

## **SETTLEMENT AGREEMENT**

This is a Settlement Agreement (the "Agreement") by and between Broward County, a political subdivision of the State of Florida (the "County"), Grace & Naeem Uddin, Inc., a Florida corporation ("GNU"), and Arch Insurance Company, a Missouri corporation ("Arch") (collectively, the "Parties") (individually, a "Party").

### **Recitals**

- A. GNU and the County entered into an agreement on June 15, 2010 (the "Construction Contract"), for Terminal 3 Security Checkpoint Expansion construction improvements at the Fort Lauderdale-Hollywood International Airport (the "Project").
- B. Arch, as surety, issued Payment and Performance Bonds (the "Bonds") in favor of GNU as principal on the Project.
- C. Disputes arose between County and GNU, leading the County to terminate the Construction Contract and make a claim under Arch's Bonds.
- D. GNU filed a complaint in the 17<sup>th</sup> Judicial Circuit (Case No. 13-013834 (2)) against the County for breach of contract, delay damages, and unpaid additional work in connection with the Project (the "Lawsuit").
- E. The County filed an amended counterclaim against GNU, alleging GNU breached the County's False Claims Ordinance and breached the contract.
- F. The County filed a third-party claim against Arch.
- G. The Parties have engaged in considerable negotiations and discussions in an effort to amicably resolve all claims and matters that both the County and GNU have raised arising out of, or relating to, work associated with the Project.
- H. The Parties desire to reduce their negotiations and discussions to writing so that it is binding upon them.

NOW, THEREFORE, in consideration of the foregoing representations and mutual covenants, promises, and considerations hereinafter set forth, and with the intent to be legally bound, it is hereby agreed between the Parties as follows:

1. **Representations:** The foregoing recitals are true and correct and by this reference thereto are incorporated herein and made a part hereof.
2. **Terms of Settlement:** The Parties to this Agreement do hereby covenant and agree as follows:
  - A. The County shall pay Two Hundred Fifty Thousand Dollars (\$250,000) ("Settlement Payment") to GNU, in full and final settlement of all matters addressed by this Agreement, within 30 days from the date the County Board of County Commissioners (the "Board") approves this Agreement. The Settlement Payment shall be made to Elder & Lewis, P.A.
  - B. The Settlement Payment constitutes full and final settlement of GNU's claim for damages, attorneys' fees, costs, and interest with respect to any and all claims brought against the County or that may have been brought against the County related to the Project. The Settlement Payment represents only payment for retainage withheld from GNU by the County on the Project plus compromised interest on the retainage. The settlement shall also represent the full and final release, waiver, and discharge of the County's claims under the Arch Bonds. The Parties shall bear their own respective attorneys' fees and costs expended in litigating and resolving this matter, and in any way related to the Lawsuit, except as specifically reserved as between Arch and GNU as set forth below.
  - C. The only condition to the binding effect of this Agreement is Board approval. County will use best efforts to seek approval of this Agreement on or before the September 8, 2022 Board meeting. Should the Board not approve this Agreement, the terms and conditions hereof shall automatically become null and void and shall have no binding effect upon the Parties, and this Agreement or drafts thereof shall not be admissible nor used in future litigation.
  - D. As part of the settlement, GNU and the County waive any and all disputes arising from or relating to the Project; provided however, that this Agreement shall not affect any warranties, warranty obligations, or any other obligations that extend beyond the Construction Contract final completion date including, but not limited to claims for latent defects, if any.
  - E. The County and Arch waive any and all disputes arising from or relating to the Project.
  - F. The County shall not take any proceedings, formal or otherwise, to debar GNU based on actions relating to the Project.

- G. Upon payment of the Settlement Payment in full, the Parties shall file a joint stipulation of dismissal of all their claims with prejudice, including GNU's claims, the County's counterclaims and third-party claim, all filed in the Lawsuit.
- H. The Parties shall each bear their own attorneys' fees and costs relating to the Lawsuit, except as specifically reserved as between Arch and GNU as set forth below.
3. **Mutual Final Releases as to County and GNU:** County and GNU respectively release, waive, and discharge each other from any and all claims, counterclaims, third-party claims, demands, damages, sums of money, litigation costs, causes of action, actions, and losses of every kind and nature, whether known or unknown, arising out of or related to the Project, except as specifically reserved below. County and GNU further expressly covenant, promise, and agree, for themselves and their respective successors and assigns, that they shall be and are hereby forever barred and permanently enjoined from asserting any and all claims, supplemental claims, causes of action, subrogation rights, or damages arising from or relating to the Project. Provided however, that this Agreement shall not affect any warranties, warranty obligations, or any other obligations that extend beyond the Construction Contract final completion date including, but not limited to, claims for latent defects, if any. GNU specifically reserves all rights to pursue its claims against Singer Architects or Singer Architect's successors in this consolidated action with the exception of the claim for retainage including interest on that retainage.
4. **Mutual Final Releases as to County and Arch:** County and Arch respectively release, waive, and discharge each other from any and all claims, counterclaims, third-party claims, demands, damages, sums of money, litigation costs, causes of action, actions, and losses of every kind and nature, whether known or unknown, arising out of or related to the Construction Contract, the Bond, the Project, or the Lawsuit. County and Arch further expressly covenant, promise, and agree, for themselves and their respective successors, and assigns, agents, representatives, that they shall be and are hereby forever barred and permanently enjoined from asserting any and all claims, supplemental claims, causes of action, subrogation rights, or damages arising from or relating to the Construction Contract, the Bonds, the Project and the Lawsuit. This Release shall constitute the full and final discharge of the Bonds by County, rendering same null and void and of no further force and effect. This Release is intended to be construed as broadly as possible as it relates to the Bonds, and nothing in this Agreement is intended to limit the generality of this Release. Arch specifically reserves all rights against GNU and its personal indemnitors as set forth below.

4. **Default:** In the event of a default of any of the covenants and conditions set forth herein that is not cured by the defaulting Party within fifteen (15) business days after written notice from a non-defaulting Party, the non-defaulting Party shall have the right to seek Court enforcement of this Agreement.
5. **Binding Effect:** The undersigned represent that they have been empowered by the respective Party to enter into, on behalf of the Party, and to bind the Party to, the commitments and undertakings contained herein. The provisions, conditions, terms, and covenants contained herein shall be of a binding effect (subject to Board approval as referenced above). The benefits and advantages hereof shall inure to the respective Parties, and the respective successors, assigns, agents, trustees, receivers, and representatives of the Parties hereto.
6. **Full Disclosure:** The Parties acknowledge and agree that each is releasing certain rights and assuming certain duties and obligations which, but for this Agreement, would not have been released or assumed. Accordingly, the Parties agree that this Agreement is fully and adequately supported by consideration and is fair and reasonable, that the Parties have had the opportunity to consult with and have in fact consulted with such experts of their choice as they may have desired, and that they have had the opportunity to discuss this matter with counsel of their choice.
7. **Venue:** The Parties acknowledge and agree that this Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each Party hereby waives any rights it may have to a trial by jury of any such litigation.
8. **Merger:** This document incorporates, includes, and supersedes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior or contemporaneous representations or agreements whether oral or written.
9. **Joint Preparation:** The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete

understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one Party than another Party.

10. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.
11. **Captions:** The captions of the sections of this Agreement are for convenient reference only, and shall not affect the construction or interpretation of any of the terms and provisions set forth herein.
12. **Further Assurance:** The Parties agree to execute all such further instruments, and to take all such further actions that may be reasonably required by any Party, to fully effectuate the terms and provisions of this Agreement and the transactions contemplated herein.
13. **Modification:** No change or modification of this Agreement shall be valid unless in writing and signed by all Parties hereto. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the Party against whom it is sought to be enforced.
14. **Survival of Provisions:** All covenants, warranties, and representations contained in this Agreement, and all documents to be delivered by the Parties in connection with the consummation of the transaction contained herein, shall survive the consummation of said transaction.
15. **Arch's Reservation of Rights as to GNU and its Indemnitors:** Nothing in this Agreement shall constitute a waiver, release, estoppel, or modification of any rights, claims, and/or defenses, at law or in equity, available to Arch against GNU and/or its indemnitors under contract, by statute or at common law. All such rights, claims and/or defenses are expressly reserved; however, GNU and Arch do not reserve any rights or claims against the County.

[This space is intentionally left blank.]

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: Broward County through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_\_ day \_\_\_\_\_, 2022, Grace and Naeem Uddin, Inc., signing by and through its \_\_\_\_\_, duly authorized to execute same, and Arch Insurance Company, signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor

\_\_\_\_\_ day of \_\_\_\_\_, 2022.

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By: **Michael Kerr** Digitally signed by Michael Kerr  
Date: 2022.08.03 14:33:57 -04'00'

Michael J. Kerr                      Date  
Deputy County Attorney

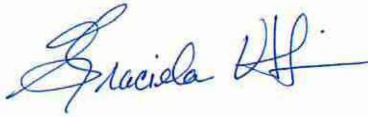
Alexander J. Williams, Senior Digitally signed by Alexander J.  
Williams, Senior Assistant County Atty  
Date: 2022.08.03 14:27:10 -04'00'  
Assistant County Atty

By: \_\_\_\_\_  
Alexander J. Williams                      Date  
Senior Assistant County Attorney

SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY, GRACE AND NAEEM UDDIN, INC.,  
AND ARCH INSURANCE COMPANY

CONTRACTOR

ATTEST:



\_\_\_\_\_  
(Secretary)

(Corporate Seal)



Grace and Naeem Uddin, Inc.



By \_\_\_\_\_  
(Signature)

NAEEM UDDIN, VP

\_\_\_\_\_  
(Type Name & Title Signed Above)

28<sup>TH</sup> day of JULY, 2022.

SETTLEMENT AGREEMENT BETWEEN BROWARD COUNTY, GRACE AND NAEEM UDDIN, INC.,  
AND ARCH INSURANCE COMPANY

SURETY

ATTEST:

Arch Insurance Company

\_\_\_\_\_  
(Secretary)

By

  
(Signature)

Peter Apostolakis, Senior Claims Examiner  
(Type Name & Title Signed Above)

2<sup>nd</sup> day of August, 2022.

