

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

STATE OF DELAWARE, )  
ex rel. Kathleen Jennings, Attorney )  
General of the State of Delaware )  
 )  
Plaintiff, )

v. )

C.A. No. 2019-0502-MTZ

REGAL BUILDERS, LLC, )  
GALAXY NETWORKS, LLC, )  
COUNTY PROPANE )  
OF DELMARVA, LLC, )  
EDDIE EVANS FARM PHASE I, LLC, )  
EDDIE EVANS FARM PHASE V, LLC, )  
EDDIE EVANS FARM PHASE VI, LLC, )  
EDDIE EVANS FARM PHASE VII, LLC, )  
THE VILLAGES OF NOBLE’S POND )  
HOMEOWNERS ASSOCIATION, INC., )  
THE VILLAGES OF NOBLE’S POND )  
SERVICE CORPORATION, INC., and )  
HARRY D. MILLER, III, )  
 )  
Defendants. )

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “**Settlement**” or “**Agreement**”) is made and entered into on this 12th day of August, 2022 (“**the Effective Date**”), between the State of Delaware, ex rel. Kathleen Jennings, Attorney General of the State of Delaware (“**Plaintiff,**” “**the DOJ,**” or “**the State**”) and Regal Builders, LLC; Galaxy Networks, LLC; County Propane of Delmarva, LLC; Eddie Evans Farm Phase I, LLC; Eddie Evans Farm Phase V,

LLC; Eddie Evans Farm Phase VI, LLC; Eddie Evans Farm Phase VII, LLC; The Villages of Noble's Pond Homeowners Association, Inc.; The Villages of Noble's Pond Service Corporation, Inc.; and Harry D. Miller, III ("Defendants" and, collectively, with **the DOJ**, "**the Parties**" or "**the Settling Parties**"). This Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge, and settle the claims identified herein, upon and subject to the terms and conditions herein.

## **RECITALS**

The following recitals are material terms of this Agreement. This Agreement is made with reference to and in contemplation of the following facts and circumstances:

A. **The Villages of Noble's Pond** is a 55+, single-family community outside Dover, Delaware. Settlement on the first home occurred in 2008 and settlement on the final home is expected to occur in or about 2029. There are currently 322 built-out lots that are owned by parties unrelated to the Developer/Builder, with a projected total of approximately 860 lots .

B. By verified complaint filed June 27, 2019, the DOJ has alleged that Defendants violated the Delaware Consumer Fraud Act, 6 *Del. C.* § 2511 *et seq.*, the Delaware Deceptive Trade Practices Act, 6 *Del. C.* § 2531 *et seq.*, the

Delaware Consumer Contracts Act, 6 *Del. C.* § 2731 *et seq.*, and the Delaware Health Spa Regulation, 6 *Del. C.* § 4201 *et seq.*

C. Defendants deny all claims asserted against them by the State and deny all liability.

D. Nonetheless, in order to avoid the uncertainty, costs and risks of litigation, the Settling Parties have determined to resolve this dispute on the terms and subject to the conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth in this Agreement, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Settling Parties agree as follows:

**1. Definitions**

The following capitalized terms have the meanings given when used in this Agreement.

- a. **“DOJ”** means the Delaware Department of Justice.
- b. **“Governing Documents”** means all recorded documents.
- c. **“Noble’s Pond”** means the Villages of Noble’s Pond.
- d. **“Recorded Documents”** means all documents relating to Noble’s Pond that are recorded in the office of the Recorder of Deeds of Kent County, Delaware, and include the following documents:

- (1) The Master Declaration of Easements, Covenants and Restrictions for the Villages of Noble's Pond (Association)
- (2) The First Amendment to the Master Declaration of Easements, Covenants and Restrictions for the Villages of Noble's Pond (Association)
- (3) The Second Amendment to the Master Declaration of Easements, Covenants and Restrictions for the Villages of Noble's Pond (Association)
- (4) The Third Amendment to the Master Declaration of Easements, Covenants and Restrictions for the Villages of Noble's Pond (Association)
- (5) The Amended and Restated Bylaws of the Village of Noble's Pond Homeowners Association, Inc.
- (6) The Master Declaration of Easements, Covenants and Restrictions for the Villages of Noble's Pond (Service Corporation)
- (7) The First Amendment to the Master Declaration of Easements, Covenants and Restrictions for the Villages of Noble's Pond (Service Corporation)
- (8) The Second Amendment to the Master Declaration of Easements, Covenants and Restrictions for the Villages of Noble's Pond (Service Corporation)
- (9) The Third Amendment to the Master Declaration of Easements, Covenants and Restrictions for the Villages of Noble's Pond (Service Corporation)
- (10) The Bylaws of the Villages of Noble's Pond Service Corporation
- (11) The Certificate of Incorporation for Villages of Noble's Pond (Service Corporation)
- (12) The First Supplement to Schedule A of Bylaws of the Service

Corporation

- (13) The Resolution for the Annexation of Eddie Evans Farm, LLC, and Regal Contractors, LLC Properties - Phases 1 & 2; Phases 5-9 In Accordance with the Charter of the Town of Cheswold
- (14) The First Supplement to Schedule A of the Bylaws of the Homeowners Association
- (15) Amended and Restated Certificate of Incorporation of the Villages of Noble's Pond Homeowners Association, Inc.

## **2. Obligations of Defendants**

2.1. Within ten (10) days of the Effective Date, Defendants will pay \$225,000 (the "Settlement Payment"), from accounts of any and/or all Defendants except The Villages of Noble's Pond Homeowners Association, Inc., to the DOJ. The DOJ will utilize that money for (1) payments to the residents of Noble's Pond, and (2) payment of costs for the administration of the settlement. Subject to Defendants' compliance with the terms of this Agreement, the DOJ will waive any claim for its attorneys' fees or costs or for any civil penalties or fines, and agrees that the Settlement Payment is the only amount for which Defendants are responsible for making under this Agreement.

2.2. By its verified complaint, the State objected to certain provisions of Defendants' recorded documents. Defendants have revised those documents to the satisfaction of the State. Defendants agree that they will not amend or revise those documents without the agreement and approval of the State, such agreement and

approval not to be unreasonably withheld.

2.3. Defendants will not raise Galaxy's prices to the Noble's Pond residents unless Defendants' costs from Verizon increase, and only then by a commensurate amount, plus 3% of any Verizon increase or CPI increase.

2.4. Defendants will continue to communicate to current and future Noble's Pond residents the amount and basis for any such increase in Galaxy's prices in an accurate and transparent fashion, and will differentiate between any such increase attributable to an increase in Verizon costs and the aforesaid annual 3% or CPI increase.

2.5. Defendants agree to meet with and coordinate with in good faith an advisory committee formed by residents to address telecommunications, as well as propane safety, issues.

2.6. On or before December 31, 2022, Defendants will ask for bids for telecommunications services to the community from Verizon and Comcast, and any other telecommunication provider that provides service within a 10 mile radius of the community and for which the advisory committee or the DOJ provides contact information for on or before October 31, 2022.

2.7. Defendants agree to provide prospective purchasers of lots at Noble's Pond sufficient time before closing, in no case less than three (3) days, to review all

documents to be provided to buyers at closing.

2.8. Defendants agree not to amend the Governing Documents in any respect that is contrary to this Agreement, and further agree to advise and consult with the State in good faith and with at least ten (10) days notice with regard to any contemplated amendment to any Governing Document. The State will respond with any comments prior to the expiration of this ten (10) day period, or pursuant to any further extension agreed to by the Parties.

2.9. Defendants have already revised their advertising, marketing and promotional materials, both hardcopy and on the relevant websites collectively (“disclosure statements”), to the satisfaction of the State. Defendants further agree not to revise those materials in any fashion that would, as reasonably interpreted, revive the concerns expressed by the State in its verified complaint. Defendants further agree to consult, in good faith and with at least ten (10) days notice, with the DOJ regarding any prospective changes to the disclosure statements that relate to or touch on the issues complained of in the State’s verified complaint.

2.10. Defendants confirm that they are willing to discuss in good faith a possible “right of first refusal” for the sale and purchase of the Clubhouse with the community residents and/or HOA, in the event the community residents and/or HOA pursue such an agreement.

### **3. Obligations of the State**

3.1. The DOJ agrees to voluntarily withdraw and dismiss the pending litigation with prejudice and hereby warrants and agrees that it has not filed or asserted any other complaints, suits, charges or claims with any other agency of government, court or tribunal, whether Federal, State or local, against Defendants or their administrators, regarding, relating to, or reflecting the facts alleged in its verified complaint.

#### **4. Releases**

4.1. On the Effective Date of this Agreement, each Defendant, on behalf of itself or himself and all of its or his heirs, assigns, agents, successors, attorneys, and all persons, entities, organizations or classes who have a statutory or common law right to claim by or through Defendants or their members, and all parties in privity therewith, hereby release and discharge the State and its administrators, officers, agents, employees, former employees, attorneys and assigns and all parties in privity therewith, from any and all claims, demands, actions, causes of action, and suits, at law, in equity or otherwise, demands, attorney's fees, costs, obligations, damages, and liabilities of every kind, nature and description whatsoever, whether individual or derivative, state or federal, known or unknown, suspected or unsuspected, whether or not concealed or hidden, which Defendants have had or now have or which they hereinafter can, shall or may have for, upon or by reason of any action, inaction, omission, or conduct of any nature whatsoever,



from the beginning of time to the date of the execution of this Agreement, that relate to or touch on the issues complained of in the State's verified complaint.

4.2. Upon compliance with all of the obligations set forth in this Agreement, the DOJ hereby releases and discharges Defendants and their administrators, officers, agents, employees, former employees, attorneys and assigns, from any and all claims, demands, actions, causes of action, and suits, at law, in equity or otherwise, demands, attorney's fees, costs, obligations, damages, and liabilities of every kind, nature and description whatsoever, whether individual or derivative, state or federal, known or unknown, suspected or unsuspected, whether or not concealed or hidden, with regard to the State's verified complaint, up to the Effective Date of this Agreement, including, but not limited to, any claims, causes of action, or suits under the Delaware Uniform Common Interest Ownership Act, 25 *Del. C.* §§ 81-101 *et seq.*; the Delaware Consumer Fraud Act, 6 *Del. C.* § 2511 *et seq.*; the Delaware Deceptive Trade Practices Act, 6 *Del. C.* § 2531 *et seq.*; the Delaware Consumer Contracts Act, 6 *Del. C.* § 2731 *et seq.*; and the Delaware Health Spa Regulation, 6 *Del. C.* § 4201 *et seq.*, including any claims, causes of action, or suits regarding or relating to Defendants' continued ownership of the Clubhouse at Noble's Pond.

4.3. Notwithstanding the foregoing or anything to the contrary herein, this Agreement does not waive, release or limit any criminal liability, claims for

liability under tax law, claims against non-parties who are not released herein, claims based on conduct unrelated to the claims asserted in the Verified Complaint arising after the Effective Date of this Agreement (and thus that could not have been asserted in the Verified Complaint), and any claims arising under this Agreement for enforcement of this Agreement.

4.4. The foregoing release from liability binds the Delaware Department of Justice only, and not any other Delaware governmental office, entity, or agency.

## **5. Administration of Settlement Payment**

5.1. Upon receipt of the Settlement Payment, the DOJ shall be solely responsible for administration of the Settlement Payment, but agrees to inform and consult, in good faith, with Defendants regarding all aspects of the administration of the settlement, including, but not limited to: the costs of the administration; the number and identity of residents to receive payments; and any communications made to residents in connection with the administration of the Settlement Payment.

## **6. No Admission of Liability; Preservation of Defenses**

6.1. The Settling Parties acknowledge that this Agreement represents a compromise of the State's and Defendants' claims, made prior to any active litigation, and is entered into to avoid the expense and uncertainty that would come from any such litigation. The Parties acknowledge that this Agreement does not

constitute an admission or acknowledgement of guilt, wrongdoing, liability, or financial responsibility, in any respect, on the part of the Defendants, their owners, administrators, officers, agents, employees, former employees, attorneys and assigns, and all parties in privity therewith.

## **7. Representations and Warranties**

7.1. Each signatory represents and warrants that it has the right and that he or she has the right and exclusive authority to execute this Agreement.

7.2. Each Settling Party represents and warrants the signatory on its behalf is authorized to execute this Agreement.

7.3 Each Settling Party acknowledges that they have read and understand the effect of the terms and conditions of this Agreement, that they have had the opportunity to seek the advice of legal counsel, and that they execute this Agreement of their own free will and accord for the purposes and conditions set forth herein. Each Settling Party further warrants and represents that no promise or inducement has been made or offered with regard to execution of this Agreement except as herein set forth and that this Agreement is executed without reliance on any statement or representation of or by any agent or representative of any of the Parties as to the nature or extent of any claims, damages, or the liability therefore. This Agreement constitutes the full and complete agreement of the Parties with respect to the matters contained herein.

## **8. Miscellaneous**

8.1. Nothing in this Agreement shall be construed to limit or affect the rights of any Noble's Pond resident or other person or entity to take any action, assert any claim, or otherwise pursue any available right or remedy not explicitly released or discharged by this Agreement, nor to create any private rights or causes of action in any third parties.

8.2. The rights, duties, obligations, and releases under this Agreement are final and binding upon, and inure to the benefit of, the Parties, their respective officers, employees, agents, legal representatives, heirs, successors and assigns.

8.3. This Agreement shall be interpreted under the substantive laws of the State of Delaware without regard to conflict of law principles or laws.

8.4. The Parties shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.

8.5. No Party has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands or causes of action disposed of by this Agreement.

8.6. If a dispute arises out of or relates to this Settlement Agreement, or the alleged breach thereof, and if the dispute is not settled through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation within thirty (30) days before resorting to litigation, arbitration, or some other dispute

resolution procedure. The Parties agree to negotiate in good faith regarding the selection of a mediator. Defendants agree to bear the cost of the mediator's fees only.

8.7. If the mediation required in Section 7.7 is unsuccessful, the Delaware Court of Chancery shall have exclusive jurisdiction to adjudicate matters arising under or in connection with this Agreement. Each of the Parties hereby irrevocably consents to the exclusive jurisdiction of the Delaware Court of Chancery with respect to any action to enforce the terms and provisions of this Agreement, and expressly waives any right to commence any such action in any other forum, venue or jurisdiction, unless the Court of Chancery declines to exercise jurisdiction over any such matter or action.

8.8. If, after the Effective Date, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable. In lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

8.9. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute a single instrument. Any signature

evidenced by facsimile transmission or by email transmission as a .pdf document shall be accepted as an original signature.

8.10. The failure of any Party to demand strict performance of any obligation of this Agreement shall not be construed as a waiver.

8.11. The term of this Agreement shall be from the Effective Date and shall continue until the last home sale in the community and/or Defendants' sale of all interests in the community, whichever is later.

8.12. This Agreement shall control and take precedence over any recorded or governing document for Noble's Pond, and the parties agree to take such further action necessary to conform that recorded or governing document with this Agreement.

8.13. Each Party participated in the negotiation, drafting and preparation of this Agreement. Accordingly, any construction to be made of any provision this Agreement shall not be based on the identity of the Party that initially drafted that provision.

8.14. Any notice or communication required or permitted by this Agreement shall be in writing and sent by registered or certified mail, or by hand delivery.

Any notice or communication to the Plaintiff should be sent to:

Chief of Consumer Protection  
Consumer Protection Unit  
Delaware Department of Justice  
820 N. French St., 5<sup>th</sup> Floor

Wilmington, DE 19801

Any notice or communication to Defendants should be sent to:

Justin Olear  
13 Noble's Pond Crossing  
Dover, DE 19904

**ACKNOWLEDGED AND AGREED TO:**

**ON BEHALF OF ALL DEFENDANTS (Regal Builders, LLC; Galaxy Networks, LLC; County Propane of Delmarva, LLC; Eddie Evans Farm Phase I, LLC; Eddie Evans Farm Phase V, LLC; Eddie Evans Farm Phase VI, LLC; Eddie Evans Farm Phase VII, LLC; The Villages of Noble's Pond Homeowners Association, Inc.; The Villages of Noble's Pond Service Corporation, Inc.; and Harry D. Miller, III):**

8/12/2022

\_\_\_\_\_  
Justin Olear  
Vice President of Regal Builders, LLC and  
Manager and/or Treasurer of all Defendants, and  
Trustee for Harry D. Miller, III  
13 Noble's Pond Crossing  
Dover, DE 19904

Date

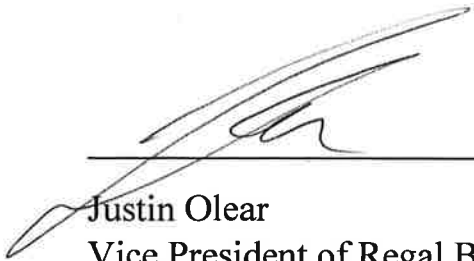
**ON BEHALF OF THE STATE:**

/s/ Michael Clarke

8/12/2022

Michael Clarke  
Deputy Attorney General  
Delaware Department of Justice  
820 N French St, 5<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 577-8087  
[michael.clarke@delaware.gov](mailto:michael.clarke@delaware.gov)

Date



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Justin Olear

Vice President of Regal Builders, LLC and  
Manager and/or Treasurer of all Defendants, and  
Trustee for Harry D. Miller, III  
13 Noble's Pond Crossing  
Dover, DE 19904

8/12/2022

Date

**ON BEHALF OF THE STATE:**

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Michael Clarke  
Deputy Attorney General  
Delaware Department of Justice  
820 N French St, 5<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 577-8087  
[michael.clarke@delaware.gov](mailto:michael.clarke@delaware.gov)

8/12/2022

Date