

SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is entered into as of _____, 2021 (the "Effective Date"), by and among FIVE STAR DEVELOPMENT RESORT COMMUNITIES, LLC, an Arizona limited liability company, FIVE STAR RESORT OWNER, LLC, a Delaware limited liability company, FIVE STAR LAND OWNER, LLC, a Delaware limited liability company, FSPV RES C, LLC, a Delaware limited liability company, and such entities' successors and assigns (collectively, "Five Star") and the TOWN OF PARADISE VALLEY, an Arizona municipal corporation. The Town and Five Star may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The Town and Five Star are parties, successors or assigns to that certain Amended and Restated Development Agreement, and Covenant Running with the Land, and Release, dated January 14, 2016 (the "DA").

B. The DA, among other things, apportions the responsibilities between the Town and Five Star with respect to certain public infrastructure improvements to be constructed in part in conjunction with Five Star's project at or near the northeast corner of Mockingbird Lane and Lincoln Drive (the "Project"), including but not limited to jointly paying for improvements to Lincoln Drive, Mockingbird Lane and Indian Bend Road surrounding the Project.

C. The Project includes, among other things, a luxury Resort Hotel, and "Resort Villas" to be developed in conjunction with the Resort Hotel on the site.

D. On or about June 25, 2020, Five Star filed a Complaint against the Town seeking, among other things, a declaratory judgment against the Town relating to various alleged obligations of Five Star under the DA. The Town filed an Answer and Counterclaim seeking a declaratory judgment that Five Star is in material breach of the DA and that Five Star must promptly pay its portion of the Street Improvements. The lawsuit captioned *Five Star Development Resort Communities, LLC v. Town of Paradise Valley, et al.*, pending in the Superior Court of the State of Arizona in and for the County of Maricopa, Case No. CV2020-007381, including all claims filed by Five Star and all counterclaims filed by the Town is referred to herein as the "Lawsuit."

E. It is the desire of the Parties, and each of them, to resolve all existing disputes among them concerning the Lawsuit without further litigation or delay.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties have made this Agreement in order to resolve the disputes among them according to the terms and conditions herein.

1. **Incorporation of Definitions and Recitals.** All of the foregoing Recitals and definitions are incorporated by reference as though set forth fully herein. All words capitalized herein and not otherwise defined shall have the meanings ascribed to them in the DA.

2. **No Admissions of Liability.** As certain claims or disputes may have arisen during the course of the Parties' interactions related to the DA, the Parties understand and agree that this Agreement is a compromise and settlement of any and all disputed claims by the Parties in the Lawsuit, and that nothing in this Agreement shall be construed to be an admission of wrongdoing by any Party or liability of one Party to the another Party.

3. **Cash Payments by Five Star relating to Public Infrastructure Improvements.** In exchange for the settlement and releases contemplated herein and other valuable consideration, the Parties agree that Five Star shall pay the Town the sums set forth in Section 4 below in addition to \$5,070,000, as follows:

3.1 **Credit for Payments Previously Made.** The Parties acknowledge the \$2,270,000 already paid by Five Star towards its contribution for the Street Improvements.

3.2 **Immediate Two Million Dollar Payment.** Immediately after approval of this Agreement by the Mayor and Town Council of the Town (the "Council") and execution by the Town, Five Star shall pay the Town \$2,000,000. This amount shall be funded by Five Star through the cash deposited with the Town and subject to return to Five Star pursuant to DA Section 2.3.2.6.3, but pursuant to this Agreement the \$2,000,000 shall be released to the Town and shall no longer be subject to any refund or return to Five Star. The Town shall be forever released from any obligation to refund any amounts to Five Star pursuant to Section 2.3.2.6.3 of the DA.

3.3 **Additional Cash Payment.** Not later than the date that is five calendar days after approval of this Agreement by the Council and execution by the Town, Five Star shall deposit with the Town, \$800,000 in immediately available funds composed of lawful money of the United States of America (the "Additional Cash Payment"), to be held by the Town in a separate fund for its sole benefit. Five Star shall have no claim to or benefit (other than resolution of the Lawsuit) from the Additional Cash Payment held by the Town. The Additional Cash Payment shall be held by the Town until the sooner to occur of (i) the date that title to all Resort Villas within the Project has been conveyed to buyers thereof, or (ii) March 15, 2022, the occurrence of either of which shall entitle the Town to immediately release the funds to itself without further notice or act of any person or entity.

4. **Offsite Improvements Surcharge Payments.** In exchange for the settlement and releases contemplated herein and other valuable consideration, in addition to the amounts to be paid by Five Star to the Town as set forth in Section 3 above, Five Star shall collect or cause to be collected a surcharge in the amount of \$10.00 per occupied and paid Hotel Key in the Resort Hotel (an "Occupied Hotel Key") per day (the "Surcharge") for a period of years from the Resort Opening Date (the "Surcharge Period"), as set forth more fully in Section 4.2 below.

4.1 Timing of Surcharge Payments. The amount of the Surcharge shall be reported and remitted to the Town at least annually not later than July 15 of each year after the Resort Opening Date, reflecting the total amount of the Surcharge collected in the immediately preceding Payment Year. If the total amount of the Surcharge is not paid within 30 days after it becomes due, such past due amount shall bear interest from the due date at the Default Rate.

4.2 Duration of Surcharge Period. The Surcharge Period shall be no less than six years (the "Minimum Surcharge Period"). At any time after the end of the Minimum Surcharge Period, the obligation to pay the Surcharge shall automatically terminate at the end of the then-applicable full Payment Year during which the cumulative total of 300,000 or more room nights' Surcharge payments have been made to the Town as and when due.

4.3 No Modification of Surcharge Payments. The Parties agree that no amount of the Surcharge shall be subject to offset, proration or refund for any cause or reason whatsoever.

4.4 Covenant Running with the Land. The obligation to pay the amount representing the Surcharge over the Surcharge Period is a covenant running with the land within Area A until paid. Five Star hereby waives any objection to the Surcharge.

4.5 Surcharge Payable through Resort Hotel. Notwithstanding the provisions of this Section 4 to the contrary, the Town acknowledges and agrees that the Surcharge is payable only through imposition of the Surcharge on Occupied Hotel Keys at the Resort Hotel. In the event Five Star does not collect and remit, or cause to be collected and remitted, the Surcharge to the Town as and when due, the land within Area A shall be subject to the continuing obligation to pay the balance of the Surcharge over the remaining Surcharge Period.

4.6 Notice of Surcharge. Following approval and execution of this Agreement, the Town shall record this Agreement in the Maricopa County Recorder's Office as notice of the Surcharge; Five Star consents to such recording as to the area shown as Parcel A on the "Master Final Plat for Amended 7000 East Lincoln – Amended," Book 1344, Page 28, Records of the Maricopa County Recorder, No. 20170713627, recorded September 27, 2017. In addition, Five Star has provided notice of the Surcharge to the current Resort Hotel Manager, and Five Star shall provide written notice of the Surcharge to any subsequent Resort Hotel Manager on or before an agreement is entered into for operation of the Resort Hotel.

5. Matters Resolved with this Agreement. Upon payment of the amounts set forth in Section 3 above, which shall be the only payments made by either party concerning the Lawsuit, and the Parties' agreement to perform the mutual obligations set forth herein, the Parties agree to all of the following:

(i) There are no requests for changes to zoning or entitlements relating to the Property (as defined in the DA) being considered, amended, or approved by the Town in connection with this Agreement, provided that Five Star shall have the right to request such changes in the future outside of this Agreement through typical zoning or entitlement processes.

(ii) Any amounts that Five Star had requested or demanded be refunded, credited, or returned by the Town in its Lawsuit or in its mediation with the Town shall be retained by the Town and are not subject to refund, credit or return.

(iii) Prior to, and as of the date of this Agreement, there are no disputes as to the timing of certificates of occupancy for the Resort Villas and Parcel C homes.

(iv) The Town has met its obligations under Section 2.3.7 of the DA.

(v) All of Five Star's obligations with respect to the management fee under Section 2.3.5.6 of the DA and off-site storm water drainage improvements related to the public streets shown on Exhibit E to the DA have been met.

(vi) There are no disputes among the Parties as to the Resort Payments.

(vii) For plan review and inspections for portions of the Project, or streets adjacent to or serving the Project, located in whole or in part in Scottsdale, Five Star shall pay to the City of Scottsdale its applicable fees for plan review and inspection, and pay to the Town the reasonable hourly rates for the Town staff members who reasonably perform, or have performed, a part of any such review(s). The payments to the Town shall be made by Five Star not later than 30 days from receipt of an invoice from the Town for its services. Failure to make the payments in this subsection within said 30-day period shall be deemed a default, and interest at the Default Rate shall accrue from the due date until paid.

6. General Terms.

6.1 Lawsuit Dismissal. The Parties stipulate and agree that upon the full execution of this Agreement, the Parties shall cause the Lawsuit to be dismissed with prejudice.

6.2 Attorneys' Fees Related to Lawsuit and Preparing Agreement. Each Party shall bear its own costs and attorneys' fees incurred with reference to the Lawsuit and the negotiation and preparation of this Agreement.

6.3 Attorneys' Fees for Dispute Regarding Agreement. In the event either Party hereto employs legal counsel and brings an action at law or other proceedings against any other Party to enforce any of the terms, covenants, or conditions hereof, the Party prevailing in such action or proceeding shall be paid by the other Party all reasonable attorneys' fees and costs, including costs of expert witnesses, incurred by the prevailing Party, and in the event any judgment is secured by such prevailing Party, all such reasonable attorneys' fees shall be included in any such judgment. The amount of reasonable attorneys' fees shall be determined by the court and not by a jury.

6.4 Release of Claims. Upon execution of this Agreement, and in consideration of the mutual covenants and promises contained in this Agreement, dismissal of the Lawsuit, and the other consideration provided by the mutual covenants and releases in this Agreement, the sufficiency of which are hereby acknowledged, the Parties release and forever discharge each

other, together with their predecessors and successors, and, to the maximum extent applicable, their employees, elected officials, appointed officials, affiliates, officers, directors, members, managers, lenders, agents, representatives, attorneys, and all persons who acted on their behalf, of and from any and all liability, claims, demands, and causes of action arising out of the Lawsuit, or any of their actions that were or may have been the subject matter of same. This release includes all unknown claims, matured or unmatured, in addition to the claims of which the Parties are presently aware. Except as specifically set forth herein, this release does not release the Parties or their predecessors or successors from their respective obligations to each other created within this Agreement or the DA.

6.5 Warranties of the Parties. The Parties expressly reaffirm the representations and warranties set forth in Article 4 of the DA as if such representations and warranties were fully set forth herein; such representations shall apply equally to this Agreement as they do to the DA.

6.6 Construction. The terms and provisions of this Agreement represent the results of the negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law that would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement would be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement of any earlier draft of same.

6.7 Section Headings. The section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

6.8 Jurisdiction and Venue. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles) and any suit brought to enforce this Agreement may only be brought in the Superior Court of Arizona, in and for Maricopa County.

6.9 Entire Agreement. With respect to its subject matter, including without limitation, all matters incorporated by reference herein (and specifically including matters referenced from the DA), this Agreement is a complete integration and final expression of the Parties' rights and duties.

6.10 Time is of the Essence. Time is of the essence of this Agreement and each provision hereof.

6.11 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that signatures transmitted by facsimile

or other commercially acceptable electronic means (including but not limited to “PDF”) shall be deemed to be original signatures and fully enforceable.

6.12 No Influence. The Parties agree and acknowledge that no representation of any kind concerning any subject has been made to them by any other Party hereby released or by any agent, representative, or attorney of any such Party, that has in any way influenced the undersigned’s decision to enter into this Agreement, other than as expressly set forth in this Agreement.

6.13 No Third-Party Beneficiaries. This Agreement is entered into for the mutual benefit of the Parties hereto only. Nothing herein shall be construed to be for the benefit of any third party, nor is it intended that any provision shall be for the benefit of, or enforceable by, any third party.

6.14 Waiver. No waiver by either Party of any condition, or the breach of any provision, term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by such Party.

6.15 Termination for Conflicts of Interest. The Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511.

6.16 Public Information Release. The Parties agree to coordinate a mutually-acceptable public information release relating to dismissal of the Lawsuit and the Parties’ ongoing cooperation relating to the DA, which shall be released concurrently with the Council’s approval of this Agreement. The Parties further agree to coordinate any media inquiries related to the public information release.

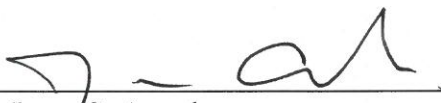
6.17 Effect of Agreement. Except as specifically agreed to herein as settlement and compromise of the Lawsuit, the terms and conditions of the DA remain in full force and effect and are hereby reaffirmed by the Parties.

6.18 Binding Arbitration. Any dispute arising out of or relating to this Agreement shall be resolved by binding arbitration by a sole arbitrator with experience in resolving business disputes. If the Parties cannot agree on an arbitrator within 15 days of written notice from one Party to the other Party, either Party may apply to the Presiding Maricopa County Civil Court Judge to appoint an arbitrator. Any court having jurisdiction thereof may enter judgment upon the award rendered by the arbitrator. The place of arbitration shall be Maricopa County, Arizona. For avoidance of doubt, this paragraph applies only to disputes arising out of this Agreement and not to disputes arising out of the DA or other disputes between the Parties. In addition, this section does not apply to, and does not otherwise prohibit, seeking emergent injunctive relief in either Maricopa County Superior Court or in the United States District Court for the District of Arizona.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

FIVE STAR DEVELOPMENT RESORT COMMUNITIES, LLC,
an Arizona limited liability company

By: 
Jerry/C. Ayoub
Its Manager

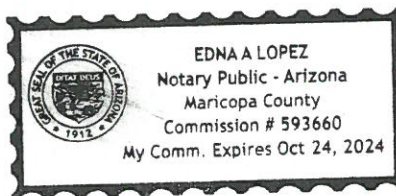
STATE OF ARIZONA)
) ss.
County of Maricopa)

On June 3, 2021, before me personally appeared Jerry C. Ayoub, the Manager of FIVE STAR DEVELOPMENT RESORT COMMUNITIES, LLC, an Arizona limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed this Settlement Agreement on behalf of the limited liability company.


Notary Public


My commission expires:

10-24-2024



[SIGNATURES CONTINUE ON FOLLOWING PAGES]

FIVE STAR RESORT OWNER, LLC,
a Delaware limited liability company

By: 
Jerry C. Ayoub
Its Manager

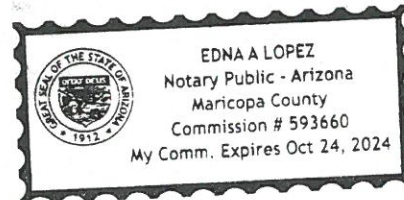
STATE OF ARIZONA)
) ss.
County of Maricopa)

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Notary Public

My commission expires:

10-24-2024



[SIGNATURES CONTINUE ON FOLLOWING PAGES]

FIVE STAR LAND OWNER, LLC,
a Delaware limited liability company

By: [Signature]
Jerry C. Ayoub
Its Manager

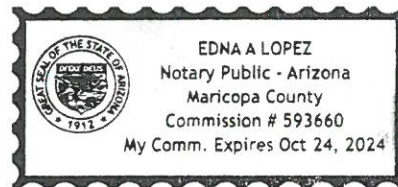
STATE OF ARIZONA)
) ss.
County of Maricopa)

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[Signature]
Notary Public

My commission expires:

10-24-2024



[SIGNATURES CONTINUE ON FOLLOWING PAGES]

FSPV RES C, LLC,
a Delaware limited liability company

By: [Signature]
Jerry C. Ayoub
Its Manager

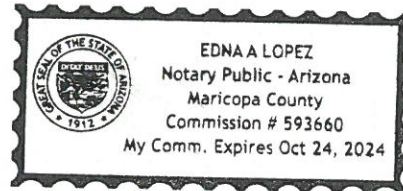
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[Signature]
Notary Public

My commission expires:

10-24-2024



[SIGNATURES CONTINUE ON FOLLOWING PAGES]

TOWN OF PARADISE VALLEY, ARIZONA,
an Arizona municipal corporation

By: _____
Its: Jerald Bien-Willner, Mayor

ATTEST:

By: _____
Duncan Miller, Town Clerk

APPROVED AS TO FORM:

By: _____
Andrew J. McGuire, Town Attorney