

STATE OF NORTH CAROLINA
PENDER COUNTY

**GENERAL RELEASE AND
SETTLEMENT AGREEMENT**

THIS MUTUAL GENERAL RELEASE AND SETTLEMENT AGREEMENT (the "Agreement") is made and entered into effective this 24 day of February, 2023, by and between Olde Point Property Owners Association, Inc. ("OPPOA") and Harbour Village Yacht Club, Inc. ("HVYC"), each a North Carolina non-profit corporation. OPPOA and HVYC are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, OPPOA is a property owners' association comprised of members who own certain lots within Olde Point Development, Phases I and II, Hampstead, North Carolina;

WHEREAS, pursuant to a deed recorded in Book 1516 at Page 114, HVYC is the owner of a lot (namely, Lot 1 Rev., Section I) (the "Club Tract") within Olde Point Development, Phase I, whereupon HVYC operates a social club (the "Club"), together with a recreation area, docks and boat launch ramp ("Boat Ramp");

WHEREAS, by virtue of the same deed, HVYC is the owner of a separate tract comprised of a parking lot (the "Parking Lot");

WHEREAS, OPPOA has asserted that its members and other residents of the Olde Point development have perpetually deeded easements permitting them to use the recreation area and boat landing on the Club Tract and to use the Parking Lot;

WHEREAS, HVYC currently requires Olde Point property owners to follow rules and restrictions set by HVYC, and pay an annual fee, to use the Parking Lot, recreation area and boat landing.

WHEREAS, OPPOA contends, and HVYC denies, that HVYC has imposed unreasonable restrictions on OPPOA members' property rights for the parking lot, recreation area and boat landing;

WHEREAS, the Parties' disputes are the subject of claims asserted in a lawsuit filed by OPPOA in Pender County Superior Court (File No. 22 CVS 174), captioned *Olde Point Property Owner's [sic] Association, Inc., Plaintiff, vs. Harbour Village Yacht Club Inc., Defendants* (the "Litigation");

WHEREAS, following a Court-ordered mediated settlement conference on November 18, 2022 and January 17, 2023, the Parties have agreed to resolve all disputes among them on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, mutual promises, covenants, and agreements set forth in this Agreement, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. Pedestrian Area and Kayak Launch. HVYC will make an area on the peninsula side of the Club Tract available for use by pedestrians (the "Pedestrian Area") on an annual fee basis, as provided herein. The Pedestrian Area will be fenced and gated as detailed in the aerial photo attached hereto as Exhibit A. In addition, HVYC will construct a kayak launch (the "Kayak Launch") available for kayaks and other non-motorized watercraft on an annual fee basis, as detailed in Exhibit A.

2. Financial Information. On or before January 31 of each year, HVYC shall publish on its website a cash flow statement showing by category the income and expense associated with the Parking Lot, Boat Ramp, Kayak Launch, and Pedestrian Area for the prior year. Upon request, HVYC shall make available for inspection by the OPPOA Board of Directors HVYC's canceled checks, invoices, loan statements showing payments and balance, and other documents evidencing the expenses shown, in addition to the number of HVYC-member Boat Ramp users. OPPOA is allowed to provide above records to 3rd party accountants, or other experts for review.

3. Use of HVYC Property. The Parking Lot, Boat Ramp, Kayak Launch, and Pedestrian Area will be made available to OPPOA members and other Olde Point residents on the following terms and conditions:

a. Registration: Users will be required to register and pay an annual fee to be established by HVYC. The annual fee shall vary according to type of use.

b. Type of Use:

(1) Motorized Boat Users: Registered motorized boat users will have access to the Parking Lot, Boat Ramp, the Kayak Launch, once completed, and the Pedestrian Area. As used herein, "Boat Ramp" shall refer to the boat ramp and docks appurtenant thereto. Registrants will be required to present proof of registration and insurance for tow vehicles. Registrants will be issued a set of three stickers, one of which shall be displayed on the registrant's tow vehicle, watercraft, and trailer. The annual fee for 2023 shall be \$300. In subsequent years, the registration fee shall be determined as a function of Maintenance Costs divided by the total number of all HVYC member-Boat Ramp users and registered motorized boat users, as determined by data for the prior calendar year. For purposes of this Agreement, "Maintenance Costs" shall be defined as the cost to preserve and maintain the condition of the easement areas existing as of the date of this Agreement and shall include the following categories: (a) grounds maintenance; (b) Parking Lot maintenance; (c) recreation area maintenance; (d) Boat Ramp maintenance; (e) Boat Ramp gate maintenance; (f) Bulkhead fence maintenance; (g) Cost of stickers and FOBs for access; (h) Lights for Parking Lot and Boat Ramp; (i) Liability insurance for easement areas; (j) Bulkhead maintenance; (k) a \$10,000

maximum annual capital reserve fee , subject to a reserve fund balance maximum of \$100,000; and (1) a \$10,000 annual ramp loan amortization recoupment for a maximum of 10 years for the repayment of the original loan balance of \$100,000 with TD Bank, loan number 0040001281546229001. The December 31, 2022 loan balance was \$86,745. Maintenance Costs shall exclude new construction, including, but not limited to, additional fencing and Kayak Launch costs, and legal fees. Registrants who did not register a boat in the prior year and register a boat outside the normal registration period shall pay a prorated fee based on the number of months remaining in the year.

(2) Non-Motorized Boat Users: Registered non-motorized boat users will have access to the Kayak Launch, once completed, and the Pedestrian Area. The annual maintenance fee shall be \$100.

(3) Pedestrian Area Users: Registered pedestrians will have access to the Pedestrian Area. The annual maintenance fee shall be \$50.

c. Other Use Restrictions: Use of the Boat Ramp, Kayak Launch and Pedestrian Area for commercial purposes, fishing, crabbing, swimming, and sunbathing is prohibited. HVYC reserves the right to limit the use of the boat ramp, parking lot, and recreation areas to easement holders who fail to comply with HVYC rules and guidelines. No registrant shall have his rights or privileges suspended except in accordance with the following two-step process: (1) A First violation will result in a written warning; and (2) A second violation will result in the issuance of a written notice to the registrant and an opportunity to be heard by the HVYC Board as to why a suspension should not issue. No suspension shall exceed the remainder of the current registration period.

d. Indemnification: As part of the registration process, HVYC may require an agreement by registrants to indemnify HVYC, provided that the language is no broader or restrictive than the following:

“Easement Holder, for himself and his family members and guests (collectively the “Indemnitor Parties”) shall defend and indemnify Harbour Village Yacht Club, Inc. (“Indemnitee”) from and against any and all claims and damages (including, without limitation, claims for personal or bodily injury, property damage, death, compensatory, punitive, and exemplary damages, administrative penalties, environmental exposures, and attorney’s fees) arising in whole or in part from the Indemnitor Parties’ negligent or intentional acts or omissions in the use of the property and facilities owned by Indemnitee, including without limitation the boat ramp, docks, recreation area, parking lot, and other improvements. Easement Holder’s obligations under this provision shall extend to any direct claims by the Indemnitor Parties and to any third-party claims.”

e. No other fees or charges not included in this Agreement will be charged to registrants.

4. Assignment of Purported Rights. Contemporaneous with its execution of this Agreement, OPPOA shall execute the document attached as Exhibit B hereto, transferring to HVYC the rights OPPOA purported to reserve unto itself pursuant to Paragraph 14(c) of the covenants recorded in Book 4698 at Page 2916, Pender County Registry. OPPOA authorizes HVYC to record the document with the Pender County Registry upon complete execution of this Agreement. This assignment is contingent upon the performance of all obligations in this settlement agreement

5. Dismissal of Litigation. Within five (5) business days of complete execution of this Agreement, counsel for OPPOA shall dismiss with prejudice all claims asserted in the Litigation.

6. Release of HVYC. In consideration of the foregoing, OPPOA, on behalf of itself and its officers and directors, hereby forever releases and discharges HVYC and its officers, directors, members, employees, agents, representatives, attorneys, insurers, heirs, successors and assigns (herein, collectively, the "HVYC Released Parties") from any and all claims, demands, causes of action, damages, costs, attorney's fees or liabilities of any kind, nature or description, whether known or unknown, suspected or unsuspected, fixed or contingent, now existing or occurring in the future, which arise out of any matter or thing done, omitted, or suffered to be done by the HVYC Released Parties prior to the date of this Agreement, including, but not limited to, all claims which are asserted or which could have been asserted in the Litigation.

7. Release of OPPOA. In consideration of the foregoing, HVYC on behalf of itself and its officers and directors, hereby forever release and discharge OPPOA and its officers, directors, owners, members, employees, agents, representatives, attorneys, insurers, heirs, successors and assigns (herein, collectively, the "OPPOA Released Parties") from any and all claims, demands, causes of action, damages, costs, attorney's fees or liabilities of any kind, nature or description, whether known or unknown, suspected or unsuspected, fixed or contingent, now existing or occurring in the future, which arise out of any matter or thing done, omitted, or suffered to be done by the OPPOA Released Parties prior to the date of this Agreement, including, but not limited to, all claims which are asserted or which could have been asserted in the Litigation.

8. This settlement shall be contingent upon agreement as to the terms of a Joint Public Statement.

9. No Admission of Liability. Neither the payment of any sums nor the execution of this Agreement is to be construed or interpreted as an admission of liability, the same being expressly denied.

10. Fees and Costs. The Parties shall bear their own attorney's fees, their respective portions of the mediator's fee, and their other costs.

11. Cooperation. The Parties agree to execute such other documents as may be necessary to effect the intent of this Agreement.

12. Representations and Warranties.

a. Full Capacity and Authority. Each Party represents and warrants that he or she, or it has not assigned any of the claims or rights released hereby, that he, she or the person signing on its behalf has the full power, authority and representative capacity to execute this Agreement, that this Agreement constitutes the valid and binding obligation of such Party, and that all required consents authorizing execution of this Agreement have been obtained or secured.

b. No Representations. Each Party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any Party or by anyone acting on behalf of any Party, which are not embodied herein, and that no agreement, statement or promise not contained in this Agreement shall be valid or binding or of any force or effect.

c. Voluntary Nature. Each Party represents that it has entered into this Agreement freely and voluntarily, that it has had full opportunity to consult with its counsel concerning the provisions of this Agreement, and that the terms of this Agreement are fully understood and agreeable to it.

13. Modification of Agreement. No waiver or modification of this Agreement, or any covenant, condition or limitation herein contained, shall be valid unless in writing duly executed by the Parties.

14. Assignment. No Party may assign any rights or obligations under this Agreement without the prior written consent of the other.

15. Governing Law. This Agreement shall be governed by and construed under the laws of the State of North Carolina.

16. Severability. All agreements and covenants contained herein are severable, and in the event any of them shall be held invalid by any competent court, this Agreement shall be interpreted as if such invalid agreements and covenants were not contained herein.

17. Binding Effect. This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, successors, and assigns.

18. Entire Agreement. This Agreement supersedes any and all other understandings and agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and constitutes the sole and only agreement between the Parties with respect to said subject matter.


19. Headings. The headings, titles, and subtitles herein are inserted for convenience or reference only and shall not control or affect the meaning or construction of any of the provisions hereof.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Electronically transmitted copies of the Parties' signatures shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the day and year first above written, the corporate parties acting through their duly authorized agents.

(SEPARATE SIGNATURE PAGES FOLLOW)

OLDE POINT PROPERTY
OWNERS ASSOCIATION, INC.

By:  2-24-23
Its: OPPCA PRESIDENT

HARBOUR VILLAGE YACHT CLUB, INC.

By:

Its:

Gregory P. LHA
Commodore - 2022

Sworn to and subscribed
before me, this the 2nd
day of March, 2023.

Shelia L Jones
my Commission Exp. 4/17/2024

