**DRAFT- FOR COUNSEL ONLY**

Settlement Agreement

Collings Lakes Civic Association v. Citizens Voices Association, et al.

Docket No.: ATL-C-99-13

After further discussion with both the Collings Lakes Civic Association (CLCA) and Citizens Voices Association (CVA) and their attorneys, significant progress was made toward a collaborative settlement of the issues involved in the above-referenced litigation. Based on long-term discussions and a yes/no vote in which all members of the community were entitled to participate, and which by a count of 441 YES to 212 NO was approved by the community of Collings Lakes, the following is the settlement agreement.

1. New Governing Organization

The parties agreed that it is not in the best interest of the community to have a formal Homeowners Association under the relevant state laws. Therefore any governing organization will be extremely limited in its powers. The governing organization will be empowered to:

* 1. Set and collect fees for repairing, maintaining, and operating the common areas of the community, including the lakes, dams, beaches, and playgrounds.
  2. Enforce collection of those fees through legal means, including litigation if necessary. Additionally, the organization will have the power to assess and collect late fees, court costs, and any other costs associated with the collection of unpaid fees through litigation or any other legal means.
  3. Repair, maintain, and operate the common areas of the community, including the lakes, dams, beaches, and playgrounds. The organization will be able to solicit bids for any work, insurance, maintenance, or other services required to fulfill this obligation, and will have the power to expend the funds necessary to do so.
  4. Maintain bank accounts, contracts, insurance policies, permits, and/or any other legal or contractual relationships to facilitate repair, maintenance, and operation of the common areas.

After significant discussions back and forth, the parties understand that it is financially and logistically disadvantageous to entirely dismantle the CLCA, which has been the organization charged with collecting fees, maintaining the common areas, etc for the past several years, and form an entirely new organization. Specifically, the CLCA is incorporated; maintains 501(c)(3) status; has bank accounts, insurance policies, contracts, and permits in the CLCA name that support the common areas; and provides tax benefits for the community as a whole.

However, the parties understand that significant changes should be made to the current CLCA if we are to come to a resolution. By way of changes, please see the edits to the bylaws I have included with this document.

Notably, the leadership in the CLCA must be put to a new election with ninety (90) days of a signed settlement agreement. Each developed property in the community is afforded two (2) votes in accordance with the Bylaws, irrespective of the number of members of the household or owners listed on the property deed, in this and all future elections, provided the household’s $48 annual fees are paid in full or that the household is on a formal Board-approved repayment plan for any arrearages[[1]](#footnote-2). The board will comprise seven (7) members, two (2) from each of the three (3) categories of homes in the community, and one (1) elected at large. The board will have the powers delineated above. The board will hold quarterly meetings open to the community at large to discuss any and all issues facing the community. Of the seven (7) members of the board, the board will elect appropriate officers as designated by the bylaws. Only members whose $48 annual fees are current and paid in full may run for the Board.

Most importantly, the organization will have the power to enforce collection of the fees by any and all legal means. The organization will have the ability to retain an attorney and/or other collections professionals and use all legal means at their disposal to collect fees from delinquent homeowners, as well as any costs associated with collection (attorney’s fees, court costs, etc) and late fees as the board sees fit. The board will also maintain discretion to collect any unpaid fees to date owed by any homeowner in the amount of $48 per year through 2015. The Board, in its discretion, may decide to employ a management company to assist in accounting.

In creating the new Board and facilitating rotating elections, the election schedule will be as follows:

2018: Full new seven (7) member board  
2020: The lowest vote-getter from each tier and the at-large member will be up for re-election  
2021: The remaining 2018 member from each tier will be up for re-election  
2022: Members elected in 2020 up for re-election (4 people)  
2023: Members elected in 2021 up for re-election (3 people)

In sum, the CLCA will remain in place, with significant alterations to the election procedures, board, bylaws, and general transparency. This will be the least costly option and will allow smooth transition into the next steps of the process to fix the dams.

1. Fee Structure and Budget

The board will have ultimate authority to set a budget for the community. However, for the first year, this settlement will assume a $100,000 operating budget, separate and apart from the budget to fix the dams. This is slightly higher than the current CLCA’s proposed budget of $88,000; however, the community must be mindful that this litigation has amassed significant legal fees that need to be addressed, and the community should also seek to maintain a small cushion in their operating budget that as of right now, does not exist.

The 1057 developed properties in the community will be divided into three (3) tiers for purposes of annual fees: [[2]](#footnote-3)

1. Tier 1 Waterfront: developed properties that directly abut the lakes (143)
2. Tier 2 Non-Waterfront: developed properties on the lake side of the Black Horse Pike that are not directly on the water (759)
3. Tier 3 Across the Black Horse Pike: developed properties on the non-lake side of the Black Horse Pike (155)

Undeveloped properties will be excluded from fees.

Taken on the numbers, Tier 1 homes represent approximately 13% of homes in the community; Tier 2 72%, and Tier 3 15%. However, to divvy up percentage responsibility for the budget according to those numbers ignores the fact that Tier 1 homeowners receive significantly more benefit from the lakes than Tier 3, despite that under such a payment scheme, they would pay the same amount.

My goal in this is to come up with a percentage based scheme that shared responsibility for the operating budget and all other expenses fairly given the geographic size of this community. On the equities, therefore, Tier 1 homeowners should be responsible for 17% of the total budget and expenses for the community, which under a $100,000 budget is $119. Tier 2, which comprises significantly more homes than either other tier, should be responsible for 72% of the total budget, which would be $95. Tier 3 should be responsible for 11%, or $71. For the 2016 year, any home that has paid their $48 fee and/or the CLCA fee additionally will be credited the amount they’ve paid.[[3]](#footnote-4)

This Tier structure will be incorporated into the By-Laws and Policies of the organization, and will be used to determine the allocation of any fees, assessments, or costs the board determines necessary, including dam repairs.

The reconfigured organization and board will bear ultimate responsibility for ensuring all legal bills are paid.

1. Repairing/Replacing the Dams

Both parties agreed that the lakes should remain a part of the Collings Lakes community. As such, the parties agreed that regardless of what steps are taken to reconfigure the governing body of the community or re-elect a new and different board, the organization will be held responsible for taking all necessary steps to rebuild the lost dams, and rebuild or otherwise rehabilitate the dams that remain to be in compliance with all state and local regulations. The costs to repair and bring to specifications the dams in the community should be divided by tier percentage in the same manner as the annual fees. The board will ensure that the dams will be repaired and brought to specifications with all reasonable expediency. The board will be free and strongly encouraged to explore financing options that may lessen the financial burden on the community, including loans, fundraisers, grants, and any other financial assistance that may be available.

Upon latest information, the cost to repair and/or replace the dams as necessary will be approximately $2 million total, or $500,000 per dam. Based on the fee structure outlined above, to cover the costs of the first dam, Tier 1 owners would be responsible for $595, Tier 2 $474, and Tier 3 $354. Repairing the dams must be a main priority of the new board, and construction is to begin as soon as reasonably possible.

It is undisputed that currently, there is no money to begin construction on the dams. It would be wise and prudent for the reorganized Board to being searching for funding, financing, or other financial aid for this project post haste, and the reorganized Board should have control of the project; however, this project cannot be left to sit indefinitely when the broken dams and emptying lakebeds pose the myriad problems they do.

As noted elsewhere in this Agreement, the community will have ninety (90) days from the date of settlement to vote for and establish a new board. Within sixty (60) days of that deadline, the Board will produce and approve a document outlining a plan for the dam project. This plan should include, but need not be limited to, a timeline, potential sources of financing and/or funding, and the potential out of pocket costs to the homeowners in the community for each dam (Tier 1: $595; Tier 2: $474; Tier 3: $354). The document should also include a timeline for payment based on those costs, subject to change as approved by the Board. Under no circumstances shall the construction start date be more than six months from the deadline date for approval of the plan, including remittance by each homeowner of one-half the total cost of the first dam (Tier 1: $297.50; Tier 2: $237; Tier 3: $177) unless the Board has secured other financing/funding and advised homeowners that the amount of the assessments for this project has changed.

The Board should within ten (10) days of its establishment, form a Committee to explore any and all potential options for financial assistance to cover the costs of the dams. The Board may, by Resolution, alter the amount of the installment payments if financial assistance can be secured. If the Board secures financing after the second notices have been mailed, the Board may either opt to mail a second notice to Members advising of the new amount due, or may opt to hold extra funds in reserve to start the next dam. However, the Board shall adhere to the Tier system in determining the amount of any and all assessments levied for the dam project.

1. Parties and counsel may, by consent, alter the allowance for repayment plans. [↑](#footnote-ref-2)
2. The specific number of homes in each Tier may be altered by consent of the parties. [↑](#footnote-ref-3)
3. The specific dollar amount will likely change year to year depending on the operating budget and the expenditures as decided by the Board, but the percentages should stay the same unless the Board votes to change them. [↑](#footnote-ref-4)