

**SETTLEMENT AGREEMENT, GENERAL RELEASE, AND
INDEMNIFICATION AND HOLD HARMLESS AGREEMENT**

This Settlement Agreement, General Release, and Indemnification and Hold Harmless Agreement (this "Settlement Agreement") is made and entered into as of the ____ day of September, 2019, by and between TODD R. PETERS, an individual having an address at 4144 Manson Avenue, Smyrna, Georgia, 30082 (hereafter "Peters"); and THE CITY OF SMYRNA, GEORGIA, a Georgia Municipal Corporation, having an address at 2800 King Street, Smyrna, Georgia, 30080, individually as Party of the Second Part (hereafter "Smyrna"); all parties sometimes hereafter referred to as the "Parties".

RECITALS

WHEREAS, PETERS is the sole individual owner of certain real property located in Cobb County, Georgia, at 4144 Manson Avenue, Smyrna, Georgia, 30082, Cobb County Tax Parcel ID #17031400210, within the City of Smyrna (the "Property"), by virtue of that certain deed recorded in Deed Book 15088, Pages 3427-8, Records of the Clerk of Superior Court of Cobb County, Georgia;

WHEREAS, certain potential disputes have arisen between the Parties regarding the maintenance of the waterway adjacent to the real property at 4144 Manson Avenue in Smyrna;

WHEREAS, the Parties wish to permanently resolve any disputes between them through the execution and performance of this Settlement Agreement, and to compromise and settle any doubtful or questionable claims on the part of any Party;

NOW, THEREFORE, in consideration of the premises, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **SETTLEMENT TERMS.**

1.1. **Payment from the City of Smyrna to Peters.** In consideration of the agreements of the Parties set forth in this Settlement Agreement, within five (5) business days of the execution of this Agreement by the latter party so to execute, the City of Smyrna shall pay to Peters the sum of precisely Ninety-Five Thousand and 00/100 Dollars (\$95,000.00).

1.2. **Peters's Waiver and Release of All Claims, Known and Unknown, Against the City of Smyrna.** In consideration of the agreements, on behalf of himself, his heirs, executors, representatives, and assigns, shall irrevocably waive and release all claims, whether known or unknown, against the City of Smyrna related to or concerning the maintenance of the waterway adjacent to the Property.

1.3. **Disclaimer of dedication.** In consideration of the agreements of the Parties, on behalf of themselves and in their representative capacities, set forth in this Settlement Agreement, the City of Smyrna shall irrevocably disclaim any possible dedication of the said waterway adjacent to the Property, and Peters shall accept such disclaimer in recordable form to run with the land and be binding on Peters's purchasers, administrators, executors, successors, and assigns. The Parties shall promptly execute and record any such further agreements and easements necessary to give effect to the intent of the Parties hereto.

2. **REPRESENTATIONS & WARRANTIES OF PETERS.**

2.1. **Binding Agreement.** This Agreement is duly executed and duly delivered by Peters and constitutes a valid and binding obligation of Peters legally enforceable against him, his representatives, agents, heirs, purchasers, administrators, executors, and assigns, in accordance with its terms.

2.2. No Violation. The execution, delivery and performance of this Settlement Agreement does not and will not result in any violation or breach of or conflict with any duty or obligation of Peters to any other party; and Peters, his heirs, purchasers, executors, and assigns, will fully indemnify and forever hold harmless the City of Smyrna against any and all claims made by any other such party at any time.

3. REPRESENTATIONS AND WARRANTIES OF PETERS.

3.1. Binding Agreement. This Agreement is duly executed and duly delivered by Peters and constitutes a valid and binding obligation of Peters legally enforceable against him in accordance with its terms.

3.2. Sole Owner. Peters represents and warrants that he is the sole owner of the parcel of real property recited above and that he is bound to no agreements, covenants, contracts, or judgments that require prior notice to or consent from any other party in order to bind himself and his successors and assigns hereby.

4. COVENANTS OF THE PARTIES.

4.1. Necessary Action. At the request of any Party hereto (the "Requesting Party"), the other Party(ies) shall take or cause to be taken all action, do or cause to be done all things, and execute and deliver or cause to be executed and delivered as the case may be, to the Requesting Party or for the benefit of the Requesting Party all such further assignments, endorsements, and other documents as the Requesting Party may reasonably request in order to consummate the transactions contemplated by the Settlement Agreement. In case at any time any further action is necessary or desirable to carry out the purposes of this Settlement Agreement, the other Party shall take all action necessary to effect the same upon the reasonable request of the Requesting Party.

5. **GENERAL RELEASE.** In consideration of this Agreement, Peters and each of his successors, heirs, assigns, representatives, administrators, executors, predecessors, receivers and/or agents, for and in consideration of the transactions described herein and other good and valuable consideration, the receipt, adequacy and fairness being hereby acknowledged, does hereby release, remise, acquit and forever discharge the City of Smyrna, and all respective successors, heirs, assigns, representatives, predecessors, administrators, executors, agents, employees and/or affiliated companies or entities, and each and all of them from any and all claims, demands, causes of action, suits, proceedings, actions, liabilities, damages, debts, judgments, costs, fees and expenses of every kind and nature whatsoever, whether known or unknown, asserted or unasserted, that they now have or ever had, arising out of, resulting from, or relating to, directly or indirectly, any action, inaction, matter, thing, or event, which occurred or failed to occur at any time in the past, from the beginning of time through and including the date hereof, including but not in any way limited to any and all claims asserted or which could have been asserted (including any claims for attorneys' fees or expenses by the Parties), more specifically related to any and all acts, omissions, performance, or other occurrence connected with the real Property owned by Peters at 4144 Manson Avenue, Smyrna, Georgia, 30080. Based on independent and fully informed judgment, Peters hereby expressly consents to a full, complete, and total release of any and all claims which could have been asserted previously against the City of Smyrna or which could hereafter be asserted, from the beginning of time until and through the date hereof, based upon any act or omission committed prior to execution hereof relative to the said real Property.

Peters hereby acknowledges and agrees that: (i) the releases set forth above are General Releases, and include releases of claims that may not presently be known to him; and (ii) his lack of such knowledge, whether through ignorance, oversight, error, negligence, or in any manner otherwise, shall not adversely affect the enforceability of or void this Agreement.

6. **NO CONTINUING OBLIGATION.** Except as provided for herein, there are no continuing debts, duties or obligations between the Parties, such obligations being released by this Agreement, including any and all claims or liabilities, as to the particular subject-matter hereof.

7. **DISCLAIMER OF LIABILITIES.** This Agreement and the recitals and provisions herein shall not be construed as an admission by any Party hereto of any liability of any kind to any other party. Instead, this Agreement is a compromise and settlement, of any and all claims, whether known or unknown to the Parties.

8. **MISCELLANEOUS.**

8.1. **Entire Agreement.** Except as otherwise provided herein, this Settlement Agreement and the documents described or incorporated herein constitute the entire agreement of the Parties concerning the subject matter hereof. All prior and contemporaneous conversations, negotiations, agreements, representations, covenants or warranties are merged herein.

8.2. **Reliance.** Each of the Parties represent and declare that in executing this Settlement Agreement they relied solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements governing any matter made by any other parties or by any person representing any of such other parties.

8.3. **Authority.** Each of the undersigned represent, declare and warrant that the undersigned has the authority to consent to the covenants and agreements provided for herein.

8.4. **Agreement Read and Understood.** Each of the Parties further represent and declare that they have carefully read this Settlement Agreement and know the contents thereof and that they signed the same freely and voluntarily.

8.5. Confidentiality. The consideration for this Agreement shall be confidential and shall not be disclosed; however, the Parties may disclose same to the Parties' accountants and attorneys; and nothing contained herein shall prohibit any Party from disclosing information (a) in response to a court order or other legal compulsion; or (b) pursuant to the requirement of a governmental or regulatory entity.

8.6. Oral Modification Prohibited. This Settlement Agreement and General Release may not be modified or terminated orally or in any other manner other than by an agreement in writing signed by the Parties hereto.

8.7. No Drafting Presumption. All of the Parties participated in the drafting of this document. They therefore stipulate and agree that, in interpreting the document, a court of law should not indulge a presumption, known as *contra proferentem*, that the document should be construed against a party because that Party drafted it.

8.8. Legal Proceedings. In the event that any Party hereto should bring any action, suit or other proceeding against any Party hereto, on any claim, demand, debt, liability, obligations, account or cause of action herein discharged and released, or contest the action herein discharged and released, or contest the validity of this Agreement, or attempt to rescind, negate, modify or reform this Agreement, or any of the terms or provisions hereof, the prevailing Party shall recover all of its attorneys' fees and costs incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions therefrom. Each of the Parties shall bear their own costs, including, but not limited to, attorneys' fees associated with the negotiation and execution of this Agreement, and fees and costs associated with the actions described in the recitals.

8.9. Binding on Successors and Assigns. This Agreement shall be binding on any and all heirs, administrators, executors, purchasers, successors-in-interest, receiver,s and assigns of the Parties.

8.10. Titles to Paragraphs. The titles of the various paragraphs of this Agreement are included for convenience of reference only and are not intended to and shall not in any way enlarge

or diminish the rights or obligations of the undersigned or affect the meaning or construction of this Agreement.

8.11. Counterparts. This Settlement Agreement may be executed in any number of counterparts, each of which may be executed by less than all of the Parties in person or via facsimile with confirmed answer back, each of which shall be enforceable against the Parties actually executing such counterparts, and all of which together shall constitute one instrument.

8.12. Governing Law. This Settlement Agreement shall be construed in accordance with the laws of the State of Georgia.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement as of the date first above written.

[SIGNATURES ON FOLLOWING PAGE]

Todd R. Peters

STATE OF GEORGIA)
COUNTY OF COBB)

I, the undersigned, a Notary Public in and for said county and state, hereby certify that Todd R. Peters, whose name is signed to the foregoing instrument and who is known to me, executed the same voluntarily.

Given under my hand and official seal of office this _____ day of _____,
2019.

NOTARY PUBLIC
My Commission Expires: _____

THE CITY OF SMYRNA, GEORGIA

A. Max Bacon, Mayor

STATE OF GEORGIA)
COUNTY OF COBB)

I, the undersigned, a Notary Public in and for said county and state, hereby certify that A. Max Bacon, the Mayor acting on behalf of the City of Smyrna, whose name is signed to the foregoing instrument and who is known to me, executed the same voluntarily.

Given under my hand and official seal of office this _____ day of _____,
2019.

NOTARY PUBLIC
My Commission Expires: _____