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Doc#: 2412024278 Fee: \$107.00

CEDRIC GILES

COOK COUNTY CLERK'S OFFICE

Date 4/29/2024 10:54 AM Pg: 1 of 16

## SETTLEMENT AGREEMENT AND RELEASE

**This document was prepared by,  
and after recording, please return  
to:**

David L. Rudolph, Esq.  
Rudolph Kaplan LLC  
805 Greenwood St  
Evanston, IL 60201

See settlement agreement and release on additional pages.

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## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“this Agreement”) is entered into as of February 14, 2023, by and between Streeterville Center Condominium Association (the “Association”), Streeterville Center, LLC (“SVC”) and HTA-Streeterville Center, LLC (“HTA”). SVC and HTA may be referred to from time to time collectively as “Defendants.” Each of the Association, SVC, and HTA will be referred to herein as a “Party,” and they will sometimes collectively be referred to as the “Parties.”

## RECITALS

WHEREAS, the Parties’ relationship relates to a mixed-use building located at 233 East Erie Street in Chicago, Illinois (the “Building”). The Building’s first eight floors and the basement garage make up the commercial portion of the Building, and floors nine through twenty-six make up the residential portion of the Building.

WHEREAS, the Association manages the residential portion of the Building, and Defendants SVC and HTA, respectively, are the former and current owners and managers of the commercial portion of the Building.

WHEREAS, the operations of the Building – including the relationship between the residential and commercial portions – are governed by the Building’s Declaration of Covenants, Conditions, Restrictions and Easements, as amended (the “Declaration”), and a December 10, 2009 Settlement Agreement (the “Settlement Agreement”).

WHEREAS, pursuant to the Declaration and Settlement Agreement: (a) the residential portion is required to provide certain services and facilities to the commercial portion; (b) the commercial portion is required to provide certain services and facilities to the residential portion; and (c) the residential portion and commercial portion are required to exchange invoices and make

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payments for their respective proper share of the services and facilities provided by the other portion (collectively, the “Shared Expenses”).

WHEREAS, the Declaration grants certain easement rights to the Association (the “Easements”).

WHEREAS, HTA and SVC entered into an Indemnity Escrow Agreement dated June 7, 2019 (the “Indemnity Agreement”).

WHEREAS, the Association commenced a proceeding against SVC in the Circuit Court of Cook County, Case No. 2015 L 005829 (the “2015 Action”), and subsequently amended its complaint to, among other things, add claims against HTA (the “Association’s Complaint”).

WHEREAS, SVC filed a counterclaim against the Association in the 2015 Action, which was voluntarily dismissed by SVC (“SVC’s Counterclaim”).

WHEREAS, HTA filed a cross-claim against SVC in the 2015 Action (“HTA’s Cross-Claim”).

WHEREAS, HTA commenced a proceeding (the “2022 Action”) against the Association in the Circuit Court of Cook County, Case No. 2022 L 008897 by filing a complaint (“HTA’s Complaint”).

WHEREAS, the Parties each deny the allegations and claims set forth against each of them in the 2015 Action, the 2022 Action, the Association’s Complaint, SVC’s Counterclaim, HTA’s Cross-Claim and HTA’s Complaint.

WHEREAS, without any Party admitting liability or wrongdoing, the Parties desire to resolve all of their disputes, including without limitation all the matters that were asserted or could have been asserted in the 2015 Action, the 2022 Action, the Association’s Complaint, SVC’s Counterclaim, HTA’s Cross-Claim and HTA’s Complaint, all claims for monies, damages or

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anything else that the Parties raised or could have raised against each other and all disputes between the Parties concerning the Building, the Declaration, the Settlement Agreement, the Shared Expenses, the Easements and/or the Indemnity Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises, covenants, representations and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The Recitals above are contractual and are incorporated by reference as though fully set forth herein.

2. **The First Settlement Payment.**

(a) Defendants shall pay the Association \$500,000.00 in accordance with paragraph 2(b) below.

(b) Within three business days of the date of this Agreement, Defendants shall jointly instruct the escrow agent under the Indemnity Agreement, Fidelity National Title Insurance Company, to transfer \$500,000.00 to the Association and its attorneys Novack and Macey LLP (the "First Settlement Payment") pursuant to the wire instructions provided by Joshua Liebman of Novack and Macey LLP via email to Timothy Novel and Abram Moore at 11:51 a.m. on February 1, 2023. Within three business days following delivery of the First Settlement Payment, the \$100,000.00 remaining in the Indemnity Escrow shall be distributed to SVC pursuant to the wire instructions being provided to Fidelity National Title Insurance Company by Timothy Novel contemporaneously with this Agreement. HTA and SVC expressly agree that this provision supersedes any and all prior agreements between those two entities regarding the distribution of the Indemnity Escrow.

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3. **Dismissal Of Claims.** This Agreement is intended to conclude and end all litigation among the Parties. Accordingly: (a) within three (3) business days after Novack and Macey LLP's receipt of the First Settlement Payment, counsel for the Association and HTA shall mutually execute and cause to be entered in Case No. 22 L 008897, an Agreed Order dismissing the 2022 Action and HTA's Complaint with prejudice, in the form attached hereto as Exhibit A; and (b) the 2015 Action, including the Association's Complaint, SVC's Counterclaim and HTA's Cross-Claim, shall be dismissed with prejudice upon the Association and Novack and Macey LLP's receipt of the First Settlement Payment in accordance with the January 31, 2023 court order stating the same.

4. **The New Declaration.** The Association and HTA agree to enter into an amendment, revision and/or modification to the Declaration (the "New Declaration"). In negotiating the "New Declaration," with respect to Shared Expenses, the parties shall be guided by the following agreed goals: (a) eliminate as many Shared Expenses as possible; and (b) apportion each Shared Expense commensurate with the benefit received from the associated service or facility.

5. **The Second Settlement Payment.** HTA shall pay the Association \$100,000.00 within ten (10) business days of execution of the New Declaration.

6. **Shared Expenses.** Until the New Declaration is executed, the Association and HTA shall continue to provide services, exchange invoices and make payments for Shared Expenses in accordance with past practices except that HTA shall no longer be required to provide payment for the following services: (a) any costs related to the Association's Engineer; (b) any costs related to the Association's Assistant Engineer/Janitor; (c) any costs related to the Association's heat, ventilation and air conditioning ("HVAC") system (including the boiler)

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including costs incurred to own, operate, maintain, repair and/or replace the system; and (d) any costs related to the Association's gas bill(s). The Association expressly waives any provisions of the Declaration that may require the owner of the commercial portion of the Building to reimburse the Association for these expenses from and after the date of this Agreement. For the avoidance of doubt, notwithstanding the terms set forth in this paragraph 6, HTA shall be solely responsible for any costs related to HTA's HVAC system, including gas costs, the boiler, and any other costs incurred to own, operate, maintain, repair and/or replace the system.

7. **Manager's Fee.** If the New Declaration is not executed on or before May 1, 2023, then HTA shall no longer be required to make any payments to the Association related to the Association's Manager from that date forward, and in that event the Association expressly waives any provisions of the Declaration that may require the owner of the commercial portion of the Building to reimburse the Association for this expense after May 1, 2023. If a New Declaration is executed prior to May 1, 2023, payments for the Association's Manager shall be allocated pursuant to the New Declaration upon execution of the New Declaration.

8. **Release of Lien.** Within 30 days of the date of this Agreement, counsel for any Party that has recorded any lien against the residential and/or commercial portion of the Building, shall record a release of any such lien and deliver copies of the recorded release of lien to all counsel identified in paragraph 26 of this Agreement. The requirements of this paragraph do not apply to any liens asserted or recorded by the Association against any residential condominium unit owner for any unpaid obligation to the Association.

9. **Waiver of Easements.** The Association expressly waives any claim related to Easement rights that it alleged in the Association's Complaint were breached or trespassed upon. Notwithstanding the foregoing, this waiver shall not apply to any alterations or modifications made

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to the Building by HTA after the date of this Agreement. In addition, this waiver shall have no effect on any agreed upon easement rights set forth in the New Declaration.

10. **Rights Of The Parties In The Event That There Is No New Declaration.** In the event that the Association and HTA are unable to agree to the terms of a New Declaration, then the Parties reserve their rights against one another pursuant to the Declaration and the Settlement Agreement for the payment of Shared Expenses incurred after the date of this Agreement except as to those Shared Expenses identified in paragraphs 6 and 7 of this Agreement. If no New Declaration is agreed upon within 12 months of the date of this Agreement, then the Association will take steps to properly record this Agreement such that all subsequent purchasers of a condominium in the Building are aware that the Shared Expenses identified in paragraphs 6 and 7 are no longer due and owing from the owner of the commercial portion.

11. **General Release By The Association.** The Association, for itself and for any and all of its unit owner members, Board Members, predecessors, successors, assigns, legal representatives, affiliates and any and all persons or entities claiming under any of the foregoing persons or entities (collectively, the "Association Releasers"), hereby remises, releases and forever discharges and covenants not to sue Defendants and any and all of their respective insurers, predecessors, successors, assigns, legal representatives, parent companies, affiliates, subsidiaries, holding companies, members, managers, directors, officers, shareholders, stockholders, attorneys, partners, employees, representatives, agents, and individuals or entities subject to potential liability by or through the actions or conduct of any of the foregoing released persons or entities and/or individuals or entities who, by or through their actions or conduct, potentially subject any of the foregoing released persons or entities to liability, and any and all of their respective predecessors, successors, heirs and assigns (collectively, the "Defendant Releasees") of, from, on account of or

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in connection with any and all events, actions, causes, causes of action, suits, debts, sums of money, accounts, reconcilings, bonds, bills, specialties, covenants, promises, variances, trespasses, damages, judgments, executions, claims, demands, credit memoranda and charges, whatsoever, at law or in equity, whether presently known or unknown, whether matured, unmatured, potential or contingent, and whether in tort, in contract, or otherwise, which any of the Association Releasors have, may have, or hereafter can, shall or may have against any of the Defendant Releasees, for any matter, cause or thing existing now or at any time prior hereto, including, but not limited to, any such claim or cause of action asserted in, related to or arising out of the 2015 Action, the Association's Complaint, SVC's Counterclaim, HTA's Cross-Claim, the 2022 Action or HTA's Complaint, or any allegations or claims that were asserted, could have been asserted or could in the future be asserted in a lawsuit arising out of or relating to any aspect of the Building, the Declaration, the Settlement Agreement, the Shared Expenses, the Easements, and/or the Indemnity Agreement; provided, however, that the provisions of this paragraph do not extend or apply to, or in any way limit or affect any rights or obligations under this Agreement including paragraph 10 herein. Except for the proviso at the end of the preceding sentence, this paragraph is intended to be a general release that is the broadest release permitted by law.

12. **General Release By SVC.** SVC, for itself and for any and all of its predecessors, successors, assigns, legal representatives, affiliates, owners including, without limitation, Deanne Thomas, and any and all persons or entities claiming under any of the foregoing persons or entities (collectively, the "SVC Releasors"), hereby remises, releases and forever discharges and covenants not to sue the Association and/or HTA and any and all of their respective insurers, predecessors, successors, assigns, legal representatives, parent companies, affiliates, subsidiaries, holding companies, members, unit owner members, Board Members, managers, directors, officers,



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shareholders, stockholders, attorneys, partners, employees, representatives, agents, and individuals or entities subject to potential liability by or through the actions or conduct of any of the foregoing released persons or entities and/or individuals or entities who, by or through their actions or conduct, potentially subject any of the foregoing released persons or entities to liability, and any and all of their respective predecessors, successors, heirs and assigns (collectively, the “Association/HTA Releasees”) of, from, on account of or in connection with any and all events, actions, causes, causes of action, suits, debts, sums of money, accounts, reconcilings, bonds, bills, specialties, covenants, promises, variances, trespasses, damages, judgments, executions, claims, demands, credit memoranda and charges, whatsoever, at law or in equity, whether presently known or unknown, whether matured, unmatured, potential or contingent, and whether in tort, in contract, or otherwise, which any of the SVC Releasees have, may have, or hereafter can, shall or may have against any of the Association/HTA Releasees, for any matter, cause or thing existing now or at any time prior hereto, including, but not limited to, any such claim or cause of action asserted in, related to or arising out of the 2015 Action, the Association’s Complaint, SVC’s Counterclaim, HTA’s Cross-Claim, the 2022 Action or HTA’s Complaint, or any allegations or claims that were asserted, could have been asserted or could in the future be asserted in a lawsuit arising out of or relating to any aspect of the Building, the Declaration, the Settlement Agreement, the Shared Expenses, the Easements, and/or the Indemnity Agreement; provided, however, that the provisions of this paragraph do not extend or apply to, or in any way limit or affect any rights or obligations under this Agreement including paragraph 10 herein. Except for the proviso at the end of the preceding sentence, this paragraph is intended to be a general release that is the broadest release permitted by law.

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13. **General Release By HTA.** HTA, for itself and for any and all of its predecessors, successors, assigns, legal representatives, affiliates, owners and any and all persons or entities claiming under any of the foregoing persons or entities (collectively, the “HTA Releasers”), hereby remises, releases and forever discharges and covenants not to sue the Association and/or SVC and any and all of their respective insurers, predecessors, successors, assigns, legal representatives, parent companies, affiliates, subsidiaries, holding companies, members, unit owner members, Board Members, managers, directors, officers, shareholders, stockholders, attorneys, partners, employees, representatives, agents, and individuals or entities subject to potential liability by or through the actions or conduct of any of the foregoing released persons or entities and/or individuals or entities who, by or through their actions or conduct, potentially subject any of the foregoing released persons or entities to liability, and any and all of their respective predecessors, successors, heirs and assigns (collectively, the “Association/SVC Releasees”) of, from, on account of or in connection with any and all events, actions, causes, causes of action, suits, debts, sums of money, accounts, reconcilings, bonds, bills, specialties, covenants, promises, variances, trespasses, damages, judgments, executions, claims, demands, credit memoranda and charges, whatsoever, at law or in equity, whether presently known or unknown, whether matured, unmatured, potential or contingent, and whether in tort, in contract, or otherwise, which any of the HTA Releasers have, may have, or hereafter can, shall or may have against any of the Association/SVC Releasees, for any matter, cause or thing existing now or at any time prior hereto, including, but not limited to, any such claim or cause of action asserted in, related to or arising out of the 2015 Action, the Association’s Complaint, SVC’s Counterclaim, HTA’s Cross-Claim, the 2022 Action or HTA’s Complaint, or any allegations or claims that could have been asserted or could in the future be asserted in a lawsuit arising out of or relating to any aspect of the Building, the Declaration, the

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Settlement Agreement, the Shared Expenses, the Easements, and/or the Indemnity Agreement; provided, however, that the provisions of this paragraph do not extend or apply to, or in any way limit or affect any rights or obligations under this Agreement including paragraph 10 herein. Except for the proviso at the end of the preceding sentence, this paragraph is intended to be a general release that is the broadest release permitted by law.

14. **Complete Defense.** If any of the Releasors hereafter sues any Releasee (or brings an arbitration), this Agreement, when pleaded, shall be and constitute a complete defense and bar thereto, and such Releasee(s) shall be entitled to recover damages from such Releasor(s) (which shall include but not be limited to reasonable attorneys' expenses and attorneys' fees) and/or to receive a declaratory judgment and/or an injunction against conduct or litigation that violates or threatens to violate this Agreement.

15. **No Reliance.** Each Party represents and warrants that, in entering into this Agreement, it has not relied on any representations by or on behalf of any other Party, other than those representations expressly set forth in writing in this Agreement.

16. **Entire Agreement.** This Agreement and the exhibit attached hereto constitute the full, final and entire agreement and understanding of the Parties with respect to the subject matter hereof, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, representations, warranties, or covenants not contained herein, any and all prior agreements or representations having been merged herein and superseded hereby. Notwithstanding the provisions of this paragraph, any agreement(s) between HTA and SVC are not incorporated herein and remain separate and distinct enforceable agreement(s), with the exception of the distribution of remaining funds in the Indemnity Escrow as set forth in paragraph 2(b) herein.

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17. **No Oral Amendment.** This Agreement and the exhibit attached hereto -- including this paragraph -- may be amended only in a subsequent writing signed by each of the Parties hereto. No waiver of any breach or provision hereof shall be binding unless in a writing signed by the waiving Party or Parties. The waiver of any breach or provision hereof shall not be deemed a waiver of any other breach or provision.

18. **Headings.** The headings, captions and paragraph numbers appearing in this Agreement are for convenience only, are not a substantive part of this Agreement and do not in any way limit, amplify, define, construe or describe the scope or intent of the terms or provisions of this Agreement.

19. **Construction.** This Agreement shall be deemed to have been jointly drafted by the Parties and any rule that an agreement shall be construed against the drafter shall not apply to this Agreement. Each Party was represented by counsel of its choice in connection with the drafting of this Agreement.

20. **Successors And Assigns.** This Agreement is binding upon the Parties and their respective heirs, assigns and successors.

21. **Attorneys' Fees -- This Agreement And This Dispute.** The Parties each shall be responsible for its own attorneys' fees and expenses related to the negotiation, drafting and execution of this Agreement and all issues relating to the Parties' disputes to date.

22. **Attorneys' Fees -- Prevailing Party.** In the event that there is any litigation or arbitration arising out of or relating to this Agreement, the prevailing Party or Parties shall, in addition to any and all other relief, recover its attorneys' fees and costs.

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23. **Ownership Of Claims.** Each Party represents and warrants that it is the sole owner of any and all claims that it has or ever had against any of the other Parties and that it has not sold, assigned, or in any way encumbered any such claims, in whole or in part, to any person or party.

24. **No Admission.** By execution of this Agreement or otherwise, no Party is admitting that it did anything wrong or improper or that it has any legal liability to any other Party (other than liabilities arising under this Agreement), and no inference of wrong or improper conduct or legal liability shall be drawn against any Party by reason of his or its execution of this Agreement or otherwise. Without limiting the generality of the foregoing, no terms in this Agreement may be used by the Association or HTA as an admission or in any other way in connection with negotiating the New Declaration.

25. **Intent To Be Bound.** Each Party represents and warrants that it has read and understands this Agreement; that it has consulted with and had advice of legal counsel with respect thereto; that this Agreement is executed and delivered as its free and voluntary act; and that it intends to be legally bound thereby.

26. **Illinois Law.** This Agreement shall be governed by the law of Illinois without regard to principles of choice of law or conflicts of law.

27. **Notice.** All notices or other communications required or permitted to be given hereunder, or which are to be given with respect to this Agreement, shall be effective upon transmission and may be transmitted only by email, personal delivery, overnight delivery or certified mail, return receipt requested, as follows:

If to the Association, to:

Brayden Portillo  
Interim Property Manager  
Streeterville Center Condominium Association  
233 East Erie Street 25th Floor

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Chicago, IL 60611  
*Streeterville@CommunitySpecialists.net*

With a copy to its lawyers:

Joshua E. Liebman  
NOVACK AND MACEY LLP  
100 North Riverside Plaza  
Chicago, IL 60606  
*jliebman@novackmacey.com*

If to SVC, to:

Deanne Thomas  
1330 N. State Street #3  
Chicago, IL 60610  
With a copy to its lawyers:

R. Timothy Novel  
LITCHFIELD CAVO LLP  
303 West Madison Street, Suite 300  
Chicago, IL 60606  
*novel@litchfieldcavo.com*

If to HTA, to:

John Bryant  
Healthcare Realty  
3310 West End Avenue, Suite 700  
Nashville, TN 37203  
*JBryant@healthcarerealty.com*

With a copy to its lawyers:

Abram I. Moore  
K&L GATES LLP  
70 West Madison Street, Suite 3100  
Chicago, IL 60602  
*abe.moore@klgates.com*

Any Party may at any time change the addresses for notices to such Party by providing a notice in the manner set forth above in this paragraph.

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28. **Counterparts.** This Agreement may be executed in any number of identical counterparts, any and all of which may contain the signature of less than all the Parties hereto, and all of which may be construed together as but a single instrument. A pdf or other electronic signature shall be deemed the same as, and the equivalent of, an original signature.

29. **Authority.** Each individual signing this Agreement on behalf of an entity represents and warrants that he or she has authority to sign this Agreement and bind his or her principal.

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

**STREETERVILLE CENTER  
CONDOMINIUM ASSOCIATION**

By: [Signature]  
Its President of the Board

**STREETERVILLE CENTER, LLC**

DocuSigned by:  
**DEANNE THOMAS**  
By: [Signature]  
D029CA836E3D404...  
Its member

**HTA-STREETERVILLE CENTER, LLC**

By: [Signature]  
Its  EVP + General Counsel

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## LEGAL DESCRIPTION

### Parcel 1:

Lots 20, 21 and 22 in the subdivision of the West 394 feet of Block 32 except the East 14 feet of the North 80 feet thereof in Kinzie's Addition to Chicago in Section 10, Township 39 North, Range 14 East of the Third Principal Meridian.

### Parcel 2:

Lots 23, 24 and 25 in the subdivision of the West 394 feet of Block 32 except the East 14 feet of the North 80 feet thereof in Kinzie's Addition to Chicago in Section 10, Township 39 North, Range 14 East of the Third Principal Meridian (except that part of said Lot 25 lying West of the center of the party wall of the building now standing on the dividing line between Lots 25 and 26 in said subdivision), in Cook County, Illinois.

### Parcel 3:

Easement for the benefit of Lot 25 of the right to maintain party wall as established by agreement between Edwin B. Sheldon and Heaton Owsley recorded August 11, 1892 as Document Number 1715549 on that part of Lots 25 and 26 in Kinzie's Addition aforesaid occupied by the West 1/2 of the party wall, all in Cook County, Illinois.

PIN: 17-10-203-027-1001

Cook County Clerk's Office