6. Payments by USB.

a. In the event no lots are sold by Signature on or before May 16, 2023, and those lots are still owned by Signature, USB shall make monthly payments commencing May 23, 2023, and on the 23rd day of each month thereafter for seven consecutive months in the amount of \$96,487.11 plus 10% interest per annum accruing on the entire amount left owing from and after August 18, 2021, to date of payment, and, upon each such payment by USB, Chapin shall release the Chapin/Seatec Mechanics Liens from one (1) lot as directed by USB.

Attached as **Exhibit B** is a payment schedule demonstrating the principal balance due after each payment, and the Remaining Balance referenced in Paragraph 5 of this Agreement in the event of a Signature default.

b. In the event Signature has failed to retire the Signature Balance on or before December 31, 2023, USB, within five (5) business days, shall pay Chapin the remainder of the USB Guarantee Amount, after the subtraction of all payments made by Signature pursuant to Paragraph 4 of this Agreement, in exchange for the release of the remaining Chapin Liens as provided under Paragraph 3 of this Agreement.

7. Forbearance on Foreclosure. Chapin shall forbear on taking any enforcement action under the County Deed of Trust until the earlier to occur of (i) a default in payment on the USB Guarantee Amount pursuant to Paragraph 6, or (ii) the USB Guarantee Amount is paid in full and the Remaining Balance has not been paid upon notice of and demand for payment of the amount due to all Parties.

8. Enforceability of this Agreement. The Parties hereto agree that this Agreement is enforceable under Code of Civil Procedure § 664.6, and further agree to request the Superior Court of the County of Monterey to retain jurisdiction over this matter under the Chapin Action in order to allow for the enforcement of the Agreement. The Parties further agree to request and allow the Court to fashion or order any remedy or language to protect and preserve the claims of the Parties to this Agreement during the pendency of the performance period set forth herein.

9. Tolling of the Statute of Limitations. USB agrees that any statute of limitations with respect to enforcing USB’s guarantee contained herein or the provisions of the SIA shall be tolled during the pendency of the performance period set forth herein. Further, any other applicable time limits, such as the date by which an action to enforce any part of this Agreement must be brought to trial, are also hereby tolled during the pendency of the performance period.

10. Dismissals: Each of the Parties agrees to dismiss, with prejudice, the Actions, as to each other, within fifteen (15) days of the Effective Date provided that the Court has entered its

order reserving jurisdiction to enforce and or supervise the performance of this Agreement and the payment of the sums due hereunder.

11. Release of Claims. Except for the obligations provided for in this Agreement, each party hereto hereby releases, acquits, and forever discharges the other, and his or her respective agents, attorneys, representatives, servants, predecessors, successors, heirs, beneficiaries, executors, administrators, employees, employers, principals, partners, shareholders, joint venturers, parents, subsidiaries, and affiliates, of and from any and all claims, actions, causes of action of any nature, and for all civil liabilities and obligations of every kind and character he, she or it now has or in the future may have ("Claims") arising out of or related to the Actions. The Parties waive the benefits of the provisions of § 1542 of the Civil Code of the State of California which reads as follows:

§1542. Certain claims not affected by general release. 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.

12. Advice of Counsel. Each party hereto understands and acknowledges the significance and consequence of waiving § 1542 of the California Civil Code and has discussed said waiver with his or her attorneys.

13. Compromise: The Parties expressly agree and understand the liability claimed in connection with the claims for which releases have been given is disputed by all parties herein released, and that this Agreement is a compromise and shall not be construed as an admission of liability or responsibility as against any party.

14. Voluntarily Signed. The Parties hereto warrant and represent that this Agreement is freely and voluntarily executed by them after having been apprised of all of the relevant information. The Parties further warrant and represent that they have not relied on any inducements, promises, or representations made by any party or its representative, or any other person, except for those expressly set forth herein. Each party warrants and represents that he or she has read this Agreement and has had the terms used herein and the consequences hereof explained to him or her by his or her attorneys.

15. Warranty of Performance. Each party hereto agrees to promptly and as expeditiously as possible carry out and execute its responsibilities under the terms of this Agreement and to execute any and all documents which may be necessary from time to time in the future to implement the terms of this Agreement.

16. Binding Effect and Indemnity. This Agreement is for the benefit of and shall be binding on all Parties and their successors, assigns, heirs, executors, administrators, predecessors, partnerships, employees, attorneys, insurers, sureties, agents, representatives, directors, officers, receivers, trustees and/or stockholders.

17. Modification Must Be in Writing. This Agreement may not be altered, amended, or modified, except by writing executed by duly authorized representatives of all Parties.

18. Construction. Should any paragraph, clause or provision of this Agreement be construed to be against public policy or determined by a court of competent jurisdiction to be void, invalid or unenforceable, such construction and decision shall affect only those paragraphs, clauses or provisions so construed or interpreted, and shall in no way affect the remaining paragraphs, clause or provisions of this Agreement which shall remain in force.

19. Counterpart Signatures. The Agreement may be executed in two or more counterparts, by facsimile, electronic or PDF signature each of which counterpart and signature shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. Entire Agreement. This Agreement states the entire agreement among the Parties and supersedes their prior agreements, negotiations or understandings.

21. Indemnity and Attorneys' Fees. Should any of the Parties breach any of the provisions of this Agreement, then the breaching Party shall indemnify and hold harmless the other Party from and against any and all claims, causes of action, obligations, damages and liabilities, including court costs, consultants' fees, and attorneys' fees, arising from or in connection with the breach. In any litigation for the breach of or to enforce a provision of this Agreement, the prevailing party shall also recover its costs, non-statutory expenses, and attorneys' fees. In addition to indemnity by reason of a breach of this Agreement by a Party, USB agrees to indemnify, hold harmless and defend Chapin and Seatec as a result of any claim or action brought by MCB regarding Lots 3 and 4.

22. Governing Law. This Agreement is entered into in the State of California and shall be construed and interpreted in accordance with the laws of the State of California.

23. Warranty of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the Parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

"Chapin"

THE DON CHAPIN CO., INC., a
California corporation

By: 

Name: Donald D. Chapin Jr.

Its: President

Signed 8-10-21

"USB"

UNITED SECURITY BANK, a California
banking corporation

By: _____

Name: Dennis Woods

Its: Chief Executive Officer

"Seatec"

**SEATEC UNDERGROUND UTILITIES,
INC.**, a California corporation

By: 

Name: *Anne Secker*

Its: *Attorney & Authorized Signer*

8/10/21

"Signature"

SIGNATURE YORK HIGHLANDS, LLC,
a California limited liability company

By: _____

Name: Nickolas K. Jekogian III

Its: Manager

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

“Chapin”

THE DON CHAPIN CO., INC., a
California corporation

By: 

Name: Donald D. Chapin Jr.

Its: President

Signed 8-10-21

“USB”

UNITED SECURITY BANK, a California
banking corporation,

By: 

Name: Dennis Woods

Its: Chief Executive Officer

Dated: 8/10/2021

“Seatec”

**SEATEC UNDERGROUND UTILITIES,
INC.**, a California corporation

By: _____

Name: _____

Its: _____

“Signature”

SIGNATURE YORK HIGHLANDS, LLC,
a California limited liability company

By: _____

Name: Nickolas K. Jekogian III

Its: Manager

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

"Chapin"

THE DON CHAPIN CO., INC.,
California corporation

By: 
Name: Donald D. Chapin Jr.
Its: President
Signed 8-10-21

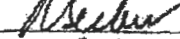
"USB"

UNITED SECURITY BANK, a California
banking corporation

By: _____
Name: Dennis Woods
Its: Chief Executive Officer

"Seatec"

SEATEC UNDERGROUND UTILITIES,
INC., a California corporation

By: 
Name: Anne Secker
Its: Attorney & Authorized Signer
8/10/21

"Signature"

SIGNATURE YORK HIGHLANDS, LLC,
a California limited liability company


By: 
Name: Nickolas K. Jekogian III
Its: Manager
8/18/21
ROZ

EXHIBIT A
FORM OF RELEASE OF MECHANICS LIEN

Recording Requested By and After:]
Recording Return to:]
]
Timothy Jones #119841]
WANGER JONES HELSLEY PC]
265 E. River Park Circle, Suite 310]
Fresno, CA 93720]
(559) 233-4800]
tjones@wjhattorneys.com]
Attorney for United Security Bank]

(Space Above This Line For Recorder's Use)

RELEASE OF MECHANIC'S LIEN

The Mechanics Liens claimed by THE DON CHAPIN COMPANY, INC., recorded as Instrument No. 2018010495, on March 13, 2018, in the official records of Monterey County, California and by SEATEC UNDERGROUND UTILITIES, INC. recorded as Instrument No. 2018022569, on May 22, 2018, in the official records of Monterey County, California and assigned to THE DON CHAPIN COMPANY, INC on August ____, 2021, against the real property owned, or reputed to be owned, by Signature York Highlands LLC, 1430 Broadway Street, Suite 503, New York, NY 10018 is hereby released as to the following real property ONLY: *[Fill in APN of Lot(s) to be released]*.

Dated: _____, 202__

DO NOT EXECUTE – EXHIBIT ONLY

Donald D. Chapin Jr., President
The Don Chapin Co., Inc.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) SS.
COUNTY OF _____)

On _____, 20____, before me, _____, the undersigned Notary Public, personally appeared **Don Chapin**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my official hand and seal. [SEAL]

EXHIBIT B

The purpose of the Settlement Agreement is to resolve the various lawsuits; allow Signature an opportunity to market and sell seven lots in Phase A of the Resubdivision; repay USB the Purchase Money and Construction Loans to Signature and any Advances made to Signature under the Agreement; and lastly, ensure that Chapin and Seatec are paid the amount due by reason of Signature's failure to pay its Chapin Claim obligation which totals \$1,265,054.63, inclusive of attorney fees and costs as of August 17, 2021.

In the event of a Signature's Default in the payment of the Chapin balance due plus interest at 10% from August 18, 2021, after USB's payment of \$300,000.00, the principal balance of the USB guarantee will be retired as provided in the agreement and the principal payment schedule in the last column below.

Lots Sold	Amount Signature Owes on Principal*	Amount Signature Owes on Principal	Amount USB Owes on Principal*
0 and prior to \$300k initial payment by USB	\$1,265,054.63	No Payments Made	\$975,409.75
0	\$965,054.63		\$675,409.75
1	\$827,189.68		\$578,922.64
2	\$689,324.73		\$482,435.53
3	\$551,459.78		\$385,948.42
4	\$413,594.83		\$289,461.31
5	\$275,729.88		\$192,974.20
6	\$137,864.93		\$96,487.09
7	\$0	\$289,644.88**	\$0

* Payments made on principal will be made per lot, in the amounts specified in this Agreement, with interest in the amount of 10% per annum on the entire balance due allocated to each payment, accruing from August 18, 2021 upon the release of the first lot, and accruing from the previous payment of the entire balance due for the remaining lots.

** This sum is the potential principal balance due if no Signature payments are made and represents the difference between the USB guaranteed amount and the Signature balance after the application of the initial USB payment of \$300,000.00.

This balance accrues interest from August 18, 2021, at 10% per annum until paid in full and is secured by Lots 3 and 4, which may be foreclosed on if the balance together with the accrued interest is not paid on or after December 31, 2023.