

Prepared by and Return to:
Constance Pierce, Esq.
Hart, Calley, Gibbs & Karp, P.C.
307 N. Washington Street
Alexandria, VA 22314

Tax Map Nos. # 075.01-04-05
075.01-05-04
075.03-03-11
075.03-03-12

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “**Agreement**”), dated as of the _____ day of _____, 2014 (the “**Effective Date**”), is entered into by and between the **OLD DOMINION BOAT CLUB** (“**ODBC**”) and **THE CITY OF ALEXANDRIA, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “**City**”). ODBC and City are each a “**Party**” and collectively may be referred to as the “**Parties.**”

RECITALS

WHEREAS, ODBC acquired certain real property, together with improvements thereon, located generally at the foot of King Street in the City of Alexandria, Virginia, by deed dated June 9, 1921, recorded in the Clerk’s Office of the Circuit Court of the City of Alexandria, Virginia (the “**Clerk’s Office**”), in Deed Book 72, Page 362, and by deed dated December 4, 1935, recorded in the Clerk’s Office in Deed Book 125, Page 285 (the “**ODBC Vesting Deeds**”); and

WHEREAS, the City and ODBC have had ongoing disputes about the ownership of portions of the properties described in the ODBC Vesting Deeds and/or now or formerly occupied or used by ODBC (the “**ODBC Property**”); and

WHEREAS, the City and ODBC and have had periodic discussions regarding their disputes about the ODBC Property; and

WHEREAS, the City adopted the Waterfront Small Area Plan in 2012 which highlights the area around the foot of King Street as the center of the City’s Waterfront and an important component of the implementation of the Waterfront Small Area Plan; and

WHEREAS, on November 19, 2013 the Alexandria City Council approved a motion directing the City Staff to conduct an additional negotiation period with ODBC to attempt to resolve the disputes about the ODBC Property, and limited that period to no more than ninety (90) days. The City Council also directed City Staff to continue the process of eminent domain as to portions of the ODBC Property in case such negotiations did not resolve the disputes; and

WHEREAS, the Parties started the above-referenced additional negotiations on December 18, 2013, met in six (6) additional meetings, including two (2) meetings with a mediator, and concluded the meetings on March 5, 2014; and

WHEREAS, the City owns or anticipates acquiring certain properties in the City of Alexandria (the “**City Property**”) more particularly defined and shown on **Exhibit A** attached hereto, that the City will convey or otherwise make available to ODBC in exchange for some or all of the ODBC Property being conveyed to the City; and

WHEREAS, on March 22-24, 2014 the ODBC membership voted to approve the transaction described in the document entitled “ODBC CITY 90-DAY NEGOTIATIONS REVISED BEACHCOMBERS/MOVE OPTION PROPOSAL Final Proposal, March 13, 2014” (the “**Move Option Proposal Summary**”) a copy of which the City posted on its website; and

WHEREAS, the terms, conditions and details of the property exchange transaction described in the Move Option Proposal Summary are set forth in the Property Acquisition and Exchange Agreement dated of even date herewith between the City and ODBC (the “**Property Exchange Agreement**”), to be executed by the Parties contemporaneously with the execution and delivery of this Agreement; and

WHEREAS, this Agreement and the Property Exchange Agreement represent a full resolution of the disputes between the Parties regarding portions of the ODBC Property, as more particularly described herein; and

WHEREAS, the provisions of this Agreement and the Property Exchange Agreement are mutually dependent insofar as the Property Exchange Agreement implements various of the provisions of this Agreement, and therefore both documents are to be read and interpreted in conjunction with one another.

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

ARTICLE I
CITY'S REPRESENTATIONS, WARRANTIES AND COVENANTS

The City hereby makes the following representations, warranties and covenants:

(1) Organization, Power, Authorization and Execution. The City is a municipal corporation of the Commonwealth of Virginia, duly formed, validly existing, and in good standing under the laws of the Commonwealth of Virginia, with all requisite powers and authorizations to carry on its business and to enter into and perform its obligations hereunder. This Agreement has been duly authorized, executed and delivered by all necessary action on the part of the City, constitutes the valid and binding agreement of the City and is enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors’ rights and remedies generally and to general principles of equity.

(2) Noncontravention. The execution, delivery and performance by the City of its obligations under this Agreement does not contravene any document, agreement, order or other instrument binding upon the City.

ARTICLE II
ODBC'S REPRESENTATIONS, WARRANTIES AND COVENANTS

ODBC hereby makes the following representations, warranties and covenants:

(1) Organization, Power, Authorization and Execution. ODBC is a Virginia [not-for-profit] corporation, duly formed, validly existing, and in good standing under the laws of the Commonwealth of Virginia, with all requisite powers and all governmental authorizations to carry on its business and to enter into and perform its obligations hereunder. This Agreement (a) has been duly authorized, executed and delivered by all necessary action on the part of ODBC, including the vote taken by the ODBC membership on _____, 2014, which approved the execution and delivery of this Agreement and the Property Exchange Agreement on behalf of ODBC, (b) constitutes the valid and binding agreement of ODBC and (c) is enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors' rights and remedies generally and to general principles of equity.

(2) Noncontravention. The execution, delivery and performance by ODBC of its obligations under this Agreement does not contravene any document, agreement, order or other instrument binding upon ODBC.

ARTICLE III
SETTLEMENT OF PENDING LITIGATION & FULL RELEASE OF PROPERTY CLAIMS

(1) Wales Alley Litigation. ODBC filed a civil action against the City, and other parties, in the Circuit Court of the City of Alexandria, entitled ODBC v. City of Alexandria, *et al.*, Case Number CL 10003017 (the "**Wales Alley Case**"). Subject to the terms and conditions of this Agreement, the Parties desire to resolve their differences and reach an end, compromise, and settlement for and to all disputes existing and potentially existing between them arising out of the Wales Alley Case.

(2) King Street Park Litigation. ODBC filed a civil action against the City in the Circuit Court of the City of Alexandria, entitled ODBC v. City of Alexandria, Chancery No. 10643 (the "**King Street Park Case**"). Subject to the terms and conditions of this Agreement, the Parties desire to resolve their differences and reach an end, compromise, and settlement for and to all disputes existing and potentially existing between them arising out of the King Street Park Case.

(3) Settlement and Release. In consideration of the execution of this Agreement and the representations, warranties, covenants, agreements, releases and promises made in this Agreement by the Parties, the Parties agree as follows:

(a) After the Primary Closing, as defined in the Property Exchange Agreement, and the expiration or termination of the King Street Lease as more

particularly described in the Property Exchange Agreement, ODBC shall dismiss its claims against the parties to the matter in the Wales Alley Case and the King Street Park Case, as necessary.

(b) Each Party shall forever release and waive any and all property claims and/or causes of action against the other Party relating to the matters that are the subject of this Agreement and the Property Exchange Agreement, including, but not limited to the Wales Alley Case, the King Street Park Case, Fayette Alley, Wales Alley and the Strand, except as they may relate to the enforcement of either this Settlement Agreement and the Property Exchange Agreement; and

(c) ODBC shall submit an Order of Settlement to the Circuit Court of the City of Alexandria, fully endorsed by Counsel for all parties, after circulation thereto within fifteen (15) calendar days following the Primary Closing, for entry of the Dismissal of both the Wales Alley Case and the King Street Park Case, as necessary.

ARTICLE IV **MISCELLANEOUS PROVISIONS**

(1) Completeness; Modification. This Agreement, the Property Exchange Agreement and all exhibits and attachments to each of them, constitute the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior understandings and negotiations, written or oral. This Agreement may be modified only by a written instrument duly executed by the parties hereto.

(2) Governing Law and Venue. This Agreement and all documents referred to herein shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Virginia, exclusive of its conflicts of law rules. Venue for any disputes under this Agreement shall be in Alexandria, Virginia or in the US District Court located in Alexandria, Virginia.

(3) Survival. All of the representations, warranties, covenants and agreements of the City and ODBC under this Agreement shall survive for a period of twenty (20) years following the Primary Closing.

(4) Partial Invalidity. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that the remaining provisions of this Agreement taken as a whole carry out the general purpose of the Agreement, and that no Party is unfairly burdened or prejudiced or materially deprived of the benefits intended to be conferred by this Agreement.

(5) Headings; Terms; Counterparts. The section headings contained in this

Agreement are for purposes of reference and convenience only and shall not limit or otherwise affect in any way the meaning of this Agreement. Unless otherwise required by the context in which any term appears: (a) the singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter, and vice versa; (b) references to “Articles”, “Sections” or “Exhibits” shall be to articles, sections or exhibits of or to this Agreement (except that references to “Sections” in an Exhibit shall be to sections of that Exhibit), and references to “paragraphs” or “clauses” shall be to separate paragraphs or clauses of the section or subsection in which the reference occurs; (c) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; and (d) the words “include,” “includes” or “including” shall mean “including, without limitation.” All exhibits attached to this Agreement are made a part hereof. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which taken together will constitute one agreement.

[The Remainder of this Page is Intentionally Blank]

WITNESS the following signatures:

OLD DOMINION BOAT CLUB,
a Virginia corporation

By: _____
Print Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA:

CITY OF ALEXANDRIA, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2014, by _____, as _____ of Old Dominion Boat
Club.

NOTARY PUBLIC

My Commission expires: _____
Virginia Notary Registration #: _____

CITY OF ALEXANDRIA,
a municipal corporation of Virginia

By: _____
Print Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA:

CITY OF ALEXANDRIA, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Rashad Young, City Manager of the City of Alexandria, a Virginia municipal corporation, on behalf of said municipal corporation.

NOTARY PUBLIC

My Commission Expires: _____

Virginia Notary Registration #: _____

EXHIBIT A
CITY PROPERTY

"CITY Property" means collectively:

- A. The 0 Prince Property;
- B. The 200 Strand Property;
- C. The WP Parking Space Property;
- D. The A/B Pier;
- E. The 204 Strand Property; and
- F. The 208 Strand Property.

