

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
NANCY J. SHERMAN,

Plaintiff,

and

LAROE ESTATES, INC.,

Plaintiff-Intervenor,

-against-

TOWN OF CHESTER,

Defendant.  
-----X

**SETTLEMENT, RELEASE,  
AND WITHDRAWAL  
AGREEMENT**

Docket No. 12-cv-00647 (ER)

WHEREAS, Steven M. Sherman filed this action which, following his death, has been prosecuted by Nancy J. Sherman, on behalf of the Estate of Steven M. Sherman; and

WHEREAS, the Estate of Steven M. Sherman has asserted various claims against the Town of Chester, including claims under 42 U.S.C. § 1983 for Takings under the Fifth Amendment, for reprisal for exercising rights under the First Amendment, and other claims under federal and state law that have been dismissed by the Court; and

WHEREAS, Laroe Estates, Inc. was granted permission to intervene in this action as a Plaintiff-Intervenor for limited purposes related to Sherman's Takings claim; and

WHEREAS, all parties to this action desire to resolve and settle all claims and potential claims in this case, without having to incur any further time, expense and cost of litigation, and without admission of any liability;

**THE PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:**

1. This Settlement, Release, and Withdrawal Agreement ("Agreement") is intended to bind Nancy Sherman, individually, and the Estate of Steven M. Sherman, its heirs, executors,

administrators, attorneys, successors, assigns, agents and representatives (collectively "Sherman"); Laroe Estates, Inc., its officers, directors, trustees, administrators, attorneys, successors, assigns, agents, and representatives (collectively "Laroe"); the Town of Chester "Chester"); and the Town of Chester's insurance companies, Selective Insurance Company of New York and Selective Way Insurance Company (collectively "Selective").

2. This Agreement is intended to settle any and all disputes between and among Sherman, Laroe, Chester and Selective, without any admission of liability or damages.

3. In consideration for the releases, representations, and obligations set forth below, Chester and Selective agree to pay the total amount of Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00), in the following payments made to the "Estate of Steven M. Sherman," without any interest, fees or costs:

- a. One payment from Selective Insurance Company of New York in the total amount of One Million Dollars (\$1,000,000.00); and
- b. One payment from Selective Way Insurance Company in the total amount of One Million Dollars (\$1,000,000.00); and
- c. One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) from Chester to be paid in semi-annual payments of Eighty-Seven Thousand Five Hundred Dollars (\$87,500.00) in accordance with the terms of a duly executed Promissory Note. The first such payment shall be made within thirty (30) days after execution of this Agreement by all parties. Thereafter, payments shall be made on or before March 1 and September 1 of each year until fully paid. Upon completion of Chester's payment obligations, Sherman and Laroe shall provide written confirmation of same to Chester.

administrators, attorneys, successors, assigns, agents and representatives (collectively "Sherman"); Laroe Estates, Inc., its officers, directors, trustees, administrators, attorneys, successors, assigns, agents, and representatives (collectively "Laroe"); the Town of Chester "Chester"); and the Town of Chester's insurance companies, Selective Insurance Company of New York and Selective Way Insurance Company (collectively "Selective").

2. This Agreement is intended to settle any and all disputes between and among Sherman, Laroe, Chester and Selective, without any admission of liability or damages.

3. In consideration for the releases, representations, and obligations set forth below, Chester and Selective agree to pay the total amount of Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00), in the following payments made to the "Estate of Steven M. Sherman," without any interest, fees or costs:

- a. One payment from Selective Insurance Company of New York in the total amount of One Million Dollars (\$1,000,000.00); and
- b. One payment from Selective Way Insurance Company in the total amount of One Million Dollars (\$1,000,000.00); and
- c. One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) from Chester to be paid in semi-annual payments of Eighty-Seven Thousand Five Hundred Dollars (\$87,500.00) in accordance with the terms of a duly executed Promissory Note. The first such payment shall be made within thirty (30) days after execution of this Agreement by all parties. Thereafter, payments shall be made on or before March 1 and September 1 of each year until fully paid. Upon completion of Chester's payment obligations, Sherman and Laroe shall provide written confirmation of same to Chester.



4. The payments in this Agreement are inclusive of any claim for attorneys' fees, costs, and interest, and neither Sherman nor Laroe shall, by virtue of this settlement or otherwise, seek any additional payments for attorneys' fees, costs, or interest. Sherman and Laroe shall be solely responsible for the payment of all taxes owed by them on account of these payments. Laroe hereby confirms that no part of this settlement does or shall require any payment to Laroe.

5. In exchange for the payments set forth in paragraph 3 above, Sherman and Laroe agree to release and forever discharge Chester, its current and former Town Board and Town Board members, its current and former Planning Board and Planning Board members, and all other boards and board members, officials, officers, directors, administrators, employees, insurers (including Selective, Summit Risk Services, Inc. and each of their affiliated entities), attorneys, assigns, agents, and representatives of the Town of Chester, from any and all debts, obligations, promises, covenants, agreements, contracts, endorsements, bonds, controversies, suits, claims, causes of action, judgments, damages, expenses, claims and demands, whatsoever, in law or in equity, which Sherman or Laroe ever had, now have, or which may arise in the future regarding any matter from the beginning of the world to the date this Agreement is executed by the parties, including, but not limited to, all claims (whether known or unknown) for relief in any form; any and all claims related to the development of property in the Town of Chester (including, but not limited to, any and all claims arising out of Plaintiff's development of the property referred to in the pleadings as "Marebrook" and "Chester Golf"); any and all claims for economic damages, lost market value, and lost profits; any and all claims for equitable relief; and any and all claims for compensatory, punitive, liquidated, and other damages or monies, arising from any and all actions whatsoever; any other claim, asserted or unasserted, under the United States Constitution and all of its Amendments, the United States Code, including but not limited to 42 U.S.C. §§ 1981, 1983, 1985, and 1988; any and all claims for violations of equal protection and due process; any and all

claims under the First Amendment; any and all claims of unconstitutional Takings; any and all claims asserting discrimination; any and all claims asserting violations of the Commerce Clause and dormant Commerce Clause; any and all claims under the New York State Constitution; any and all claims under New York State law; any and all claims actionable under Article 78 of the CPLR; any and all claims under federal and state common law; and any and all other federal, state and local laws, regulations and ordinances.

6. Sherman and Laroe specifically agree to withdraw, discontinue, and dismiss, with prejudice, the action pending in the United States District Court for the Southern District of New York entitled *Sherman, et al. v. Town of Chester, et al.*, under docket number 12 Civ. 647 (ER) (GWG). Upon execution of this agreement, the parties shall immediately execute and file with the Court a Stipulation of Dismissal with Prejudice, discontinuing and dismissing this lawsuit in its entirety, with prejudice.

7. In conjunction with the related insurance coverage action pending in the Supreme Court of the State of New York, County of Orange, entitled *Selective Insurance Company of New York v. Town of Chester, et al.*, bearing Index No. EF002900-2019, and the appeal pending in the Appellate Division, Second Department, bearing Appeal No. 2021-02279 (“Coverage Action”), Selective, Sherman, Laroe, and Chester hereby release and agree to the dismissal with prejudice of any and all claims, counterclaims, crossclaims, declaratory relief, attorneys’ fees and costs that were filed or could have been filed against any other party in the Coverage Action, and to withdraw any and all submissions to the Second Department on the appeal. Sherman, Laroe and Chester hereby affirm that the consideration described in this Agreement is all that any of them shall ever receive from Selective as a result of, arising out of, or in connection with the Selective insurance policies at issue in the Coverage Action relating to Sherman and Laroe’s claims released in paragraph 5 above, and any and all claims, counterclaims, defenses, indemnification, insurance



coverage, claims of bad faith (statutory or otherwise), claims regarding the handling of the insurance claims, declaratory relief, attorneys' fees or costs that were or could have been asserted in the Coverage Action. The parties to this Agreement agree that they will not seek anything further from Selective, including any future payment, as a result of, arising out of, or in connection with the Selective policies at issue in the Coverage Action, the claims released in paragraph 5 above, and any and all claims, counterclaims, defenses, indemnification, insurance coverage, claims of bad faith (statutory or otherwise), claims regarding the handling of the insurance claims, declaratory relief, attorneys' fees or costs that were or could have been asserted in the Coverage Action. Notwithstanding anything in this Agreement, Selective shall continue to pay any reasonable and necessary defense costs incurred by Chester for the defense of the federal action described in paragraph 6 above until Selective closes its files in this matter. Nothing in this Agreement shall waive any rights by Chester to coverage from Selective regarding any matters other than those described in paragraphs 6 and 7 subject to all applicable terms, conditions, provisions and exclusions contained in any relevant Selective policy. Upon full execution of this Agreement and the dismissal with prejudice of the federal court action by and between Sherman, Laroe and Chester, Selective shall discontinue the Coverage Action with prejudice and without costs to any party, and shall withdraw its appeal to the Second Department.

8. The Town represents that this Agreement was approved by a majority of the Town Board at a duly noticed public meeting for which it was listed as an item on the Town Board agenda, and that the Supervisor of the Town of Chester has the authority to execute this Agreement on behalf of the Town.

9. By signing this Agreement, the parties acknowledge and agree that they were fully and fairly represented by counsel in connection with the review, negotiation and signing of this Agreement; they have carefully read and understand the terms of this Agreement, all of which

have been fully explained to them by their counsel; they have signed this Agreement freely and voluntarily and without duress or coercion and with full knowledge of its significance and consequences and of the rights relinquished, surrendered, released and discharged; the only consideration for signing this Agreement are the terms stated within the four corners of this document; that no other promise, agreement, or representation of any kind has been made to them any person or entity whatsoever to cause them to sign this Agreement; and they are not relying on any representation or promise that does not appear in this Agreement.

10. This Agreement, including all facts, circumstances, statements and documents relating hereto, will not be admissible or submitted as evidence in any litigation in any forum for any purpose other than to secure enforcement of the terms and conditions of this Agreement, or as otherwise consistent with the applicable law.

11. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior oral and/or written agreements between them. This Agreement may not be altered, amended or modified except by a further writing signed by all the parties to this Agreement.

12. If any of the provisions, terms or clauses of this Agreement, other than the total amount of compensation, are declared illegal, unenforceable or ineffective in a 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 upon all parties. The failure of either party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of the Agreement.

13. Facsimile or electronically transmitted signatures on this Agreement shall be deemed the equivalent of originals.

14. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the United States of America and State of New York. Any action in law or equity relating to this Agreement shall be commenced in the United States District Court for the Southern District of New York or the Supreme Court of the State of New York, County of Orange. Should an action be commenced with respect to this agreement or the Note executed in accordance with this agreement, the prevailing party shall be entitled to recover its attorney's fees.

15. By signing this Agreement, the parties indicated hereunder agree to and accept the provisions contained herein.

Dated: Carle Place, New York  
October \_\_\_\_, 2022

\_\_\_\_\_  
NANCY SHERMAN, INDIVIDUALLY,  
AND ON BEHALF OF  
THE ESTATE OF STEVEN M. SHERMAN

\_\_\_\_\_  
DATE

STATE OF Vermont  
COUNTY OF Rutland

On the \_\_\_\_ day of October in the year 2022, before me, the undersigned, personally appeared NANCY SHERMAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument

\_\_\_\_\_  
NOTARY PUBLIC



\_\_\_\_\_  
LAROE ESTATES, INC.  
BY: YOSEF HERSKOWITZ, PRESIDENT

\_\_\_\_\_  
DATE

STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of October in the year 2022, before me, the undersigned, personally appeared Yosef Herskowitz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
TOWN OF CHESTER  
BY: ROBERT VALENTINE, SUPERVISOR

\_\_\_\_\_  
DATE

STATE OF NEW YORK  
COUNTY OF ORANGE

On the \_\_\_\_ day of October in the year 2022, before me, the undersigned, personally appeared ROBERT VALENTINE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
SELECTIVE INSURANCE COMPANY  
OF NEW YORK

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_ (AUTHORIZED REPRESENTATIVE)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of October in the year 2022, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
SELECTIVE WAY INSURANCE COMPANY

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_ (AUTHORIZED REPRESENTATIVE)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of October in the year 2022, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument

\_\_\_\_\_  
NOTARY PUBLIC

## PROMISSORY NOTE

October \_\_\_\_, 2022

\$1,750,000.00

For value received, the Town of Chester, New York, having an office at Town Hall, 1786 Kings Highway, Chester, New York 10918 ("Payer"), promises to pay to the order of the Estate of Steven M. Sherman the sum of One Million, Seven Hundred Fifty Thousand and 00/100 (\$1,750,000.00) Dollars c/o Norton & Christensen, 60 Erie Street, Goshen, New York 10924 ("Payee"), without interest.

Payments shall be due hereunder as follows:

November 1, 2022	\$87,500
March 1, 2023	\$87,500
September 1, 2023	\$87,500
March 1, 2024	\$87,500
September 1, 2024	\$87,500
March 1, 2025	\$87,500
September 1, 2025	\$87,500
March 1, 2026	\$87,500
September 1, 2026	\$87,500
March 1, 2027	\$87,500
September 1, 2027	\$87,500
March 1, 2028	\$87,500
September 1, 2028	\$87,500
March 1, 2029	\$87,500
September 1, 2029	\$87,500
March 1, 2030	\$87,500
September 1, 2030	\$87,500
March 1, 2031	\$87,500
September 1, 2031	\$87,500
March 1, 2032	<u>\$87,500</u>
	\$1,750,000

All payments shall be made via check delivered by mail to Payee at the address set forth above. If any payment or action to be made or taken herein shall be or become due on a Saturday, Sunday or on any legal holiday in the State of New York, such payment or action shall be taken or become due on the next succeeding business day.

This Note has been issued pursuant to the terms of a Settlement, Release, and Withdrawal Agreement resolving litigation and, therefore, this Note is to be effectuated in accordance with the terms of that Agreement.



If any payment is more than ten (10) days late, Payee shall notify Payer of the default in writing, certified mail, return receipt requested, both to the then-sitting Town Supervisor and Town Clerk of the Town of Chester. If Payer fails to remedy the default within sixty (60) days of the written notice, Payee may commence an action for enforcement of the remaining amounts. This Note may be prepaid, at the option of the Payer, in whole or in part without penalty.

Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived.

In the event of default, not cured as provided herein, the Payer shall be liable for Payee's reasonable attorney's fees and costs for collection of this Note, without any entitlement to interest.

Any notice or demand required or permitted to be made or given hereunder shall be deemed sufficiently made and given if given by mailing of such notice or demand by certified or registered mail, return receipt requested, addressed, to the Payer (both Town Supervisor and Town Clerk) and Payee's addresses first above written. Either party may change its address by like notice to the other party.

This Note may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any change, modification, termination, waiver, or discharge is sought. This Note shall be construed and enforced in accordance with the laws of New York.

The Town of Chester

By: Robert Valentine, Supervisor

ATTEST:

[SEAL]

Linda Zappala, Clerk, Town of Chester

STATE OF NEW YORK     )  
COUNTY OF ORANGE    ) SS.:

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert Valentine, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual executed the instrument.

Notary Public