

SETTLEMENT AGREEMENT
AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement” or “Settlement Agreement”) is entered into by and between Lone Pine Real Estate, LLC, a Delaware limited liability company (“Lone Pine”), Scott Schorer its sole member (“Schorer”), and Roosevelt Ridge Homeowners Association, a Colorado nonprofit corporation (“Association”) on this 27th day of April, 2021. (Lone Pine Parties and Association are collectively hereafter referred to as the “Parties” or singularly as a “Party”).

WHEREAS, on August 30, 2005, Lone Pine recorded the Declaration of Covenants, Conditions, and Restrictions for Roosevelt Ridge (the “Declaration”) and thereby subjected to the Declaration the real property described therein;

WHEREAS, Section 12.2 of the Declaration reserved the right of Lone Pine, as Declarant under the Declaration (“Declarant”), to annex certain real property into the Association and subject such property to the Declaration;

WHEREAS, the first Association record of any member paying dues on is on September 1, 2006, which amount was prorated for four months (September-December 2006);

WHEREAS, Lone Pine retained ownership of certain Lots annexed into the Association beginning in 2006;

WHEREAS, Schorer as the sole member of Lone Pine, directed and controlled the Association by and through its Board of Directors from 2006 through 2018, exercised Declarant rights as set forth in the Declaration since the creation and formation of the Association including the annexation of lands into the Association boundaries, and incurred costs and expenses for the management of the Association (“Lone Pine Declarant Activities”);

WHEREAS, the Association’s Executive Board permitted the formation of the RRHOA Member Audit Committee to review Association records and determine instances of nonpayment of Assessments, including nonpayment by Lone Pine;

WHEREAS, after applying payments made after December 31, 2019, the Association calculates that the amount of assessment due but not paid by Lone Pine since 2006 is \$35,400.00.

WHEREAS, the Association upon the advice and input of the RRHOA Member Audit Committee contends that Lone Pine has not paid to the Association certain assessments due related to Lots owned by Lone Pine;

WHEREAS, the Colorado Common Interest Ownership Act (“CCOIA”) establishes rules applicable to the Committee, including, but limited to, all regular and special meetings of the Committee must be open to attendance by all members of the Association;

WHEREAS, Lone Pine contends that the Committee has not complied with its obligations under CCIOA, including, but not limited to, the requirement for open meetings upon notice to all members of the HOA and a record thereof in the form of meeting minutes, none of which were adhered to by the Committee or its members;

WHEREAS, Lone Pine’s nonpayment of assessments for Lots 1 and 3 relied upon Section 5.14 of the Declaration provides “Common Assessments of the Association shall commence as to each Lot within the Project Area on the date of Recordation of the first deed conveying the Lot;”

WHEREAS, the Association contends that all owners of “Lots” annexed into the Association were obligated to pay assessments, and the Declarant is not exempt from the obligation to pay assessments for common expenses under applicable provisions of CCIOA;

WHEREAS, the statute of limitations for the statutory lien for unpaid assessments is six years after the full amount of assessments become due and Lone Pine asserts the Association is barred from asserting claims for unpaid assessments for periods earlier than 2015;

WHEREAS, the Association contends that some equitable tolling of the statute of limitations would be appropriate based upon length of the period of Declarant control;

WHEREAS, in the balance to equitable tolling, Lone Pine contends that any equitable tolling sought by the Association would be balanced against Lone Pine’s defenses of laches, the length of time the Association took to calculate the amount of claimed outstanding assessments, out-of-pocket expenses paid by Lone Pine for the Association’s benefit not required by the law or the Declaration, and the Declarant’s reliance upon Section 5.14 of the Declaration;

WHEREAS, in consideration of the foregoing the Parties acknowledge and agree that a dispute exists as to whether the Association is entitled to payment from Lone Pine for the full amount of the alleged assessment (the “Dispute”);

WHEREAS, the Association has issued a special assessment for cistern construction (“Cistern Assessment”);

WHEREAS, Lone Pine, acting pursuant to its rights as Declarant, seeks a boundary line adjustment (“BLA”), to annex Parcel C, and to convert Parcel C into a reconfigured Lot 3 (“Reconfigured Lot 3”);

WHEREAS, the Parties acknowledge the total number of Lots subject to assessments, including the Cistern Assessment, will remain unchanged upon the creation of Reconfigured Lot 3 and that the obligation to pay assessments accrue only to Lots and not to Parcels; and

WHEREAS, the Parties wish to resolve any dispute related to the Cistern Assessment with respect to the Lots 1 and 3, Parcel C, any future annexation of Parcel C, any future BLA between the Lots 1 and 3 and/or Parcel C, and future reconfiguration of the Lots 1 and 3 and/or Parcel C (“Cistern Assessment to Lone Pine Property”).

NOW THEREFORE, in consideration of the Parties’ respective mutual covenants and promises contained herein, as well as other good and valuable consideration, including payments made to date by Lone Pine for the Cistern Assessment, the receipt and sufficiency of which all Parties accept and acknowledge, the Parties agree as follows:

1. The Parties agree that in consideration of the terms of this Settlement Agreement, Lone Pine shall remit payment to the Association as follows:

Lone Pine shall remit payment to the Association in the total amount of twenty-five thousand and 00/00ths (USD) (\$25,000.00) in eight (8) equal payments of three thousand one hundred twenty-five and 00/00ths (USD) (\$3,125.00) (“Settlement Payments”). The first payment is due upon the Parties executing this Settlement Agreement, and the remaining seven (7) payments shall be made quarterly thereafter (on or before the 15th day of June, September, January, April); provided, however, should Lone Pine complete the BLA and transfer ownership of Reconfigured Lot 3 by a sale to a third party prior to completion of the Settlement Payments, all remaining Settlement Payments shall be due and payable within 10 days the closing of such sale of Reconfigured Lot 3.

2. As long as Lone Pine is current on the Settlement Payments and other assessments due to the Association after the date of this Settlement Agreement, the Association would consider Lone Pine’s account with the Association not in arrears and in good standing. As long as Lone Pine is current on the Settlement Payments, the Association will not impose any late charges, fines, interest, and attorney fees and costs.
3. Lone Pine and its sole member, Scott Schorer, for themselves, their successors in interest, employees, agents, personal representatives, executors, assigns, heirs, executors, and administrators, forever release and discharge the Association, its successors in interest, employees, agents, personal representatives, executors, assigns, heirs, executors, and administrators, from any and all claims, debts, causes of action, damages, attorney fees, consulting and expert fees, which were, or could have been asserted against the Association by Lone Pine or Schorer arising from, or in any way connected with or related to the amounts owed for any “Lots” (as defined by the Declaration) or “Parcels” (as defined by the Declaration) owned by Lone Pine at any time from 2006 through the date of this Settlement Agreement, related in any manner to the Dispute, Lone Pine Declarant Activities, and the Cistern Assessment to Lone Pine Property, whether said claims, debts, causes of action, damages, attorney fees, consulting and expert fees are

known, unknown, legal or equitable, vested or contingent, or whether they have been incurred at the present or whether they arise in the future.

4. The Association for itself, its successors in interest, employees, agents, personal representatives, executors, assigns, heirs, executors, and administrators, forever releases and discharges Lone Pine and Schorer, their successors in interest, employees, agents, personal representatives, executors, assigns, heirs, executors, and administrators, from any and all claims, debts, causes of action, damages, attorney fees, consulting and expert fees, which were, or could have been asserted against Lone Pine or Schorer by the Association arising from, or in any way connected with or related to the amounts owed for any "Lots" (as defined by the Declaration) or "Parcels" (as defined by the Declaration) owned by Lone Pine at any time from 2006 through the date of this Settlement Agreement, related in any manner to the Dispute, Lone Pine Declarant Activities, and the Cistern Assessment to Declarant Property, whether said claims, debts, causes of action, damages, attorney fees, consulting and expert fees are known, unknown, legal or equitable, vested or contingent, or whether they have been incurred at the present or whether they arise in the future.
5. By agreeing to this Settlement Agreement and the terms set forth herein, no Party makes any admission of liability to any of the other Parties to this Settlement Agreement. This Settlement Agreement is being made by the Parties solely to avoid the inherent risks and expenses associated with extended damages and litigation.
6. The Parties agree, covenant, represent and warrant that there is sufficient and adequate consideration being received and fair value being provided by the Parties for entering into this Settlement Agreement, and that this Settlement Agreement is being entered into knowingly, voluntarily, without mental reservation, with no purpose of evasion, and with the intent to be legally bound hereby, without coercion of any kind, in part to remove the uncertainty and expenses of additional negotiations and further or possible future litigation, and with an adequate opportunity for and the actual benefit of the assistance and advice of legal counsel.
7. This Settlement Agreement is the complete and entire agreement between the Parties. Any and all prior or contemporaneous oral or written agreements between the Parties have been merged into, and are superseded by, this Settlement Agreement. No such prior or contemporaneous oral or written agreements shall be admissible in any proceeding to vary, contradict, supplement, or modify this Settlement Agreement.
8. In the event of any dispute between the Parties arising out of or related to this Settlement Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs.
9. The Parties agree to execute all documents necessary to effectuate the intent of this Settlement Agreement.

10. In the event any of the provisions of this Settlement Agreement are deemed to be invalid and unenforceable, those provisions shall be severable from the remainder of this Settlement Agreement.
11. This Settlement Agreement shall be binding upon, and inure to the benefit of the Parties' respective heirs, assigns, successors in interest, personal representatives and executors.
12. This Settlement Agreement may be executed in counterparts and by facsimile or email, each of which shall be deemed an original, but all of which together shall constitute an agreement.
13. The Parties and their respective counsels, if any, have reviewed this Settlement Agreement and agree that any rule of construction that would require an ambiguity, if any, in this Settlement Agreement to be resolved against the drafter shall not be employed in the interpretation of this Settlement Agreement.
14. The Parties hereto expressly assume any and all risks that the facts and law may be different from the facts and law as known to, or believed to be, by each such Party as of the date of this Settlement Agreement, and agree and understand that this Settlement Agreement shall be effective and enforceable according to the terms herein even if the facts and/or law turn out to be different than each Party hereto knows or believes them to be as of the date hereof.
15. This Settlement Agreement shall be governed under the laws of the State of Colorado.
16. All Parties shall pay for their own respective attorney's fees.
17. The individuals signing below represent that:
 - a. They have full power and authority to enter into this Agreement and to conclude the transaction described by this Agreement; and
 - b. Each representative executing this Agreement has full authority to enter into the Agreement and to bind the principals whom he/she represents.

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Dated this ____ day of _____, 2021

Lone Pine Real Estate, LLC

Roosevelt Ridge Homeowners Association

By:
Its:

By:
Its:

Scott Schorer

Initial: Lone Pine

Initial: Association

Schorer