

## SETTLEMENT AGREEMENT

This Agreement is between Peloton Residences, LLC ("Peloton") a limited liability company duly register to conduct business in the State of Wisconsin, and the City of Madison, Wisconsin (the "City"), a municipal corporation organized and existing under the laws of the State of Wisconsin.

1. Definitions. In this Agreement:

(a) The "Properties" means the land and improvements located at 1032 and 1004 S. Park Street, parcel numbers 0709-262-0814-5 and within the City of Madison, Wisconsin.

(b) "Case" means the action pending in the circuit court for Dane County, Wisconsin titled *Peloton Residences, LLC v. City of Madison*, Case No. 17-CV-1416.

(c) "Court" means the Circuit Court for Dane County.

(d) A "tax year" means a year in which an assessment is made as of January 1, with taxes based on the assessment payable in the year following the tax year.

2. Refund of Taxes. The City shall issue a refund payable to Axley Brynelson, LLP Trust Account, or to another account designated by Peloton in writing, pursuant to Wis. Stat. §74.37, in the amount of \$33,908.19 for 2016 as a refund of property taxes previously paid by Peloton based on the property tax assessment of the Property for the tax year 2016. The parties agree that no portion of this amount constitutes interest. The refund of this matter represents the revised 2016 assessed values:

(a) 0709-262-0814-5, 1,408,000;

(b) 0709-262-815-3, \$661,000

3. Waiver of Costs. Each party waives all claims for costs.

4. Time of Payments. The City shall pay the refund of taxes provided in Section 2 of this Agreement in full within 30 days of the date this Agreement is signed by both parties.

5. Stipulation for Dismissal. No later than ten days after Peloton receives payment in full of the refund of taxes provided in section 2 of this Agreement, the parties shall (a) enter into a stipulation, signed by their respective attorneys, for the dismissal of the Case (including, but not limited to, all claims asserted in the Complaint in the Case) on the merits, with prejudice, and without costs to either party; and (b) an agreed upon Order of dismissal to be signed by the circuit court judge, and (c) file the stipulation and order with the Court.

6. Responsibility for Fees and Expenses of Attorneys and Experts. Each party shall be solely responsible for the fees of its attorneys and experts.

7. No Representations. Each party acknowledges and agrees that no representation

or promise not expressly contained in this Agreement has been made by the opposing party or any of its employees, attorneys, agents, or representatives. Each party acknowledges that it is not entering into this Agreement on the basis of any such representation or promise, express or implied.

8. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors, and assigns.

9. Governing Law. This Agreement shall be governed and interpreted by the laws of the State of Wisconsin.

10. Interpretation of Agreement. The parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement: (a) neither party shall be deemed the drafter of this Agreement for purposes of its interpretation; and (b) the parties shall attempt in good faith to resolve the dispute.

11. Representation by Counsel; Reliance. Each party acknowledges that it has been represented throughout all negotiations leading up to this Agreement by attorneys of its choice and that its attorneys have approved this Agreement. Each party represents that in entering into this Agreement, the party has relied on its own judgment and on the advice of its attorneys, and that no statements or representations made by the other party or any of its agents, except statements or representations expressly made in this Agreement, have influenced or induced the party to sign this Agreement.

12. No Assignment or Transfer. Peloton represents and warrants that it has not assigned or transferred to anyone and will not assign or transfer to anyone any of the claims in the Case.

13. Entire Agreement. This Agreement states and constitutes the entire agreement of the parties concerning its subject matter and supersedes all prior or contemporaneous agreements (written or oral), representations, negotiations, and discussions concerning its subject matter, including but not limited to, all agreements (written or oral), representations, negotiations, and discussions made in the course of mediation of the Case.

14. Use of this Agreement. This Agreement shall not be filed with the Court in this Case or in any other case or proceeding, except for the purpose of enforcing this Agreement. This Agreement and any part of this Agreement shall not be admissible in the lawsuit or in any future judicial or administrative proceeding and shall not be offered as evidence or presented by any Party in the Lawsuit or any future judicial or administrative proceeding, except for the purpose of enforcing this Agreement.

15. No Admissions of Liability or Concerning Assessments or Fair Market Value. This Agreement is the settlement of disputed claims. By entering into this Agreement, the City does not admit any liability to Peloton for any of the claims asserted in the Case or Peloton's objections to the assessments, and the payments made under this Agreement shall not be construed as an admission of any such liability. Neither Party makes an admission about the assessments or the fair market value of the Property as of January 1, 2016 or any other date nor any other admission concerning the assessment of Peloton's property. In addition, none of the

agreed upon values or assessments as of January 1, 2016 shall be admissible in any proceeding or assessment challenge in any subsequent year.

16. Waiver. No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

17. Amendments or Modifications. This Agreement may not be amended, modified or altered in any manner whatsoever, except by a further written agreement duly authorized and signed by the parties.

18. Authorization to Sign Agreement. This agreement was approved by the Madison Common Council on \_\_\_\_\_ 2018 by Resolution \_\_\_\_\_. Each person signing this Agreement on behalf of either party represents and warrants that the person holds the position indicated beneath the person's signature and that the person has the requisite corporate or other authority to sign this Agreement on behalf of the party. Each party represents that entry into this Agreement is not in contravention of any agreement or undertaking to which the party is bound.

19. Reading of Agreement. Each person signing this Agreement on behalf of either party acknowledges that the person has read this Agreement, that the person understands the terms and conditions of this Agreement, that the person (if other than an attorney for the party) has been advised by legal counsel concerning this Agreement, and that the person freely and voluntarily signs this Agreement.

Dated: \_\_\_\_\_, 2017.

**PELTON RESIDENCES, LLC**  
BY: Axley Brynelson, LLP  
2 East Mifflin Street, Suite 200  
Madison, WI 53703

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Brian W Mullins, State Bar No. 1018298  
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*Attorneys for Peloton Residences, LLC*

Dated: \_\_\_\_\_, 2017.

**CITY OF MADISON**

BY: City Attorney's Office  
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