

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (this “Agreement”) is made and entered into as of the Effective Date (as hereinafter defined) by and between the **City and County of Denver**, a home rule city and municipal corporation of the State of Colorado (the “City”), **ACM Park Hill JV VII LLC**, a Delaware limited liability company, formerly known as Bushwood LLC (“ACM”), and **Westside Golf, LLC**, a Colorado limited liability company (“WGLLC” and referred to herein, together ACM, as “Westside”). The City and Westside are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

Recitals

This Agreement is made with respect to the following facts:

A. Pursuant to Ordinance Number 2017-1396, approved by the Denver City Council and published on January 5, 2018 (the “Ordinance”), the City has been authorized to initiate efforts to acquire certain real property interests necessary for construction of a storm water detention facility and related public improvements (the “Project”) on a portion of the property known as the Park Hill Golf Course (the “Property”), which is defined below as the Acquired Interests, by negotiation or by the exercise of the power of eminent domain (the “Condemnation Process”).

B. Pursuant to the Ordinance, the City engaged in discussions with the then-owner of the Property, the George W. Clayton Trust (“Clayton”), for the acquisition of the real property interests needed for the Project. The City and Clayton subsequently entered into the Agreement for Immediate Possession, dated July 1, 2018 (the “IP Agreement”), whereby the City and Clayton agreed to the acquisition by the City of the following real estate interests on the Property:

1. Permanent Easement encompassing approximately 25 acres of land within the boundaries of the Property (the “PE”).
2. A Temporary Construction Easement encompassing approximately 46 acres of land within the boundaries of the Property (the “TCE”).

C. Pursuant to the terms of the IP Agreement, the PE and the TCE have been executed, delivered, and recorded in the real property records of the City and County of Denver. The PE was recorded on February 14, 2019 with the Denver Clerk and Recorded at Reception Number 2019017954. The TCE was recorded on July 3, 2019 with the Denver Clerk and Recorder at Reception Number 2019085909. As used herein, the term “Acquired Interests” shall mean and refer collectively to the PE and the TCE. Under the IP Agreement, the City and Clayton agreed to defer the issue of compensation for the Acquired Interests to further negotiation in accordance with applicable law.

D. The Property is subject to a Lease dated December 23, 1998, as amended (“Lease”), between Clayton and American Golf Corporation, a California corporation (“AGC”). AGC’s interest under the Lease was assigned to Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf (“Arcis”).

E. In 1997, the City acquired a restrictive covenant which limits the use of the Property to golf-related purposes (the “Golf Course Use Restriction” or “GCUR”). The original GCUR was released by mutual agreement between the City and Clayton pursuant to the terms of an Agency Agreement, dated October 13, 2000, between the City and Clayton (the “Agency Agreement”). The Agency Agreement incorporated the substantive terms of the GCUR. By written notice dated June 10, 2019, Clayton exercised its unilateral right to terminate the Agency Agreement which triggered a requirement for the execution of a replacement GCUR. The current version of the GCUR is set forth in an instrument dated July 11, 2019 and recorded in the real property records of the City and County of Denver on July 12, 2019 under Reception Number 2019090259.

F. In connection with the Condemnation Process, Arcis asserted certain claims against the City, including the claims set forth in a lawsuit captioned Evergreen Alliance Golf Limited, L.P. v. The City and County of Denver, Case No. 2019CV31165 (the “IC Action”).

G. Pursuant to separate written agreements between and among Westside, Clayton, and Arcis, at a closing consummated on or about July 11, 2019 (the “Transaction”), Westside has acquired (1) fee simple title to the Property by conveyance from Clayton (subject to the PE, TCE, and GCUR), and (2) a leasehold interest in the Property under the Lease by assignment from Arcis. In connection with the Transaction, Arcis has withdrawn from the IC Action and Westside has been substituted as a party. As a result of the Transaction, Westside has succeeded to the rights of Clayton and Arcis with respect to the Condemnation Process pursuant to applicable law.

H. The City and Westside now wish to fully settle and resolve all issues, matters, claims, and disputes relating to the Condemnation Process, the IC Action, the Acquired Interests, and all related matters on and subject to the terms and conditions set forth in this Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing premises, and the promises and covenants set forth below and herein, the Parties hereby agree as follows:

1. Payment. The City shall pay Westside the sum of Six Million and NO/100 Dollars (\$6,000,000.00) for the Acquired Interests on the terms and conditions set forth in this Agreement (the “Settlement Payment”). The City has already deposited a total of \$1,500,000 in the registry of the Court in connection with the IC Action. Within ten (10) business days after the Effective Date of this Agreement, the City shall pay the remaining balance of the Settlement Payment (in the amount of \$4,500,000) to Westside.

2. Dismissal of IC Action and Resolution of Condemnation Process. Upon the Effective Date, the Parties shall stipulate to the dismissal of the IC Action, with prejudice, each party to bear its own attorneys’ fees and costs, with the balance of the funds on deposit in the IC Action to be disbursed to Westside. The Parties each hereby acknowledge that, upon receipt of the remaining balance of the Settlement Payment, the Condemnation Process shall be deemed to be fully satisfied, discharged, and resolved in accordance with all applicable laws, codes, ordinances, and regulations, for all purposes and with respect to all actual or potential claims,

known and unknown, arising under or relating to the Ordinance, the Condemnation Process, the Acquired Interests, the Property, the Lease or otherwise. Westside shall be responsible for resolving and discharging any and all apportionment claims made with respect to the Condemnation Process pursuant to applicable law. The City hereby acknowledges that (1) no additional property interests within the boundaries of the Property are necessary for the Project, (2) receipt by the City of the Acquired Interests on the terms and conditions set forth in this Agreement fully accomplishes and satisfies the purpose and intent of the Ordinance and the Condemnation Process with respect to the Property, and (3) any further property interest on, in, or to the Property that may hereafter be desired by the City would require a new and separate land acquisition ordinance to be approved by the Denver City Council in accordance with the terms of the Charter for the City and County of Denver.

3. Waiver of Right to Terminate. The Parties acknowledge that significant changes have taken place on and surrounding the Property which have collectively had a detrimental impact on the use of the Property for golf-related purposes. Notwithstanding the foregoing, as of the Effective Date of this Agreement, Westside hereby waives and relinquishes (a) any right to terminate the GCUR under the terms of the GCUR arising from or in any way relating to the Project, the Acquired Interests, the IC Action, or the Condemnation Process, and (b) any other right to take any unilateral action to terminate, release, extinguish, abandon, or otherwise challenge the enforceability of the GCUR on the basis of changed circumstances, impossibility, frustration of purpose, or any other grounds arising from or in any way relating to the Project, the Acquired Interests, the IC Action, or the Condemnation Process. Notwithstanding the foregoing, nothing contained in this Section 3 is intended to waive, limit, or otherwise alter the right or option of the City and Westside to jointly act to amend or modify the terms of the GCUR by mutual agreement or to collectively take any other action with respect to the GCUR as the Parties deem appropriate pursuant to applicable law. Additionally, nothing contained in this Agreement is intended to waive, relinquish, or otherwise alter or limit the rights and obligations of the Parties under the GCUR with respect to any future condemnation action or as a consequence of any other conditions, facts, or circumstances which may arise after the Effective Date of this Agreement and which are unrelated to the Project.

4. Forbearance. The City acknowledges that Westside intends to pursue a process to explore community support for a future use of the Property that will include significant open space but will not be exclusively focused on golf-related activities as required by the GCUR and to obtain all approvals necessary for such a change in use (the “Land Use Approval Process”). From and after the Effective Date, in order to allow Westside an opportunity to engage in the Land Use Approval Process, the City shall forbear from taking any action to enforce any and all affirmative covenants under the GCUR to the extent such covenants may be deemed to require Westside to restore, operate, occupy, manage, or use any golf-related functions on the Property (the “Forbearance”). The Forbearance shall continue for a period of no less than three (3) years from and after the Effective Date. At any time after the expiration of such 3-year period, the City shall have the unilateral right and option, at the City’s sole discretion, to terminate the Forbearance by giving no less than thirty (30) days’ prior written notice of termination to Westside (the “Termination Notice”). Nothing contained in this Section 4 is intended to constitute a waiver, modification, or amendment of or to the GCUR or any term, obligation, limitation, or restriction set forth therein, including, without limitation, any and all negative covenants contained in the

GCUR relating to the permitted uses of the Property. Further, the City makes no representations, guarantees, or assurances as to the outcome of the Land Use Approval Process. Upon receipt of a Termination Notice, Westside shall have a period of time (the “Restoration Period”) to take all steps necessary to fully comply with all terms, covenants, and requirements set forth in the GCUR, including, without limitation, all affirmative covenants relating to golf-course operations. The Restoration Period shall commence as of the date of Westside’s receipt of the Termination Notice and continue for a commercially reasonable period of time as necessary to allow for the procurement and completion of all work required to fully restore a regulation-length 18-hole golf course on the Property, including the design, construction, and complete landscaping establishment of such a restored facility.

5. Maintenance by Westside. From and after the Effective Date, Westside shall use commercially reasonable efforts to keep and maintain the Property in good order, repair, condition, and appearance. Maintenance shall consist of the following work:

- a. Mowing, irrigation, noxious weed management to prevent the spread of weed species, and control of insects and vermin to prevent infestation on the Property. Such measures should occur throughout the Property including along perimeters abutting concrete, sidewalks, streets or roads.
- b. Pruning of trees, removal of dead or downed branches, and cutting and removing dead trees.
- c. Removal of trash and debris.
- d. Securing the Property with periodic patrols, fencing, or other commercially reasonable means to prevent unauthorized access, use, or vandalism.
- e. Compliance with all applicable laws, codes, regulations, permits, ordinances, and similar legal requirements, including, without limitation, the Colorado Noxious Weed Act (CRS Section 35-5.5-101, et seq.).

6. City to Maintain PE. Pursuant to the terms of the PE, the City shall be responsible for maintaining the area covered by the PE including any trash removal, landscaping elements, irrigation systems, or similar improvements made by the City in connection with the Project. Nothing in this Agreement shall be construed to relieve the City of any obligation to maintain the PE or to restore the TCE areas upon completion of construction as and to the extent required by any applicable law.

7. Delays Due to Force Majeure Events. With regard to the obligations of the Parties under Section 5 and Section 6 above, the time for performance of such obligations shall be suspended, and the date for completion shall be extended, for and during the duration of any Force Majeure Event(s). As used herein, the term “Force Majeure Event” shall mean and include causes beyond the reasonable control of such Party, including, without limitation, acts of vandalism, terrorism, or war; or acts of God (such as, but not limited to, fires, explosions, earthquakes, or severe weather events, such as droughts or floods). In addition, should a court enter a temporary or preliminary order enjoining the Land Use Approval Process, the time period of Forbearance set

forth in Section 4 above shall be extended for the period of time during which such court order remains in effect.

8. General Release by Parties. In consideration of the promises, covenants, and obligations set forth in this Agreement, upon execution, the Parties each release and discharge the other, and the predecessors, successors, or assigns of any of them, including any past or present departments, appointed or elected officials, officers, employees, members, representatives or agents of and from any and all present, known and unknown claims, demands, obligations, actions, and causes of action based on or relating to the IC Action, the Ordinance, the Condemnation Process, the Acquired Interests, the Property, and/or the Lease.

9. No Admission of Liability. Nothing in this Agreement, including the fact that it was entered into, shall constitute or be construed as an admission on behalf of any party herein identified as to the validity of any of the claims, defenses or allegations made by either party, nor shall it be admissible in any court, administrative agency or tribunal for any party, with the exception of a proceeding to enforce or interpret the terms of this Agreement.

10. Release of Information. The Parties agree that the Agreement is subject to and may be released by the City pursuant to the requirements of the Colorado Open Records Act and is an exception to the confidentiality provision found at C.R.S. § 13-22-307(2).

11. Warranty of Authority. The Parties warrant that no other person has any interest in any of the claims alleged in this matter; that they have the sole right and exclusive authority to execute this Agreement and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims or damages or liability covered hereby. The signatories below warrant that they have authority to execute this Agreement on behalf of their respective entities.

12. Binding Effect. This Agreement shall be binding upon the Parties, including any past or present subsidiary, parent, or affiliate entity or cooperative, or the predecessors and their successors or assigns of Westside and any affiliated entities or the predecessors and any successors or assigns of the City.

13. Integration. This Agreement constitutes the entire agreement between the City and Westside concerning the matters set forth herein, and is a complete merger of all antecedent offers, counteroffers, negotiations and agreements.

14. Severability. In the event that any term or provision of this Agreement is declared to be illegal or invalid, for any reason whatsoever, by a court of competent jurisdiction, such illegality or invalidity shall not affect the remaining terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

15. Governing Law and Venue. This Agreement and all provisions contained herein shall be construed pursuant to the laws of the State of Colorado, and any questions regarding the validity of any section and/or paragraph contained herein shall be determined pursuant to the laws of the State of Colorado. The Parties agree that any action to interpret, construe, or enforce this Agreement shall be brought in the District Court in and for the City and County of Denver, Colorado.

16. Attorney Fees. Each Party shall bear its own attorneys' fees and costs in connection with this Agreement. In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees and costs incurred.

17. Notices. Any notice required or permitted under the terms of this Agreement shall be in writing, may be given by the Parties hereto or such Parties' respective legal counsel, and shall be deemed given and received (i) when hand delivered to the intended recipient, by whatever means; (ii) three (3) business days after the same is deposited in the United States mail, with adequate postage prepaid, and sent by registered or certified mail, with return receipt requested; or (iii) one (1) business day after the same is deposited with an overnight courier service of national or international reputation having a delivery area encompassing the address of the intended receipt, with the delivery charges prepaid. All notices shall be delivered or mailed, as the case may be, to the appropriate address set forth below:

If to City:

Mayor
City and County of Denver
1437 Bannock Street, Room 350
Denver, Colorado 80202

with a copy to:

Denver City Attorney
Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, Colorado 80202

If to Westside:

4100 E. Mississippi Avenue, Suite 500
Glendale, CO 80246
Attn: Kenneth Ho

18. Representation by Counsel. The Parties have been represented by counsel of their choice throughout the negotiations which preceded the execution of this Agreement, and in connection with the preparation and execution of this Agreement, the Parties have carefully and thoroughly reviewed this Agreement, in its entirety, with such counsel, and such counsel has approved it as to form.

19. Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to create or confer and shall not be construed or operate to create or confer, any rights or remedies under or by reason of this Agreement, upon any person other than the Parties hereto, and their respective successors and permitted assigns.

20. Miscellaneous. The Parties agree that, in entering into this Agreement, they are relying upon their own judgment, belief and knowledge as to all phases of their claims and further acknowledge that no promise, inducement or agreement or any representations and warranties not expressed herein have been made to procure their agreement hereto. The Parties further acknowledge that this Agreement is contractual and not merely recitals, and that they have read, understand and fully agree to the terms of the Agreement.

21. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each counterpart to be considered an original portion of this Agreement.

[REMAINDER OF PAGE BLANK – SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement intending that it be valid and effective as of the date set forth below (the "Effective Date").

WESTSIDE GOLF, LLC

By: _____
Andrew Klein
[Title]

ACM PARKHILL JV VII LLC

By: _____
Andrew Klein
[Title]

CITY AND COUNTY OF DENVER

A municipal corporation of the State of Colorado

By: _____
Kristin M. Bronson, *City Attorney*
City and County of Denver

By: _____
Jeffrey Steinberg, *Director of Real Estate*
City and County of Denver

ACKNOWLEDGMENT BY:

Waas Campbell Rivera
Johnson & Velasquez, LLC

By: _____
Mikaela Rivera, Esq.
*Attorneys for Westside Golf, LLC and
ACM Parkhill JV VII, LLC*

Effective Date: _____, 2019