

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between the following, hereinafter collectively known as the “Parties” on this ____ day of _____, 2024:

1. City of Columbus, Ohio, Department of Public Service and the Columbus City Attorney (the “City”);
2. Nickolas M. Savko & Sons, Inc. (“Savko”)

This Agreement shall become effective immediately upon the City’s execution of it.

RECITALS

WHEREAS, on January 3, 2019, the City, through its Department of Public Service, issued final approval for plans for the Shannon Green subdivision, Section 1, Parts 1 and 2 (collectively, for purposes of this Agreement, Section 1, Parts 1 and 2 shall be known as the “Shannon Green Project”); and

WHEREAS, on or about April 17, 2019, two construction agreements were entered into between D.R. Horton-Indiana LLC dba Westport Homes (“D.R. Horton”) and the City; and

WHEREAS, the first construction agreement, Construction Agreement No. 2686, was for the construction of Shannon Green Section 1, Part 1, and D.R. Horton’s surety, Westchester Fire Insurance Company (“Westchester”) issued a performance bond in the amount of \$1,013,041.00 to guarantee the construction of Section 1, Part 1; and

WHEREAS, the second construction agreement, Construction Agreement No. 2687, was for the construction of Shannon Green Section 1, Part 2, and D.R. Horton’s surety, Westchester, issued a performance bond in the amount of \$267,006.00 to guarantee the construction of Section 1, Part 2; and

WHEREAS, during the construction of the Shannon Green Project, Savko, D.R. Horton’s general contractor, proposed to use Roller Compacted Concrete (“RCC”) rather than asphalt, as contemplated by the Construction Agreements; and

WHEREAS, the City approved Savko’s proposal to use RCC on the Shannon Green Project; and

WHEREAS, upon such approval by the City, Savko became subject to the then-existing City Construction and Materials Specifications (“CMS”) governing RCC; and

WHEREAS, Savko installed RCC pavement in the Shannon Green Project; and

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WHEREAS, in September 2019 and October 2019, the City performed core sampling of the pavement that Savko installed in the Shannon Green Project, in accordance with the CMS governing RCC; and

WHEREAS, two sections of pavement failed the RCC core sampling requirements; and

WHEREAS, the first of those two sections was located on Bamberg Drive in Shannon Green Section 1, Part 1, at the north lane of Bamberg Drive from stations 1+50 to 2+50 and at the south lane of Bamberg Drive from stations 1+95 to 2+50 (the “Bamberg Pavement”); and

WHEREAS, the second of those two sections was located on Tarboro Place in Shannon Green Section 1, Part 2, at the east lane of Tarboro Place from stations 5+25 to 7+75 (“East Tarboro Pavement”) and at the west lane of Tarboro Place from stations 5+25 to 6+75 (“West Tarboro Pavement”); and

WHEREAS, the City has prepared a Street Punch List for Construction Agreement Nos. 2868 (“Street Punch List”), which are required to be fulfilled prior to acceptance of the streets within the Shannon Green Project separate and apart from the core sampling deficiencies associated with the Bamberg Pavement, East Tarboro Pavement, and West Tarboro Pavement, and which Street Punch List is incorporated herein by reference as Exhibit A; and

WHEREAS, a dispute has arisen between the City and Savko regarding the appropriate remedy for the Bamberg Pavement, East Tarboro Pavement, and West Tarboro Pavement (“Dispute”); and

WHEREAS, the Parties have reached an agreement as to the appropriate resolution surrounding the Bamberg Pavement, East Tarboro Pavement, and West Tarboro Pavement; and

WHEREAS, it is the intention of the Parties to fully and finally resolve any and all disagreement between them with regard to any and all claims, damages, potential causes of action, and demands related to the Dispute, and to release any and all claims, damages, potential causes of action, and demands, both known and unknown, which are related to the Dispute and could be brought, which have arisen or which may arise as a result of any claims, damages, potential causes of action, and demands related to the Dispute; and

WHEREAS, the Parties acknowledge and understand that nothing in this Agreement is to be construed as an admission of liability on the part of any other party, their respective agents, employees, executors, administrators, successors, assigns, and insurers, and that nothing in this Agreement shall be used as an admission of fault with regards to any and all claims, damages, potential causes of action, and demands related to the Dispute, or any potential future claims, damages, potential causes of action, and demands related to the Dispute, and that the Parties expressly deny any liability; and

WHEREAS, the Parties acknowledge that they are entering into this Agreement voluntarily and after consultation with counsel for the purpose of compromising all claims that were alleged or could have been alleged related to the Dispute and avoiding the risk and additional costs and expenses of further negotiation or potential litigation; and

NOW, THEREFORE, in consideration of the promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement agree to be legally bound to the following terms and conditions, including the above Recitals:

1. **PARTIES.** This Agreement is entered into and on behalf of, and shall extend to the above listed Parties, and their past, present, and future agents, representatives, attorneys, insurers, lien holders, predecessors, successors, heirs, executors, officers, board members, directors, members, managers, employees, servants, stockholders, affiliates, parents, subsidiaries, partners, subrogees, and assigns, and all others acting by, through, or in concert with any of the foregoing.
2. **CONSIDERATION: SAVKO PROVISION OF WEST TARBORO PAVEMENT MAINTENANCE SECURITY.** For and in consideration of the covenants, promises, and releases set forth in this Agreement, Savko agrees to provide maintenance security for the West Tarboro Pavement, until and including September 10, 2029 (“Warranty Period”), on a form acceptable to the Director of Public Service and Columbus City Attorney (“Maintenance Security”). The parties intend that the Maintenance Security will take the form of a corporate guarantee letter, which shall provide for the guarantee that, during the Warranty Period, Savko will be responsible for the entire cost of replacement of the West Tarboro Pavement, or part thereof, if the West Tarboro Pavement fails or has a defect that requires replacement. The City will, in its reasonable discretion, decide whether any particular defect in the West Tarboro Pavement warrants the use of the Maintenance Security to remedy the defect.
3. **END OF WARRANTY PERIOD.** At the end of the Warranty Period for the West Tarboro Pavement, the City agrees to send written correspondence to Savko acknowledging termination of the Warranty Period described in Section 2 and, if applicable, returning the Maintenance Security to Savko.
4. **CONSIDERATION: SAVKO COMPLETION OF STREET PUNCH LIST.** For and in consideration of the covenants, promises, and releases set forth in this Agreement, Savko agrees to fulfill, or cause to be fulfilled, the items on the Street Punch List, incorporated herein as Exhibit A to this Agreement.
5. **CONSIDERATION: CITY ACCEPTANCE OF WEST TARBORO PAVEMENT, BAMBERG PAVEMENT, EAST TARBORO PAVEMENT, AND SHANNON GREEN PROJECT.** For and in consideration of the covenants, promises, and releases set forth in this Agreement, the City agrees to accept the West Tarboro Pavement, Bamberg Pavement, East Tarboro Pavement, and all other streets within the Shannon Green Project, as defined in this Agreement, upon formal approval of this Agreement by Columbus City Council; execution of this Agreement; Savko’s completion of the obligations described in Sections 2, 3, and 4 of this Agreement; completion of all final inspection requirements of all City departments and agencies, including the Department of Public Utilities; and the

adoption of an ordinance by Columbus City Council for the acceptance of the Shannon Green Project, which ordinance will be initiated within a reasonable time following the satisfaction of all preceding items in this Section .

6. **RELEASE BY CITY.** City, for itself and its agents, administrators, successors and assigns, hereby releases and forever discharges Savko and Savko's past, present, and future parents, subsidiaries, attorneys, predecessors, successors, affiliated persons or entities, independent contractors, subcontractors, agents, administrators, representatives, heirs, assigns, officers, directors, members, managers, employees, servants, stockholders, and insurers, administrators, and risk managers from any and all liability, claims, demands, controversies, damages, actions and causes of action of any kind including, without limitation, all claims related to the Dispute and all claims that could have been alleged in the Dispute related to the Dispute. It is expressly understood and agreed that this Agreement is intended to cover and does cover not only known injuries and damages, but any further injuries and damages not known or anticipated which may later occur or be discovered, including all the effects and consequences thereof, provided that they arise from any act, omission, or occurrence related to the allegations at issue in the Dispute and occurring prior to the execution of this Agreement. The Parties agree that the City's release, as reflected in this Section, shall extend only to the allegations at issue in the Dispute and occurring prior to the execution of this Agreement. In no event shall this Agreement be interpreted as the City's release of Savko in potential future contractual disputes, which, should such disputes arise, must be resolved by separate agreement of the Parties.
7. **COSTS.** The Parties shall each be responsible for their own expenses, fees, and costs, including attorneys' fees, which each of the Parties have incurred and may continue to incur as the result of the controversy that is the subject of this Agreement and which each of the Parties may incur in the enforcement of this Agreement.
8. **BINDING NATURE OF AGREEMENT.** This Agreement shall be binding upon the Parties and their past, present, and future parents, subsidiaries, predecessors, successors, affiliated persons or entities, agents, executors, administrators, representatives, heirs, assigns, officers, directors, members, managers, employees, servants, stockholders, and insurers.
9. **NO ADMISSION OF LIABILITY.** The Parties understand and hereby agree that this Agreement is a compromise of the Dispute, and that entry into this Agreement, the terms of this Agreement, any documents executed and delivered incident to this Agreement, and any action taken in furtherance of this Agreement do not constitute and will not be deemed or constituted as an admission of liability or wrongdoing, or of any position whatsoever, in any respect, by the Parties, and that liability or wrongdoing is expressly denied by the Parties.
10. **GENERAL TERMS.** The Parties represent and affirm that the only consideration for this Agreement and execution are the terms stated above; that no other promise or agreement of any kind has been made to or with them by any persons or entity to cause them to execute this Agreement, other than those specified in this Agreement; that no other promise or

agreement shall be involved or claimed and that it fully understands the meaning and intent of the Agreement, including, but not limited to, its final and binding effect. The Parties agree to cooperate in the preparation, filing, and execution of any and all necessary documents for purposes of final disposition consistent with this Agreement. Finally, the Parties further acknowledge that they have been advised and represented by counsel concerning and before executing this Agreement, or that they were given the opportunity to do so, that they have carefully read and fully understand all of the provisions of this Agreement, and that the execution of this Agreement is a knowing and voluntary act of the Parties.

11. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the Parties and may not be modified except in writing.
12. **EXPRESS DISCLAIMER OF RELIANCE.** The Parties expressly disclaim any reliance of any kind or nature, whether in negotiations or otherwise, on statements, actions, or omissions of any kind made or allegedly made by any of the Parties or their attorneys and agents, regarding the facts of the Dispute, any other facts pertinent to this Agreement, or the contents and legal consequences of this Agreement.
13. **COUNTERPARTS.** This Agreement may be executed in counterparts. Copies of this Agreement shall have the same force and effect as the original.
14. **SEVERABILITY.** If any of the provisions, terms, or clauses of this Agreement are declared illegal, unenforceable, or ineffective in any legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Agreement shall remain valid and binding on the parties.
15. **TRUE PARTIES IN INTEREST.** As a material inducement to the execution of this Agreement, the Parties represent and warrant that they are the true parties in interest to its claims and have not transferred or assigned the claims or any part thereof to any third party or entity and that no other person or entity has any right, title, or interest in or to the claims or any part thereof. The Parties also represent and warrant that they are not aware of any other individuals, entities, third-party claims, subrogation interests, investors, government entities, contractors, ventures, or companies that may have a claim, demand, third-party claim, action, judgment, lien, cost, subrogation interest, cause of action, interest, claim for pre- or post-settlement interest, or suit in law or equity related to, directly or indirectly, the allegations related to the Dispute. The Parties represent, warrant, and covenant that they have the right and authority to execute this Agreement.
16. **INTERPRETATION AND CONSTRUCTION.** The Parties represent and agree that they have had the opportunity to fully and equally participate in the preparation, negotiation, review, and approval of this Agreement.
17. **CHOICE OF LAW.** This Agreement shall be governed by the laws of the State of Ohio.

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18. **CITY COUNCIL AUTHORIZATION.** The Parties acknowledge and agree that this Agreement shall not become effective until formally approved via legislation approved by Columbus City Council. Savko may rely upon the City's execution of this Agreement and approval as to form by the City Attorney as evidence that this Agreement has been formally authorized by Columbus City Council.

THE UNDERSIGNED STATE THAT THEY HAVE CAREFULLY READ THE FOREGOING AND UNDERSTAND THE CONTENTS AND THAT THEY EXECUTE THE SAME AS THEIR OWN FREE AND VOLUNTARY ACT.

[Signature Pages Follow]

Draft Dated: February 26, 2024

**CAUTION – THIS IS A BINDING CONTRACT.
READ BEFORE SIGNING.**

IN WITNESS WHEREOF, Nickolas M. Savko & Sons, Inc. has executed this Agreement on the date(s) set forth below:

Authorized Representative for Nickolas M. Savko & Sons, Inc.:

Signature

Printed Name

Title

Sworn to and subscribed to in my presence on _____, _____ 2024.

NOTARY PUBLIC

My commission expires: _____

Draft Dated: February 26, 2024

**CAUTION – THIS IS A BINDING CONTRACT.
READ BEFORE SIGNING.**

IN WITNESS WHEREOF, the City of Columbus, Ohio has executed this Agreement on the date(s) set forth below:

Authorized Representative for the City of Columbus, Ohio:

Signature

Printed Name

Title

Sworn to and subscribed to in my presence on _____, _____ 2024.

NOTARY PUBLIC

My commission expires: _____

Authorized by Ordinance
_____-2024

Zach M. Klein
Columbus City Attorney

Date