

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 12th day of November 2013, by and between the City of Flagstaff, Arizona, a municipal corporation ("City") and Vedula Elevation, LLC, a Delaware limited liability company ("Vedula").

RECITALS:

- A. Vedula completed construction of multi-family residential housing known as the Elevation Apartments, located at 5000 N. Mall Way within the City of Flagstaff in 2013;
- B. During construction, the City invoiced Vedula for development and sewer capacity fees (collectively, "Construction Fees") owed for the Elevation Apartments;
- C. Following completion of construction, in 2013 the City discovered invoicing errors and determined the Construction Fees for the Elevation Apartments were underpaid respectively in the amounts of \$133,884.59 and \$491,545.00, or a total of \$625,429.59 ("Amount Owed");
- D. Vedula disputes the Amount Owed.

TERMS AND CONDITIONS:

WHEREAS, the parties desire to avoid the time, expense and inconvenience of further dispute concerning collection of the Amount Owed, the parties hereby agree as follows:

1. Settlement Amount. Vedula shall pay City the sum of Five Hundred Sixty-Two Thousand Eight Hundred Eighty-Six Dollars and Sixty-Three Cents \$562,886.63 ("Settlement Amount") in full on or before January 2, 2014. The Settlement Amount represents 90% of the Amount Owed. Payment shall be made payable to the City of Flagstaff and remitted to the City Finance Department, 211 W. Aspen Avenue, Flagstaff, Arizona 86001.
2. Effect of Payment. Vedula's payment of the Settlement Amount, shall be in full and complete satisfaction of any Construction Fees owed by Vedula to the City as of the date of issuance of the final certificate of occupancy for the Elevation Apartments, whether known or unknown, including but not limited to the Amount Owed, and any accrued interest.
3. Definition of Construction Fees. Construction Fees shall specifically mean any fees owed by Vedula to the City pursuant to the Development Agreement and Waiver dated March 3, 2011 by and between the City and Vedula as successor in interest to Vedula Flagstaff, LLC an Arizona limited liability company ("Development Agreement"), and City ordinances incorporated by reference, as of the date of issuance of the final certificate of occupancy for the Elevation Apartments. Such term does not include taxes, bonds or warranties as to work.

4. Release and Waiver. Upon payment of the Settlement Amount: (i) Vedura hereby releases the City, its council members, officers, agents, employees from any and all claims, defenses, actions, or causes of actions, whether known or unknown, Vedura has, or has had, related to the Construction Fees, and waives the same; and upon receipt of the Settlement Amount: (ii) the City hereby releases Vedura, its members, officers, agents, employees and successors from any and all claims, defenses, actions, or causes of actions, whether known or unknown, the City has, or has had, related to the Construction Fees, and waives the same.
5. Compromise. This Agreement is not an admission of liability, but is entered into as a compromise.
6. Effect of Breach. If the Settlement Amount is not paid when due, the City may, following notice to Vedura and opportunity to cure not to exceed 15 days from receipt of such notice: (i) immediately file an action for enforcement of this Agreement and/or collection of the Settlement Amount, including statutory interest, or (ii) file an action for collection of the Amount Owed, including accrued interest, pursuant to any other lawful authority. In the event of breach of this Agreement, neither the City nor Vedura shall be required to first engage in non-binding mediation pursuant to the Development Agreement, Paragraph 6.2 prior to commencing litigation, and nothing herein shall preclude the parties from exercising all remedies available at law.
7. Admissibility. This Agreement shall not be admissible in any proceeding except a proceeding to enforce this Agreement under its terms.
8. Attorneys' Fees. In the event of any action to enforce this Agreement, the prevailing party is entitled to recover its attorneys' fees and court costs.
9. Finality. This Agreement is final and conclusive except to the extent City can demonstrate fraud, malfeasance or misrepresentation of material fact by Vedura relating to the Construction Fees.
10. Complete and Binding. This Agreement represents the complete understanding of the parties and there are no other agreements or representations. Any amendment must be approved in writing by both parties. The Agreement shall be binding and inure to the benefit of the parties hereto, their successors and assigns.
11. Authority. Each party represents it has authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year as written above.

VEDURA ELEVATION, LLC, a Delaware
limited liability company
By: Vedula Elevation Manager LLC, an Arizona
limited liability company
Its: Manager
By: VEM Manager LLC, an Arizona limited
liability company
Its: Manager
By: Vedula PRF LLC, an Arizona
limited liability company
Its: Manager
By: Paul R. Fannin
Paul R. Fannin
Its: Manager

CITY OF FLAGSTAFF

By: Mayor Nabours

Attest:

By: Elizabeth Burke, City Clerk

Approved as to form:

By: City Attorney's Office