

ITEM #57

(Exhibit 1 – Updated Settlement Agreement)

**ADDITIONAL MATERIAL
REGULAR MEETING**

SEPTEMBER 9, 2021

**SUBMITTED AT THE REQUEST OF
OFFICE OF THE COUNTY ATTORNEY**

**SETTLEMENT AGREEMENT
FOR BROWARD COUNTY TOURIST DEVELOPMENT TAX**

THIS SETTLEMENT AGREEMENT (the “**Agreement**”) is dated _____, 2021, and is between [PLATFORM], a _____ corporation (“**Platform**”), and **BROWARD COUNTY, FLORIDA** (the “**Taxing Jurisdiction**”). Each party may be referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS:

WHEREAS, the Taxing Jurisdiction filed suit against Platform and certain unknown Hosts in the Circuit Court of the Seventeenth Judicial Circuit in Broward County, Florida, Case No. _____, in which the Taxing Jurisdiction sought, among other things, declaratory relief and an injunction concerning the reporting, collection, and remittance of the Tourist Development Tax (“**TDT**”) to the Taxing Jurisdiction for periods prior to [DATE OF MOU] (the “**Litigation**”);

WHEREAS, the Taxing Jurisdiction also asserts a claim in the Litigation against certain unknown Hosts relating to property taxes allegedly due as a result of certain Host’s abandonment of homestead, pursuant to Florida Statutes Section 196.061, as a result of renting the homesteaded property for more than thirty (30) days per calendar year for two (2) consecutive years. If the homestead has been abandoned, the Host would be liable for the tax owed on the value erroneously exempted and the erroneous limitation on the assessment value, plus penalties and interest and reassessment at current market value (“**Homestead Tax Liability**”). No claim has been asserted against Platform relating to the Homestead Tax Liability;

WHEREAS, the Parties desire to resolve all aspects of the Litigation as against Platform without the further time and expense of litigation or other legal action;

WHEREAS, Platform represents that it provides an Internet-based platform (the “**Platform**”) through which third parties offering accommodations and/or activities (“**Hosts**”) and third parties booking such accommodations and/or activities (“**Guests**”) may communicate, negotiate, and consummate a direct booking transaction for accommodations and/or activities (“**Booking Transactions**”);

WHEREAS, Platform and the Taxing Jurisdiction entered into a Voluntarily Collection Agreement effective [DATE OF MOU], that governs the Parties’ agreement concerning facilitation of Hosts’ remittance of TDT from [DATE OF MOU], forward; and

WHEREAS, the Taxing Jurisdiction and Platform enter into this Agreement voluntarily in order to resolve the Litigation, and to facilitate the Hosts' remittance of TDT imposed under applicable Florida Statutes and Broward County law (the applicable "**Code**"), for Booking Transactions completed by Hosts and Guests on the Platform for transient rental accommodations (as defined in the Code) located in Broward County, Florida for the period of January 1, 2014 through [DATE OF MOU] (the "**Taxable Booking Transactions**"), and possible settlement by Hosts of Homestead Tax Liability that may result from Booking Transactions for transient rental accommodations located in Broward County, Florida during the period of January 1, 2014, through December 31, 2020.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES, MUTUAL COVENANTS, AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

PROVISION OF DATA

(A) Solely pursuant to the terms and conditions of this Agreement and subject to the provisions of the Protective Order (attached as Exhibit A), within 60 days after this Agreement is fully executed, Platform agrees contractually to provide the following information in response to third party discovery to be served upon Platform by Broward County in the Litigation to the extent this information is in Platform's possession:

- Taxable Booking Transactions information: Names, email addresses, listing addresses, and amount of taxable revenue earned per Host per calendar year for the time period of January 1, 2014, through [DATE OF MOU], for Hosts who had more than \$5,000 in total taxable revenue from Taxable Booking Transactions in any one of the calendar years from 2014 through 2017; and
- Homestead Tax Liability information: Names, email addresses, listing addresses, and the specific calendar years implicated (i.e., consecutive years with rentals of 30 or more days) of Hosts who meet the following criteria: the Host rented an entire home on the Platform for more than 30 days for two consecutive calendar years during the time period 2014 to 2020.

Platform will provide a sworn statement by a person with knowledge at Platform ("Sworn Statement") attesting to the accuracy and authenticity of the information provided meeting the stated criteria.

Except as provided above, Platform is not contractually agreeing to provide any additional information; however, nothing in this Agreement alleviates any legal obligation Platform may otherwise have to provide information.

The Parties agree to jointly seek entry of the proposed Protective Order in the Litigation.

The Taxing Jurisdiction acknowledges that the Taxable Booking Transactions information provided by Platform under this Agreement constitutes “return information” under Florida law and is provided pursuant to the Protective Order entered by the Court in the Litigation. Except as expressly provided herein or permitted under applicable law, the Taxing Jurisdiction agrees that the restrictions from sharing such return information with other agencies within Broward County, other governmental agencies, third parties, and the public, will continue to govern the confidentiality of such information after it is produced, including but not limited to the restrictions set forth in Florida Statutes §§ 193.074 and 213.053; the foregoing limitations do not apply to disclosing individual Host information solely (i) to the particular Host at issue; (ii) with the Broward County Property Appraiser relating to property tax determinations, or (iii) to agents of the Taxing Authority for purposes of administering a settlement, negotiating payment, or in connection with any litigation to collect amounts owed from the applicable Host.

NO PAYMENT OF BACK TAXES

(B) Platform represents, which representation is being relied upon by the Taxing Authority, neither Platform nor any of its current or past affiliated parent or subsidiary companies have paid TDT back taxes (i.e., TDT owed for transactions that occurred prior to the operative date of a voluntary collection agreement) to any state or local government entity in Florida.

AFFIRMATION TO HOSTS

(C) Platform agrees, for the purposes of facilitating this Agreement, that upon the inquiry by any Host, it will affirm the statutory liability of Hosts to pay any and all TDT due on the Taxable Booking Transactions for time periods prior to [DATE OF MOU], except insofar as the Hosts may have applicable defenses such as under the statute of limitations. Platform shall not make any statement to knowingly discourage any Host from complying with the Host’s legal obligations to pay any TDT Obligation or Homestead Tax Obligation that may be due.

LIMITATION OF APPLICATION

(D) This Agreement is solely for the purpose of resolving the Litigation and facilitating the remission of TDT by Hosts with respect to Taxable Booking Transactions prior to [DATE OF MOU], and/or the negotiation and resolution of Homestead Tax Liability as a result of Booking Transactions, and, except with respect to the representations, rights, and liabilities set forth herein, the execution of or actions taken under this Agreement shall not be considered an admission of law or fact or constitute evidence thereof under the Code or any other provisions of the laws of the United States of America or of any State or subdivision or municipality thereof. Neither Party waives, and each Party expressly preserves, any and all arguments, contentions, claims, causes of action, defenses, or assertions relating to the validity, interpretation, or applicability of the Code, regulations, or application of law. Other than the reserved right to apply to the Court to enforce the terms of this Agreement, the Parties agree that for so long as a Party is in compliance with its obligations under this Agreement and the applicable Florida statutory, regulatory, or case law regarding Platform's obligation to collect and remit TDT for Taxable Booking Transactions is not materially changed, the other Party will not file a separate lawsuit or refile this action against the first Party relating to the issues raised in this Litigation. The Taxing Jurisdiction further agrees that for so long as Platform is in compliance with its obligations under this Agreement and the applicable Florida statutory, regulatory, or case law regarding Platform's obligation to collect and remit TDT for Taxable Booking Transactions is not materially changed, the Taxing Jurisdiction will not file a separate lawsuit or claim relating to the issues raised in this Litigation against Platform or its current or past affiliated parent or subsidiary companies, directors, shareholders, investors, employees and other agents.

DISMISSAL

(E) Within ten days after execution of this agreement, the Parties will execute and file a stipulation for the entry of an order by the court (i) dismissing the Litigation against Platform without prejudice, and (ii) reserving jurisdiction to enforce the terms of this Agreement. Each Party will bear its own costs and fees from the Litigation. The Parties will promptly proceed with any additional procedures needed to effectuate a dismissal of the Litigation. This Agreement is a compromise and settlement of a dispute between the parties. This Agreement is not an admission of liability, wrongdoing, or of any fact by any Party and no inference shall be drawn herefrom.

MISCELLANEOUS

(F) CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of Florida without regard to its conflict of law principles. Venue and jurisdiction for any litigation arising out of this Agreement shall be in a Florida state court of appropriate jurisdiction in Broward County, Florida.

(G) MODIFICATION. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.

(H) MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, and understandings with respect thereto. Nothing in this Agreement shall supersede, modify, or have any effect upon the [MOU].

(I) COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.

(J) RELATIONSHIP OF THE PARTIES. The Parties are entering into an arm's-length transaction and do not have any relationship, employment or otherwise. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

(K) WAIVER AND CUMULATIVE REMEDIES. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

(L) FORCE MAJEURE. Neither Party shall be liable for any failure or delay in performance under this Agreement for causes beyond that Party's reasonable control and

occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Platform employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(M) ASSIGNMENT. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Platform may assign this Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

(N) MISCELLANEOUS. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

NOTICES

(O) Notices and other communications shall be in writing and shall be deemed to have been given upon (i) the second business day after sending by reputable overnight courier; (ii) the third business day after sending by registered or certified mail; or (iii) the date of service by email. Notices shall be addressed to the following persons:

To Platform:

To the Taxing Jurisdiction:

Broward County Records, Taxes and Treasury Division
Attn: Tom Kennedy, Director
115 South Andrews Avenue, Ste. A430
Fort Lauderdale, Florida 33301
E-mail: tkennedy@broward.org

With a copy to:
Broward County Attorney's Office
Attn: Rene Harrod
115 South Andrews Avenue, Room 423
Fort Lauderdale, Florida 33301
Email: rharrod@broward.org

(Signatures follow on next page)

IN WITNESS WHEREOF, Platform and the Taxing Jurisdiction have executed this Agreement effective on the date set forth in the introductory clause.

[PLATFORM], a _____ corporation

By: _____
Signature of Authorized Representative

Name and Title of Authorized Representative

BROWARD COUNTY, FLORIDA

WITNESS:

BROWARD COUNTY, by and through
its County Administrator

(Signature)

By _____
County Administrator

(Print Name of Witness)

____ day of _____, 2021

(Signature)

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

(Print Name of Witness)

By _____
Scott Andron (Date)
Assistant County Attorney

By _____
René D. Harrod (Date)
Chief Deputy County Attorney