

RESOLUTION NO. R16-762

**A RESOLUTION AUTHORIZING A GENERAL RELEASE AND SETTLEMENT AGREEMENT CONCERNING CLAIMS IN PENDING LITIGATION**

**WHEREAS**, the Council is the duly elected governing authority of the City of Stockbridge, Georgia (hereinafter, the “City”); and

**WHEREAS**, the City filed a lawsuit in the Superior Court of Clayton County (Civil Action No. 2013-CV-02362-11) (hereinafter, the “Litigation”);

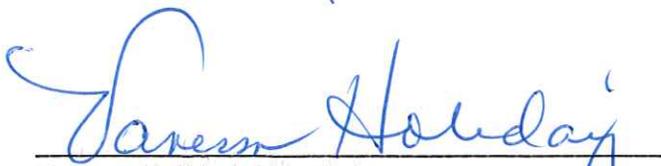
**WHEREAS**, the Council finds that it is in the best interest of the City to resolve its claims in the Litigation under the terms set forth in the General Release and Settlement Agreement attached hereto as Exhibit A;

**NOW THEREFORE**, the Council of the City of Stockbridge hereby resolves that the City shall enter into the General Release and Settlement Agreement attached hereto as Exhibit A and that the Mayor or Mayor Pro Tem of the City of Stockbridge shall have the authority to execute said agreement.

This Resolution shall be effective immediately upon its adoption.

**SO RESOLVED**, this 27<sup>th</sup> day of September, 2016.

  
\_\_\_\_\_  
Anthony S. Ford, Mayor Pro Tem

  
\_\_\_\_\_  
Vanessa Holiday, City Clerk



IN THE SUPERIOR COURT OF CLAYTON COUNTY  
STATE OF GEORGIA

CITY OF STOCKBRIDGE, GEORGIA :  
a municipal Corporation and political :  
subdivision of the State of Georgia, :  
acting by and through its Mayor and :  
City Council; et al. :

Plaintiff, :

CIVIL ACTION NO. :  
2013-CV-02362-11 :

vs. :

ELP LLLP, and :  
SOUTHLAKE GOLF LP, and :  
JH CHILDS NO 2 LLLP, and :  
NATIONAL MANAGEMENT :  
COMPANY, INC. :

Defendants. :

**GENERAL RELEASE AND SETTLEMENT AGREEMENT**

This General Release and Settlement Agreement (hereinafter, "Agreement") is made and entered into by and between ELP LLLP, Southlake Golf LP, JH Childs NO 2 LLLP and National Management Company, Inc., its officers, members, directors, partners, shareholders, employees, agents or subsidiaries, successors, and assigns (hereinafter collectively referred to as "Defendants"), and the City of Stockbridge (hereinafter referred to as "the City").

**WHEREAS**, the City has made a claim in the above-styled lawsuit against Defendants asserting entitlement to certain interest and attorney's fees; and

**WHEREAS**, this Agreement shall not be deemed in any manner an admission, finding, or indication for any purpose whatsoever that Plaintiff or Defendants, or any of their respective officers, employees and/or other agents acted contrary to law or violated any law with respect to the above-styled action at any time;



**NOW THEREFORE**, in exchange for Twenty Thousand Dollars (\$20,000.00) and other good and valuable consideration paid by Defendants to the City, the sufficiency and receipt which is hereby acknowledged, Defendants agree as follows:

1.

Within five (5) days from execution of this Agreement by the Parties, Defendants agree to pay by money order, wire transfer or certified funds Twenty Thousand Dollars (\$20,000.00) to the City as full and final settlement of all claims alleged in the above-styled lawsuit; and within ten (10) days of receipt of said payment, both parties agrees to file a joint dismissal of their respective claims in the above-styled lawsuit with prejudice.

2.

Defendants agree to waive their right to appeal or otherwise challenge any ruling or decision made by the Court in the above-styled action.

3.

Defendants agree not to disclose or discuss this Agreement or any part of its contents with anyone except, its attorney, its accountants, the Internal Revenue Service, the Taxing Authority of the State of Georgia, or such other persons or as may be otherwise be required by law. Defendants also agree (a) to avoid direct or indirect references, whether by their actions or words, to the Agreement or the terms of the Agreement; (b) not to initiate discussions, correspondence or other communications regarding the Agreement or the terms of this Agreement and (c) to confine any unavoidable remarks relating directly or indirectly to the Agreement or the terms of this Agreement to the statement that "the matter has been resolved."

A handwritten signature in black ink, appearing to be initials or a stylized name, located in the bottom right corner of the page.

4.

Defendants represent that they have not assigned any portion of their claims against the City, above-styled, including any actions against the City, its officers, agents, directors, supervisors, or representatives and that they will not do so at any time hereafter and that this Agreement represents a full and complete resolution of this matter, with prejudice.

5.

Defendants, their attorneys, agents, assigns, heirs, executors, administrators, and successors, hereby fully, finally and forever releases and discharges the City and all of its present and former officers, agents, assigns, directors, parent companies, subsidiaries, insurers, attorneys, benefit plans, affiliates and representatives from any and all claims, demands, actions, causes of actions, suits, damages, losses, costs, expenses, and attorney's fees of any kind any every character whatsoever, whether known or unknown, from the beginning of time to the present day. Defendants also release and forever acquit the City, its attorneys, agents, assigns, heirs, executors, administrators, and successors, and anyone who is affiliated or may claim affiliation through the City from any claim for punitive damages arising from the transaction and occurrences which form the basis for the above-styled lawsuit, including punitive damages of every kind and character whatsoever, whether known or unknown, from the beginning of time to the present day.

6.

Defendants hereby covenant, agree and acknowledge that they will not make any oral or written communication to any person, company, or other entity which disparages, criticizes, or has the effect of damaging the reputation or of otherwise working in any way to the detriment of the City.

A handwritten signature in black ink, appearing to be initials or a name, located in the bottom right corner of the page.

7.

Defendants agree that all claims between them and the City, with respect to the interpretation and enforceability of this Agreement including the terms thereof shall be exclusively decided by the Superior Court of Clayton County by a bench trial (not a jury).

8.

The parties acknowledge and agree that they will each be solely responsible for all their costs, fees, attorney's fees and expenses associated with the above-referenced claim.

9.

Defendants affirm that the only consideration for this Agreement, and their execution of the Agreement, are the terms stated herein and that there are no other promises or agreements of any kind that have caused them to execute the Agreement; that they fully understand the meaning and intent of the Agreement, including, but not limited to, its final and binding effect; that they have had a reasonable period of time within which to consider this Agreement; and that they are represented by counsel and has had the advice of counsel before executing this Agreement.

10.

The parties hereto acknowledge that the Agreement sets forth the entire agreement between the parties and fully supersedes any and all prior agreements, claims, petitions, allegations, or understandings among them pertaining to the subject matter of the above-styled action.

11.

This Agreement is made and entered into in the State of Georgia and shall be interpreted and enforced under and governed by the laws of the State of Georgia. Furthermore, this

A handwritten signature in black ink, appearing to be 'J. B.', located in the bottom right corner of the page.

Agreement shall be construed as having been drafted by all of the parties. Any change or modification to this Agreement shall be made in writing with the consent and signatures of all of the parties to be charged.

12.

This Agreement may be executed in counter-parts, and each counter-part, when executed, shall have the efficacy of a signed original. Copies of such signed counter-parts may be used in lieu of the originals for any purpose.

13.

No waiver or any breach of any term or provision of the Agreement shall be construed to be, nor shall be deemed, a waiver of any other breach of the Agreement. No waiver shall be binding unless it is made in writing and signed by the parties waiving the breach.

**DEFENDANTS ACKNOWLEDGE THAT THEY HAVE READ THE FOREGOING AGREEMENT AND FULLY UNDERSTANDS ITS TERMS AND CONTENTS AS EXECUTING THE SAME FREELY AND VOLUNTARILY HAVING BEEN GIVEN A FULL AND FAIR OPPORTUNITY TO CONSIDER IT AND CONSULT WITH ADVISORS INCLUDING ATTORNEYS OF THEIR CHOICE.**

**IN WITNESS WHEREOF**, the undersigned has hereunto set his hand and seal.

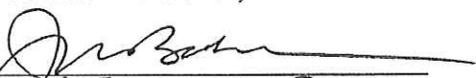
ACCEPTED BY:

ELP, LLLP

  
By: James M. Baker  
Title: Pres of G.P

9-23-16

SOUTHLAKE GOLF, LP

  
By: James M. Baker

9-23-16

Title: Part of G.P.

JH CHILDS NO 2 LLLP

[Signature] 9-23-16  
By: James M. Baker  
Title: Part of G.P.

NATIONAL MANAGEMENT COMPANY  
INC.

[Signature] 9-23-16  
By: James M. Baker  
Title: President

ACCEPTED BY:

\_\_\_\_\_  
BEN F. WINDHAM  
Attorney for Defendants  
Ben F. Windham, P.C.  
3838 Highway 42  
Locust Grove, GA 30248

\_\_\_\_\_  
Date

\_\_\_\_\_  
JACK R. HANCOCK  
Attorney for Defendants  
Freeman Mathis & Gary, LLP  
661 Forest Parkway, Suite E  
Forest Park, Georgia 30297

\_\_\_\_\_  
Date

ACCEPTED BY:

CITY OF STOCKBRIDGE, GEORGIA

\_\_\_\_\_  
Mayor Pro Tem Anthony Ford

\_\_\_\_\_  
Date

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ANDREW J. (ANDY) WELCH, III  
Attorney for Plaintiffs  
Smith Welch Webb & White  
2200 Keys Ferry Court  
P.O. Box 10  
McDonough, Georgia 30253

Title: Pres. of G.P.

JH CHILDS NO 2 LLLP

[Signature] 9-23-16  
By: James M. Barker  
Title: Pres. of G.P.

NATIONAL MANAGEMENT COMPANY  
INC.

[Signature] 9-23-16  
By: James M. Barker  
Title: President

ACCEPTED BY:

[Signature]  
BEN F. WINDHAM  
Attorney for Defendants  
Ben F. Windham, P.C.  
3838 Highway 42  
Locust Grove, GA 30248

9/26/16  
Date

JACK R. HANCOCK  
Attorney for Defendants  
Freeman Mathis & Gary, LLP  
661 Forest Parkway, Suite E  
Forest Park, Georgia 30297

\_\_\_\_\_  
Date

ACCEPTED BY:

CITY OF STOCKBRIDGE, GEORGIA

\_\_\_\_\_  
Mayor Pro Tem Anthony Ford

\_\_\_\_\_  
Date