

This Settlement and Release Agreement (the "Agreement") dated this 20th day of August 2014 (the "Effective Date") is by and between Plaintiffs David Glass, Pamela Glass, Black Bear Crossings on the Lake, Inc. for themselves and for all of their respective officers, directors, shareholders, members, affiliated and related organizations and employees, and their agents, representatives, successors or assigns, and each of them (collectively "Plaintiffs") on the one hand and the City of St. Paul, Minnesota and all of its elected officials, employees, heirs, administrators, executors, successors and assigns (collectively "the City") on the other hand. The City and Plaintiffs are collectively referred to as "the Parties."

### Recitals

A. The purpose of this Agreement is to settle, fully, completely, and in accordance with the terms of this Agreement, all disputes, claims, and controversies of any type or nature between Plaintiffs and the City, arising out of the City's decision not to extend Plaintiffs' Management Agreement for the Como Lakeside Pavilion and certain statements that City officials made to the press and in other forums regarding Plaintiffs and their performance under the Management Agreement.

B. Plaintiffs have asserted claims against the City arising out of the City's decision not to extend the Management Agreement of the Como Lakeside Pavilion, and regarding certain statements that City officials made to the press and in other forums regarding Plaintiffs and their performance under the Management Agreement. Plaintiffs asserted these claims in a lawsuit styled *Black Bear Crossings on the Lake, Inc et al v. City of St. Paul*, in the Second Judicial District Court in Ramsey County, No. 62-CV-8220 ("the Action" pending in "the Court").

C. The City may have counterclaims against Plaintiffs in connection with the Action.

D. Each Party acknowledges that they are entering into this Agreement after consulting with counsel. Neither this agreement nor the settlement of this action shall be construed as an admission of liability by any party for any purpose.

### Agreement

1. Incorporation of Memorandum of Understanding. This Agreement fully incorporates by reference the Memorandum of Understanding executed by the Parties on June 16, 2014 and attached hereto as Exhibit A, as if it were fully set forth in this Agreement.

2. Denial of Liability. Plaintiffs acknowledge that the City has denied and continues to deny any liability for the Claims asserted in Plaintiffs' Complaint, Plaintiffs agree that this Agreement shall not in any way be construed as an admission by the City of any unlawful or wrongful act whatsoever. The City also specifically denies any liability to Plaintiffs or any other person or entity regarding the subject matter of this Action. The City acknowledges that Plaintiffs deny any liability to the City for any actions relating to the subject matter of the Action, including but not limited to any alleged breaches of the Management Agreement by Plaintiffs, which the City claimed justified its decision not to extend the Management Agreement.

3. Payments by the City. The City shall make payments to Plaintiffs by wire transfer according to the schedule set forth below. The City shall make the payment specified in subpart (a) below to Robins, Kaplan, Miller & Ciresi L.L.P. The remaining payments shall be made to Black Bear Crossings on the Lake, Inc. and David and Pamela Glass. If Black Bear Crossings on the Lake, Inc. is not in existence as of the date that a payment is due, Plaintiffs shall inform the City in writing, and that payment and all subsequent payments shall be made to David Glass and Pamela Glass. Plaintiffs shall provide the City with the information necessary to complete the wire transfers within five (5) business days of the effective date of this agreement. In the event that the City fails to make any of the payments set forth in this paragraph, interest shall be charged at an annual rate of five percent (5.0%), compounded daily, from the date of the payment-due date to the date that payment is made by the City. Any dispute regarding any alleged failures to comply with this paragraph shall be submitted first to non-binding mediation before Hon. Allen Oleisky. The costs of such mediation shall be paid by Plaintiffs and the City in equal shares. If mediation does not lead to an agreement, the prevailing Party in any subsequent action to enforce the provisions of this paragraph may petition the court for reimbursement of its costs from the non-prevailing Party, including mediation costs and attorney fees, which the court shall grant in its discretion.

(a) \$ 250,000.00 due the later of: (i) 30 days after the Effective Date of this Agreement, or (ii) seven (7) business days after the St. Paul City Council's approval of the settlement identified in this Agreement.

(b) \$ 137,500.00 due July 15, 2015.

(c) \$ 137,500.00 due July 15, 2016.

(d) \$ 137,500.00 due July 15, 2017.

(e) \$ 137,500.00 due July 15, 2018.

The City reserves the right to make payments in the years 2015, 2016, 2017 and 2018 from revenues and/or commissions received by the City of St. Paul from the operations of Como Lakeside Pavilion. Payments referenced in this paragraph shall be payable in full by the agreed upon dates independent of any vendor receipts paid to the City.

4. Survival of Payment Obligation. In the event that David Glass and Pamela Glass are both deceased as of the date that a payment set forth in Paragraph 3 is due, that payment and any subsequent payments inure to the heirs or assigns of David Glass.

5. Representations, Warranties, and Covenants of Plaintiffs and the City.

(a) Plaintiffs specifically represent, warrant, and covenant to the City that, other than the Claims made or which could have been made in this Action, they are not aware of any pending demands, complaints, charges, lawsuits, or other actions of any nature whatsoever that they have against the City arising out of the City's decision not to extend the Management

Agreement for Como Lakeside Pavilion or certain statements that City officials made to the press and in other forums regarding Plaintiffs and their performance under the Management Agreement.

(b) The City specifically represents, warrants, and covenants to Plaintiffs that it is not aware of any pending demands, complaints, charges, lawsuits, or other actions of any nature whatsoever that it may have against Plaintiffs, arising out Plaintiffs' management of Como Lakeside Pavilion, including but not limited to any alleged breaches of the Management Agreement by Plaintiffs, which the City claimed justified its decision not to extend the Management Agreement.

6. Releases.

(a) Plaintiffs hereby release and forever discharge the City and its elected officials, employees, heirs, administrators, executors, successors and assigns from any and all claims, demands, actions and causes of action, known or unknown, of whatever kind or nature which they now have or may have or may hereafter have arising out of, in consequence of, or on account of the City's decision not to extend Plaintiffs' Management Agreement for the Como Lakeside Pavilion and certain statements that City officials made to the press and in other forums regarding Plaintiffs and their performance under the Management Agreement. For purposes of clarification, this includes all claims that were or could have been asserted relating to the City's decision not to renew Black Bear's Management Agreement, including but not limited to claims of breach of contract, defamation, declaratory judgment, specific performance, tortious interference with contract, promissory estoppel and discrimination.

(b) The City hereby releases and forever discharges Plaintiffs and each of their respective officers, directors, shareholders, members affiliated and related organizations and employees, and their agents, representatives, successors or assigns from any and all claims, demands, actions and causes of action of whatever kind or nature which they now have or may have or may hereafter have arising out of, in consequence of, or on account of the City's decision not to extend Plaintiffs' Management Agreement for the Como Lakeside Pavilion, including but not limited to any alleged breaches of the Management Agreement by Plaintiffs, which the City claimed justified its decision not to extend the Management Agreement.

7. Covenant not to Comment to Media. The Parties and their counsel hereby agree not to comment on the terms, impact or basis for the Parties' decision to enter into this Agreement to the media. If the Parties or their counsel are questioned by the media or other third parties on the terms of this Agreement, the Parties and their counsel agree to state that the case was resolved to the mutual satisfaction of the Parties and their counsel, and to respond to any further inquiries by saying "no comment." The Parties agree that their remedies for any alleged violation of this Paragraph are limited to declaratory or injunctive relief.

8. Return or Destruction of Documents. The Parties and their Counsel hereby agree to return to the opposing Party all paper copies of and physical media (including but not limited to CDs, DVDs, external hard drives, or thumb drives) containing documents and materials received in this matter (including but not limited to written discovery requests and responses

thereto, documents produced in discovery, expert reports, and mediation materials, but not including publicly filed pleadings and exhibits) from the opposing Party, to the extent that such documents and materials do not contain that Party's attorney work product. To the extent that such documents and materials contain a Party's work product or were loaded to the receiving Party's computer systems, the receiving Party's counsel agrees to sign an affidavit to the effect that all such documents or materials have been permanently deleted or destroyed. The Parties shall complete their obligations under this Paragraph within fifteen (15) business days of the Effective Date of this Agreement.

9. City Council Approval. The Parties agree that final approval of this Agreement shall be made by the St. Paul City Council and that payments pursuant to this Agreement will be made thereafter, as provided for in Paragraph 3 of this Agreement.

10. Governing Law. This Agreement shall be governed by the laws of the State of Minnesota, without regard to its principles of conflicts of law. Any action to enforce the terms of this Agreement shall be brought in the state courts of the State of Minnesota.

11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties. Each Party acknowledges that it has not relied on any oral or written representations by the opposing Party (or counsel of the opposing Party) to induce him, her, or it to sign this Agreement.

12. Ambiguities. Attorneys for both parties have participated in the negotiation of this Agreement and, thus, it is understood and agreed that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. In the event that any language of this Agreement is found to be ambiguous, each party shall have an opportunity to present evidence with respect to the actual intent of the parties with respect to such ambiguous language.

13. Waiver. No waiver by any party of any breach of any term or provision of this Agreement shall be a waiver of any preceding, concurrent or succeeding breach of the Agreement or of any other term or provision of this Agreement. No waiver shall be binding on the part of, or on behalf of, any other party entering into this Agreement.

Dated: August 20, 2014

ROBINS, KAPLAN, MILLER & CIRESI,  
L.L.P.

By



Jair M. Conlin (#0312289)

Ryan W. Marth (#327621)

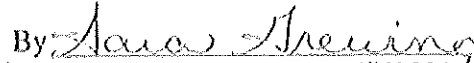
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ATTORNEYS FOR PLAINTIFFS

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City Attorney

By



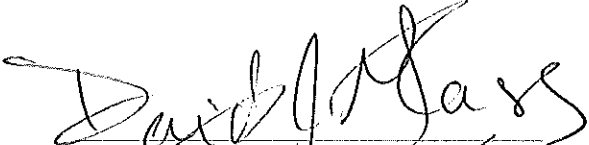
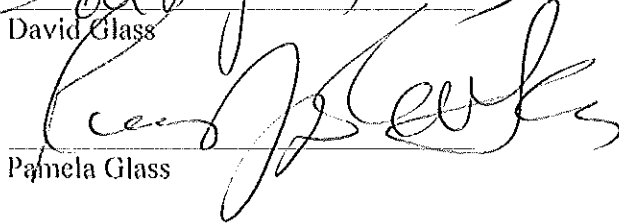
Lawrence J. Hayes, Jr., (#428210)

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ATTORNEYS FOR DEFENDANT

  
David Glass  
Pamela Glass

## MEMORANDUM OF UNDERSTANDING

In order to ensure a smooth transition of management of the Como Lakeside Pavilion, Black Bear Crossings on the Lake, Inc. ("Black Bear") and the City of St. Paul (the "City") agree to the following terms:

- 1) The parties shall execute a transition agreement, consistent with the terms of this Memorandum of Understanding within ten (10) business days of the execution of this Memorandum of Understanding.
- 2) Black Bear will vacate the Pavilion no later than 11:59 p.m. on January 4, 2015.
- 3) Black Bear will serve all weddings and other events for 2014, as previously agreed with its customers.
- 4) Black Bear will observe all current service requirements (i.e., public hours) pursuant to the Management Agreement.
- 5) Black Bear may continue to book weddings and events for 2014, and will maintain the exclusive right to cater these events, as provided in the Management Agreement.
- 6) Black Bear will cease to take any and all bookings that would be scheduled after January 4, 2015. Como Lakeside Pavilion new event bookings following January 4, 2015 will be suspended pending the selection process and the City awarding a new vendor.
- 7) Black Bear shall immediately provide the City with a list of events booked for 2015.
- 8) For customers who, as of the date of this Memorandum of Understanding, have booked events with Black Bear for 2015 or after, Black Bear shall inform them in writing that it will no longer manage the Pavilion after 2014. It shall provide those customers with the option of (a) cancelling their event booking, or (b) keeping their reservation while selecting their own caterer in place of Black Bear. Black Bear shall secure the agreement of the City on the text of the letter described in this paragraph, such agreement not to be unreasonably withheld. Black Bear shall copy the City on all letters sent pursuant to this paragraph. Black Bear represents that these events are inclusive of any and all event obligations after January 4, 2015.
- 9) Within fifteen (15) days of receiving notification from a wedding-or-event customer with a 2015-or-later event that the customer wishes to cancel its reservation, Black Bear shall notify the City of the cancellation. Within fifteen (15) days of receiving such notification from Black Bear, the City shall reimburse Black Bear for any sums that it refunds to customers who cancel their 2015-or-later event bookings. The payments described in this paragraph

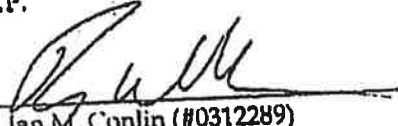
shall not release the City from any liability that it may have to Black Bear for breach of the Management Agreement or any other action or inaction taken by the City.

- 10) The City agrees that it shall save and hold Black Bear, its agents and/or employees, harmless from any and all loss, damage, costs and expenses of any nature, including attorneys' fees, arising from or in any way connected with the cancelation and/or termination of any "Business Package Facility Reservation/Catering Contract" and/or "Facility Reservation/Catering Contract" entered into by Black Bear Crossings for the eleven events at the Como Lakeside Pavilion currently booked to occur in 2015 or 2016, with Black Bear to provide said contracts to the City immediately.
- 11) At any time after 12:00 p.m. (noon), CDT, on June 13, 2014, the City may initiate a request-for-proposal and community-input process to select a new vendor for the Pavilion.
- 12) The City agrees to honor the existing Management Agreement as it pertains to routine maintenance tasks in and around the Pavilion. All maintenance shall be at the same level as other Parks properties.
- 13) Black Bear agrees that Susie Odegard will be its first and primary contact point with the City for any operational issues that arise between it and the City. If Black Bear is unable to reach Ms. Odegard within a timeframe that is appropriate, given the nature of the issue that Black Bear is raising, it may contact Paul Prior. If Black Bear is unable to reach Paul Prior within a timeframe that is appropriate, given the nature of the issue that Black Bear is raising, it may contact Joe Buzicky.
- 14) The parties shall cooperate in good faith with each other and with any replacement vendor or prospective replacement vendor to ensure the smooth transition of the Pavilion.

Dated: June 16, 2014

ROBINS, KAPLAN, MILLER & CIRESI,  
L.L.P.

By



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*Dated June 16, 2014*

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CITY OF ST. PAUL DEPARTMENT OF  
PARKS & RECREATION