

IN THE CIRCUIT COURT OF TANEY COUNTY, MISSOURI

DARRELL and KATHLEEN THOMPSON,

Plaintiffs,

vs.

**RESORT SALES MISSOURI, INC. and
SPINNAKER RESORTS, INC.,**

Defendants.

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Case No. 1746-CC00203

**STIPULATION OF CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

dated as of

April 11, 2019

by and among

RESORT SALES MISSOURI, INC. and SPINNAKER RESORTS INC.

AND

DARRELL and KATHLEEN THOMPSON and CLASS COUNSEL

SETTLEMENT AGREEMENT

This Stipulation of Class Action Settlement Agreement and Release (the “Agreement”) is made and entered into as of the date set forth above by and among Plaintiffs Darrell and Kathleen Thompson (“Plaintiffs”), individually and on behalf of the Settlement Class defined in Paragraph 3 below, and Defendants Resort Sales Missouri, Inc. and Spinnaker Resorts, Inc. (“Defendants”) in the lawsuit *Thompson v. Resort Sales Missouri, Inc.*, Case No. 1746-CC00203. This Agreement refers to Plaintiffs, the Settlement Class Members, and Defendants collectively as the “Parties.”

The Parties intend for this Agreement to fully, finally, and forever resolve, discharge, and settle all claims released in this Agreement, according to the terms and conditions set forth below.

WITNESSETH:

WHEREAS, Plaintiffs filed a First Amended Class Action Petition against Defendants in the Circuit Court of Taney County, Missouri, captioned *Thompson v. Resort Sales Missouri, Inc.*, Case No. 1746-CC00203, asserting class claims for (1) violation of R.S. Mo § 484.010 *et seq.*, (2) violations of R.S. Mo § 407.010 *et seq.*, and (3) money had and received (the “Action”); and

WHEREAS, the Parties, by and through counsel, have agreed to seek certification of the Settlement Class defined in Paragraph 3 and seek approval of this Agreement; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties that, subject to the approval of the Court, the Action and Released Claims shall be finally and fully resolved, compromised, discharged, and settled under the following terms and conditions.

1. Definitions

Capitalized terms, or terms emphasized in bold, are defined as follows:

- 1.1. “**Action**” means all class claims in the lawsuit *Thompson v. Resort Sales Missouri, Inc.*, Case No. 1746-CC00203.
- 1.2. “**Agreement**” means this Stipulation of Class Action Settlement Agreement and Release, including all exhibits.
- 1.3. “**Attorneys’ Fees**” means the funds for attorneys’ fees and expenses that may be awarded by the Court to Class Counsel and to be paid from the Settlement Amount.
- 1.4. “**Bar Order**” means an order of the Court barring the assertion of claims against the Released Parties by other persons in the form included as part of the Final Order and Judgment associated with this Agreement.
- 1.5. “**Claims Administration Fund**” means the portion of the Settlement Amount that will be designated to cover fees and expenses of the Claims Administrator as per Paragraph 4(a) below.

- 1.6. **“Claims Administrator”** means Angeion Group.
- 1.7. **“Class Counsel”** means the law firm Strong-Garner-Bauer, P.C.
- 1.8. **“Closing Costs”** means charges Defendants made (typically in the amount of \$99, \$299, or \$400) during sales of Missouri timeshare interests and described in the purchase contracts as covering “document preparation” and/or “legal fees.”
- 1.9. **“Court”** means the Circuit Court of Taney County, Missouri.
- 1.10. **“Defendants”** means Resort Sales Missouri, Inc. and Spinnaker Resorts, Inc.
- 1.11. **“Effective Date”** means the date as set forth in Paragraph 13.2.
- 1.12. **“Final Order and Judgment”** means the order and form of judgment approving this Agreement in the form attached hereto as Exhibit 1.
- 1.13. **“Final Order Date”** means the date the Court enters the Final Order and Judgment.
- 1.14. **“Full Legal Notice”** means the comprehensive legal notice regarding the Action and terms of this Agreement approved by the Court and made available on a Website to be created by the Claims Administrator.
- 1.15. **“Incentive Award”** means funds that may be awarded by the Court to Plaintiffs for their service as class representatives and to be paid from the Settlement Amount.
- 1.16. **“Mailed Notice”** means the form of the notice attached hereto as Exhibit 2.
- 1.17. **“Mailed Notice Date”** means the date the Claims Administrator disseminates the Mailed Notice.
- 1.18. **“Net Settlement Proceeds”** means the portion of the Settlement Amount to be disbursed to Settlement Class Members as per Paragraphs 4(b) and 5 below.
- 1.19. **“Opt Out”** shall have the meaning assigned in Paragraph 10.3 of this Agreement.
- 1.20. **“Plaintiffs”** means Darrell and Kathleen Thompson.
- 1.21. **“Parties”** means the Plaintiffs, the Settlement Class Members who have not timely requested to Opt Out of this Agreement, Resort Sales Missouri, Inc., and Spinnaker Resorts, Inc.
- 1.22. **“Preliminary Approval Date”** means the date that the Court enters the Preliminary Approval Order.
- 1.23. **“Released Claims”** means the claims described in Paragraphs 12.2 and 12.3 of this Agreement.

- 1.24. **“Released Parties”** means any party released from an actual or potential claim in Paragraph 12 of this Agreement.
- 1.25. **“Releasing Parties”** means any party releasing an actual or potential claim against another party as described in Paragraph 12 of this Agreement.
- 1.26. **“Settlement Amount”** means the amount Defendants have agreed to pay under the terms of this Agreement as set out in Paragraph 4 below.
- 1.27. **“Settlement Class”** means the class of persons or entities set out in Paragraph 3 below.
- 1.28. **“Settlement Class Member”** means all individuals or entities falling within the Settlement Class set out in Paragraph 3 below.
- 1.29. **“Website”** means BransonTimeshareSettlement.com.

2. The Action and Class Covered by this Agreement

This Agreement sets forth the terms of an agreement between Defendants and all Settlement Class Members who have not validly and timely requested to Opt Out of this Agreement.

3. The Settlement Class

The Settlement Class shall include all persons or entities who (a) purchased a Missouri timeshare interest from Defendants on or after June 1, 2014, (b) were charged Closing Costs in connection with that transaction, and (c) did not rescind or cancel their timeshare purchase contract. The Settlement Class described here will include all persons or entities who were “charged” such Closing Costs regardless of whether or not the Closing Costs are currently in escrow.

Defendants represent there are approximately 5,401 Settlement Class Members.

4. Consideration and Disbursement of Settlement Amount

In full and complete settlement of the Action and of Plaintiffs’ and the Settlement Class Members’ claims, and subject to all of the terms and conditions of this Agreement, Defendants agree to pay consideration in the amount of \$1,400,000.00 (the “Settlement Amount”). The Parties intend for this Agreement to create a “common fund” settlement, with all fees and expenses of the Claims Administrator, Attorneys’ Fees and expenses of Class Counsel, and Incentive Awards to Plaintiffs to be paid from the Settlement Amount.

Defendants shall deposit the Settlement Amount into a trust account of the Claims Administrator according to the following schedule: (a) \$19,976.00 within ten (10) business days after the Preliminary Approval Date, and (b) the remaining \$1,380,024.00 within ten (10) business days after the Effective Date.

Subject to Court approval, the Settlement Amount shall be disbursed as follows:

- (a) \$19,976.00 into a designated "Claims Administration Fund" to cover all estimated fees and expenses necessary for class notice or administration of this class action settlement, with the funds disbursed to the Claims Administrator as such fees and expenses are incurred and approved by the Court;
- (b) \$896,357.40 (the "Net Settlement Proceeds") to the Settlement Class Members who have not validly and timely requested to Opt Out of this Agreement, to be disbursed by the Claims Administrator after the Effective Date and distributed pro rata as per Paragraph 5 below.
- (c) \$476,666.60 (the "Attorneys' Fees") to Class Counsel (33.3% fee of \$466,666.60, plus litigation expenses estimated at \$10,000), upon Court approval and subject to Paragraph 11 below, as Attorneys' Fees and reimbursement for Class Counsel's litigation expenses, to be disbursed by the Claims Administrator after the Effective Date;
- (d) \$7,000.00 (the "Incentive Award") jointly payable to Plaintiffs, upon Court approval and subject to Paragraph 11 below, for their service as class representatives, to be disbursed by the Claims Administrator after the Effective Date; and
- (e) in the event any portion of the Claims Administration Fund is not claimed by the Claims Administrator or any portion of the Net Settlement Proceeds has not been disbursed as provided for in this Agreement after a period of 180 days from the date the Claims Administrator issues the disbursement checks, then such remaining amounts shall be disbursed in cy pres, with the Court accepting suggestions on the organization to whom such additional funds shall be disbursed.

5. Distribution of Net Settlement Proceeds and Calculation of Pro Rata Shares

Each Settlement Class Member who has not validly and timely requested to Opt Out of this Agreement shall be entitled to an individual award representing the member's pro rata share of the Net Settlement Proceeds. Each Settlement Class Member's pro rata share shall be calculated according to the formula $A / B \times C$, where A represents the Closing Costs charged to the Settlement Class Member, B represents the aggregate total of all Closing Costs charged to the Settlement Class Members who have not validly and timely requested to Opt Out of this Agreement, and C represents the Net Settlement Proceeds.

Defendants represent the total aggregate amount of Closing Costs charged to all Settlement Class Members is approximately \$1,357,897.00.

6. Settlement Class Member Data

To facilitate disbursement of the Net Settlement Proceeds and the Court-approved notice provided for in this Agreement, Defendants agree to provide the following information in electronic form to Class Counsel and the Claims Administrator no later than ten (10) days after the Preliminary Approval Date: (1) the name and last-known mailing address for each Settlement Class Member, and (2) the total Closing Costs charged to each Settlement Class Member.

Data about the Settlement Class Member's shall be treated as confidential and shall not be disclosed to third parties or used for purposes other than the administration of this class action settlement.

7. Commitment to Support this Agreement

The Parties agree it is in their best interests to consummate this Agreement and all the terms and conditions contained herein and to cooperate with each other and to take all actions reasonably necessary to obtain Court approval of this Agreement and entry of the orders required to implement its provisions. The Parties also agree to support this Agreement in accordance with and subject to the provisions of this Agreement.

8. Preliminary Approval of Settlement

The Parties will submit this Agreement, together with the exhibits attached hereto, to the Court at a hearing (the "Preliminary Approval Hearing") and apply for, among other things:

- (a) an order granting Plaintiffs leave to file a Second Amended Class Petition, which will amend Plaintiffs' proposed class definition consistent with the Settlement Class set out in Paragraph 3 above.
- (b) conditional certification of the Settlement Class, preliminary approval of this Agreement, and an Order of Preliminary Approval and Conditional Class Certification, in the form identified in Exhibit 3;
- (c) approval of the Mailed Notice in the form identified in Exhibit 2 in this Agreement;
- (d) approval of the Full Legal Notice in the form identified in Exhibit 4 in this Agreement;
- (e) an order directing the Claims Administrator to cause the Settlement Class to be provided with Mailed Notice;
- (f) an order finding that the Parties' proposed notice constitutes the best notice practicable under the circumstances and is due and sufficient notice to all Settlement Class Members;

- (g) an order finding that the allocation of the Settlement Amount in Paragraphs 4 and 5 fully satisfies the requirements of due process, the Missouri Rules of Civil Procedure, and any other applicable law;
- (h) an order scheduling the Settlement Fairness Hearing one hundred twenty (120) days after entry of the Order of Preliminary Approval and Conditional Class Certification, or as soon thereafter as the Court may hear the matter, for final approval of this Agreement, and for approval of the award of Attorneys' Fees and Incentive Award;
- (i) an order providing that any person who wishes to Opt Out from the Settlement Class must submit a request for exclusion to the Claims Administrator at the address Angeion Group, 1650 Arch St. #2210, Philadelphia, PA 19103 no later than thirty (30) days from the date of the Mailed Notice as specified in Paragraph 9; and
- (j) an order providing that any objections to the proposed settlement shall be heard and any papers submitted in support of said objections shall be received and considered by the Court at the Settlement Fairness Hearing, only if persons making objections file their written objections or opposition with the Court no later than seventy-five (75) days from the date of the Mailed Notice and such papers are served by first class mail on the Parties' counsel.

9. Mailed Notice to Class Members and Full Legal Notice

Within thirty (30) days after the Court has entered the Order of Preliminary Approval and Conditional Class Certification and approved the Mailed Notice, the Claims Administrator shall disseminate the Mailed Notice to Settlement Class Members by sending a postcard via U.S. first class mail to each Settlement Class Member's last known address.

The Claims Administrator will post a comprehensive notice (the "Full Legal Notice") regarding the Action and the terms of this Agreement on the Website, which shall be created by the Claims Administrator, for a period of sixty (60) days after the Mailed Notice Date. The Full Legal Notice will be substantially similar to what appears at Exhibit 4 attached hereto.

The cost of providing the Mailed Notice and Full Legal Notice, and all other of the Claims Administrator's fees and expenses, will be paid from the Settlement Amount, as described in Paragraph 4(a) above.

10. Exclusion and Opt Out from Settlement Class, Objections to Settlement, and Procedure for Settlement Fairness Hearing; Limited Waiver

10.1. Settlement Class Members Retain Counsel at Own Expense

Settlement Class Members who seek exclusion from the settlement, object to the settlement, or simply wish to participate in the settlement may retain counsel at their own

expense. Settlement Class Members who choose to retain their own counsel will be responsible for attorneys' fees or costs incurred as a result of this election.

10.2. Objections

Any Settlement Class Member who wishes to object to the settlement must file with the Court a Written Notice of Objection and a Notice of Intent to Appear and serve copies of the same on Class Counsel and Defendants' counsel no later than seventy-five (75) days from the Mailed Notice Date. The Objection must state (a) the full name, address, and telephone number of the person objecting; (b) the words "Notice of Objection" and (c) must set forth in clear concise terms the legal and factual arguments supporting the objection to the proposed settlement agreement. The Objection shall not be valid if it merely objects to the appropriateness of the Action or its merits. Settlement Class Members who fail to object in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Agreement. Settlement Class Members shall not be entitled to speak at the Settlement Fairness Hearing unless they have filed and served on all counsel of record a timely Notice of Objection and Notice of Intention to Appear pursuant to this paragraph.

10.3. Opt-Out Timing and Rights

The Mailed Notice shall provide that Settlement Class Members may request exclusion from the Settlement Class by providing notice of such exclusion, in the manner specified in the Mailed Notice, on or before the date set by the Court as the Opt-Out deadline. Plaintiffs, Class Counsel, and Defendants agree to urge the Court to set the Opt-Out deadline for thirty (30) days after the date of the Mailed Notice Date.

Settlement Class Members have the right to exclude themselves ("Opt Out") from this Agreement and from the Settlement Class by timely submitting to the Claims Administrator, at the address Angeion Group, 1650 Arch St. #2210, Philadelphia, PA 19103, a request to Opt Out and otherwise complying with the agreed upon Opt-Out procedure approved by the Court. If a Settlement Class Member wishes to be excluded, they must send a request to the Claims Administrator at the above address with their full name and address. Settlement Class Members who timely request to Opt Out shall be excluded from this Agreement and from the Settlement Class. Any Settlement Class Member who does not submit a request to Opt Out by the Opt-Out deadline or who does not otherwise comply with the agreed upon Opt-Out procedure approved by the Court shall be bound by the terms of this Agreement and the Final Order and Judgment. Any Settlement Class Member who does not Opt Out of this Agreement shall be deemed to have taken all actions necessary to withdraw and revoke the assignment to any person or entity of any claim against Defendants.

Any Settlement Class Member who timely submits a request to Opt Out shall have until the Settlement Fairness Hearing date to deliver to Class Counsel a written revocation of the request to Opt Out. Class Counsel shall timely apprise the Court of any such revocation.

10.4. Setting the Settlement Fairness Hearing Date

Plaintiffs, Class Counsel, and Defendants agree to urge the Court to hold the Settlement Fairness Hearing one hundred twenty (120) days after entry of the Order of Preliminary Approval and Conditional Class Certification and to work together to identify and submit any evidence that may be required by the Court to satisfy the burden of proof for obtaining approval of this Agreement and the orders of the Court that are necessary to effectuate the provisions of this Agreement, including without limitation the Final Order and Judgment and the orders contained therein. At the Settlement Fairness Hearing, Plaintiffs, Class Counsel, and Defendants shall present evidence necessary and appropriate to obtain the Court's approval of this Agreement, the Final Order and Judgment, and the orders contained therein (including without limitation the Bar Order), and shall meet and confer prior to the Settlement Fairness Hearing to coordinate their presentation to the Court in support of Court approval.

11. Attorneys' Fees and Incentive Award

Consistent with Paragraph 4(c), Class Counsel intends to apply to the Court for an award of Attorneys' Fees and expenses in the amount of \$476,666.60 payable from the Settlement Amount, which Defendants agree not to oppose. This represents a request for a fee of 33.3% of the settlement amount, plus litigation expenses estimated to be \$10,000. If the Court awards Attorneys' Fees in excess of these amounts requested, Class Counsel hereby covenants and agrees to waive, release, and forever discharge the amount of any such excess award and to make no effort to collect same. Class Counsel shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment made pursuant to this paragraph.

In addition to Attorneys' Fees, and consistent with Paragraph 4(d), Class Counsel intends to apply to the Court for an Incentive Award in the amount of \$7,000.00, payable jointly to Darrell and Kathleen Thompson, which Defendants will not oppose.

12. Release, Covenant Not to Sue, and Bar Order

12.1. Scope and Effect of Final Order and Judgment

The Final Order and Judgment shall be binding upon, and inure to the benefit of, the Plaintiffs, all Settlement Class Members who have not validly and timely requested to Opt Out of this Agreement, Defendants, and each of their respective past, present and future employees, officers, directors, legal representatives, members, owners, parents, subsidiaries, affiliates, divisions, assignors, predecessors, successors and assigns. The Parties to this Agreement intend the settlement to be a final and complete resolution of all claims released herein.

12.2. Plaintiffs' Release

Plaintiffs, on behalf of themselves and their spouses, heirs, employees, legal representatives, insurers, partners, parents, associates, assignors, predecessors, administrators, executors, successors, assigns, attorneys, agents, and anyone else acting on

their behalf or at their direction (together with the Settlement Class Members the “Releasing Parties”) shall, as of the Effective Date, be deemed to release and forever discharge Defendants and their past, present, and future employees, officers, directors, legal representatives, members, owners, shareholders, parents, subsidiaries, affiliates, divisions, assignors, predecessors, successors, and assigns (the “Released Parties”), from any and all claims, rights, causes of action, and liabilities whatsoever, irrespective of legal theory, whether based on federal, state, local, statutory, or common law, or any other law, rule, or regulation, including both known and unknown claims, accrued and un-accrued claims, foreseen and unforeseen claims, and matured and un-matured claims, which have been or could have been asserted in this Action (the “Released Claims”).

12.3. The Settlement Class’s Release

Each Class Member who has not validly and timely requested to Opt Out of this Agreement, on behalf of themselves and their past and present spouses, heirs, employees, legal representatives, insurers, partners, parents, associates, assignors, predecessors, administrators, executors, successors, assigns, and anyone else acting on their behalf or at their direction (together with Plaintiffs the “Releasing Parties”) shall, as of the Effective Date, be deemed to release and forever discharge Defendants their past, present, and future employees, officers, directors, legal representatives, members, owners, shareholders, parents, subsidiaries, affiliates, divisions, assignors, predecessors, successors, and assigns (the “Released Parties”), from any and all claims, rights, causes of action, and liabilities whatsoever, irrespective of legal theory, related to closing costs charged and/or paid in their transaction with defendants.

12.4. Covenant Not to Sue

All the Releasing Parties named above and each of them agree and covenant not to sue, prosecute, or institute or cooperate in the institution, commencement, filing, or prosecution of any suit or proceeding, in any forum, against any of the Released Parties based upon or related to any of the Released Claims.

Upon entry of the Final Order and Judgment, each Releasing Party shall be deemed to have covenanted and agreed not to sue or to assert or to prosecute, institute, or cooperate in the institution, commencement, filing, or prosecution of any proceeding against any of the Released Parties, in any forum, any cause of action, judgment, lien, indebtedness, costs, damages, obligations, attorneys’ fees, losses, claims, liabilities, and demands of whatever kind or character, against the Released Parties that is similar to, or is based on, the causes of action and/or factual allegations in this Action.

12.5. Bar Order

It is an essential element of this Agreement that Defendants obtain the fullest possible release from further liability to anyone relating to the Released Claims, and it is the intention of the Parties that this Agreement eliminate all further risk and liability of Defendants relating to the Released Claims. Accordingly, the Parties agree that the Court

shall include in the Final Order and Judgment a Bar Order meeting the following requirements:

The Releasing Parties are permanently enjoined from: (a) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding, or order in any jurisdiction against any of the Released Parties which is based on any of the Released Claims; and (b) instituting, organizing class members in, joining with class members in, amending a pleading in, or soliciting the participation of class members in, any action or arbitration, including but not limited to a purported class action, in any jurisdiction against one or more Released Parties based on, involving, or incorporating, directly or indirectly, any of the Released Claims.

13. Termination and Effective Date of Agreement

13.1. Right to Terminate this Agreement

If, at the Preliminary Approval Hearing or within thirty (30) days thereafter, the Court does not enter the Order of Preliminary Approval and Conditional Class Certification and approve the Mailed Notice in substantially the same form as Exhibits 3 and 2 hereto, each of Class Counsel and Defendants shall have the right, in the sole and absolute discretion of such Party, to terminate this Agreement by delivering a notice of termination to the other. In the event of any such termination, the Parties shall be restored to their original positions, except as expressly provided herein.

If the Court declines to enter the Final Order and Judgment in substantially the same form as Exhibit 1 attached hereto, or if the Final Order and Judgment is reversed on appeal, each of Class Counsel and Defendants shall have the right, in the sole and absolute discretion of such Party, to terminate this Agreement by delivering a notice of termination to the other. In the event of any such termination, the Parties shall be restored to their original positions, except as expressly provided herein.

13.2. Effective Date

If the Final Order and Judgment is entered by the Court and the time for appeal from all of such orders and judgment has lapsed (including without limitation any extension of time for the filing of any appeal that may result by operation of law or order of the Court) with no notice of appeal having been filed, the "Effective Date" shall be the next business day after the last date on which notice of appeal could have been timely filed. If the Final Order and Judgment is entered and an appeal is filed as to either of them, the "Effective Date" shall be the next business day after the Final Order and Judgment is affirmed, all appeals are dismissed, and the time for taking further appeals to, or petitioning for discretionary review in, any court has expired.

14. Not Evidence; No Admission of Liability

In no event shall this Agreement, in whole or in part, whether effective, terminated, or otherwise, or any of its provisions or any negotiations, statements, or proceedings relating

to this Agreement in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, in any other action, or in any judicial, administrative, regulatory, or other proceeding, except in a proceeding to enforce this Agreement. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence, or an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of Defendants or Plaintiffs, or as a waiver by Defendants or Plaintiffs of any applicable defense. None of the Parties waives or intends to waive any applicable attorney-client privilege or work product protection for any negotiations, statements, or proceedings relating to this Agreement. This provision shall survive the termination of this Agreement.

15. Entire Agreement

This Agreement, including its Exhibits, contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties; the Agreement is not subject to any condition not expressly provided for in this Agreement. This Agreement supersedes any prior agreements or understandings, whether written or oral, between and among Plaintiffs, Settlement Class Members, Class Counsel, and Defendants regarding the subject matter of the Action or this Agreement.

16. Amendment

This Agreement may be amended or modified only as provided in a written instrument signed by or on behalf of Defendants and Class Counsel (or their successors in interest) and approved by the Court.

17. No Presumption Against Drafter

None of the Parties shall be considered the drafter of this Agreement or any provision of this Agreement under any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter. This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.

18. Captions and Headings

The use of captions and headings in this Agreement is solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

19. Continuing Jurisdiction and Exclusive Venue

Except as otherwise provided in this Agreement, it is expressly agreed and stipulated that the Circuit Court for Taney County, Missouri, shall have exclusive jurisdiction and authority to consider, rule upon, and issue a final order with respect to suits, whether judicial, administrative, or otherwise, which may be instituted by any person or entity, individually or derivatively, with respect to this Agreement.

Except as otherwise provided in this Agreement, Defendants and each Class Member who has not validly and timely requested to Opt Out of this Agreement hereby irrevocably submits to the exclusive jurisdiction and venue of the Circuit Court for Taney County, Missouri, for any suit, action, proceeding, case, controversy, or dispute relating to this Agreement and/or Exhibits hereto and negotiation, performance, or breach of same.

20. Parties Shall Not Contest Jurisdiction

In the event of a case, controversy, or dispute arising out of the negotiation of, approval of, performance of, or breach of this Agreement, and solely for purposes for such suit, action, or proceeding, to the fullest extent that they may effectively do so under applicable law, the Parties irrevocably waive and agree not to assert, by way of motion, as a defense, or otherwise, any claim or objection that they are not subject to the jurisdiction of such Court, or that such Court is in any way an improper venue or an inconvenient forum.

21. Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original. Facsimile signatures shall be considered valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement.

22. Successors and Assigns

The provisions of this Agreement shall be binding upon and inure to the benefit of Defendants and their successors and assigns.

23. Governing Law

This Agreement and all agreements, exhibits, and documents relating to this Agreement shall be construed under the laws of the State of Missouri.

24. List of Exhibits

Exhibit 1 – Final Order and Judgment

Exhibit 2 – Mailed Notice

Exhibit 3 – Proposed Order for Preliminary Approval and Conditional Class Certification

Exhibit 4 – Full Legal Notice

25. Notices to Counsel

Notices (other than the class notices described separately in this Agreement) shall be in writing and delivered by hand delivery or first-class mail **and** email to the Parties as follows:

Notice to Defendants shall be made by: (a) hand delivery or first-class mail to Jason Smith, Spencer Fane LLP, 2144 East Republic Road, Suite B300, Springfield, MO, 65804, and (b) email to jcsmith@spencerfane.com.

Notice to Plaintiffs and any Settlement Class Member shall be made by: (a) hand delivery or first class mail to Chandler Gregg, Strong-Garner-Bauer, 415 E. Chestnut Expressway, Springfield, MO 65802, and (b) email to chandler@stronglaw.com.

26. Signatures

The Parties have executed and delivered this Agreement, by and with the advice and review by counsel, and made it effective as of the date set forth in the beginning of this Agreement.

COUNSEL FOR PLAINTIFFS DARRELL AND KATHLEEN THOMPSON AND THE SETTLEMENT CLASS

By: 
Chandler Gregg

PLAINTIFFS/CLASS REPRESENTATIVES

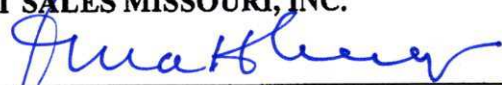
By: 
Darrell Thompson

By: 
Kathleen Thompson


COUNSEL FOR DEFENDANTS

By: 
Jason C. Smith

RESORT SALES MISSOURI, INC.

By: 
Name: **BASIL W. MATTHEWS**
Title: **COMPTROLLER**

SPINNAKER RESORTS, INC.

By: 
Name: **BASIL W. MATTHEWS**
Title: **COMPTROLLER**