

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement") is made and entered into effective as of the date this Settlement Agreement is fully executed (the "Effective Date") by and between WC Capital, LLC ("WCC") and the City of Virginia Beach, Virginia (the "City").

### **Preliminary Statement**

The purpose of this Settlement Agreement is to reach an accommodation between the parties with regard to that certain litigation pending before the United States District Court for the Eastern District of Virginia, Norfolk Division, styled *City of Virginia Beach v. WC Capital, LLC*, case no. 2:21cv371 (the "Litigation"), involving certain real property formerly utilized as a golf course known as the Signature at West Neck (the "Property"). The parties are reserving their respective rights, claims and arguments as asserted in the Litigation, but seek to end the Litigation upon terms which each believes to be acceptable. Accordingly, this Settlement Agreement provides for the maintenance of certain portions of the Property at issue in the Litigation in lieu of any claimed or asserted farming activities on those portions of the Property, for maintenance of certain areas of high visibility from public right of ways, and for maintenance of certain areas around the former clubhouse building on the Property. So long as WCC complies with the maintenance plan set forth herein, the City will not assert that WCC is obligated to maintain the remainder of the Property in accordance with Virginia Beach City Code § 23-50, or any similar or subsequent ordinance enacted in relation to the cutting or maintenance of vegetation on property within the City. The areas to be maintained are set forth on Exhibit A, attached, as more specifically described herein.

For purposes of this Settlement Agreement, the term "grass and weeds" is defined as any and all vegetation other than ornamentals, nursery trees and plants or any other trees or bushes

### **Agreement**

NOW THEREFORE, for good and valuable consideration, including the matters set forth in the Preliminary Statement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Farming Plan: WCC previously tendered a farming plan (the "Farming Plan") to the City in relation to the Litigation. The Farming Plan delineated certain areas in light green, comprising the flat portions of the former fairways on the Property which were to be farmed by WCC (the "Farm Plots"). The Farm Plots exclude a vegetated buffer of varying widths, but not less than 50' in width in any given location, between the Farm Plots and the adjoining properties to discourage trespass and other activities on the Property. The Farm Plan also excludes from the Farm Plots the former sand traps, pond banks, wooded, understoried, or otherwise treed areas, bushes, hills and slopes, and nursery trees previously planted on the Property. The Farm Plots are generally delineated in light green on Exhibit A and marked accordingly.

a. On and after the Effective Date, WCC will maintain the grass and weeds in the Farm Plots to a height of 10" or less.

b. The area designated as having nursery trees on Exhibit A will be maintained in a professional and reasonable manner consistent with an area growing nursery trees and in accordance with requirements of state law and/or local ordinance

2. Clubhouse Area. The former Clubhouse on the Property and the surrounding area are delineated in yellow on Exhibit A (the "Clubhouse Property").

a. On and after the Effective Date, WCC will maintain, or cause to be maintained, the grass and weeds on the Clubhouse Property to a height of 10" or less.

3. High Visibility Areas. The areas with high visibility from certain public right of ways, as determined by the parties, are delineated in red on Exhibit A (the "High Visibility Areas").

a. WCC will maintain all grass and weeds on the High Visibility Areas to a height of 10" or less, subject to the following exclusions:

i. WCC will not maintain any property located within the High Visibility Areas which is between a now existing fence and a neighboring property line.

ii. WCC will not maintain any former sand traps within the High Visibility Areas.

iii. WCC will not maintain any pond banks, wooded or treed areas, or bushes, flowers or ornamental plants, if any, within the High Visibility Areas.

4. Cutting Standards. WCC will have 30 days from the Effective Date to perform the first cut on the Farm Plots, Clubhouse Area and High Visibility Areas, understanding that it will begin work at the High Visibility Areas so that those portions of the Property are cut as soon as practicable. The parties agree that the City shall, as part of the Settlement Agreement, have a right of access to inspect the Property within thirty (30) days following the first cut to determine compliance with the maintenance plan for High Visibility Areas and Farm Plots as defined herein. As part of that right of inspection, the parties agree that they may use reasonable means to mark the perimeter of the areas to be maintained so as to avoid boundary disputes between the parties on future cuts of the Property. Thereafter, WCC shall cut the Farm Plots, Clubhouse Area and High Visibility Areas on a regular basis during the growing season (April through September) and during the non-growing season (November through March) as needed to comply with this Settlement Agreement.

5. Enforcement Standards. The parties understand that the portions of the Property to be maintained under this Settlement Agreement are substantial, and thus that weather and other conditions may result in a limited amount of vegetation exceeding 10" in height for a limited period of time. If the City believes that any portion of the Property to be cut is not being maintained as provided under the terms of this Settlement Agreement, then the City will provide WCC with

fourteen (14) days written notice to cure. In the event of an act of God, WCC will be given additional reasonable time to cure upon written notice by WCC to the City that such reasonable time is necessary; however, in no event shall the additional time granted exceed an additional 30 days. The notice shall specify where on the Property the City believes the violation is located with sufficient specificity to permit WCC to identify and cure the issue. If WCC fails to cure any such defective work within the fourteen (14) day notice period, then the City may, in its sole discretion, either (1) bring an action in the United States District Court for the Eastern District of Virginia to enforce this Agreement, including without limitation for specific performance; or (2) terminate this Agreement without further notice at which point the parties will be entitled to assert their respective legal and equitable rights, remedies and defenses, as applicable.

a. Notice under this Paragraph 5 shall be by both electronic mail and overnight mail to the address(es) specified by WCC in writing upon execution of this Agreement.

b. The City will not, and will not encourage, trespass on the Property. The City agrees that it will be the entity responsible for monitoring and enforcing any work performed under Paragraphs 1, 2 and 3, above. The City further agrees not to rely upon complaints provided by citizens who are trespassing on the Property to assert noncompliance with the terms of the Settlement Agreement.

6. Joint Statement. The parties will craft a joint statement to be sent to neighboring property owners advising that the parties have reached an agreement in resolution of the Litigation. The parties understand and agree that the City is bound by certain requirements, as determined by the City Attorney's Office, as to what can and cannot be placed in any such statement. The parties will use their best, good faith efforts to craft the joint statement, but the failure to agree on language is not a condition of the enforceability of this Settlement Agreement. The above notwithstanding, the joint statement will include the following: (i) that the parties have reached a settlement of the Litigation; (ii) that the City will be monitoring compliance with the terms of the Settlement Agreement; (iii) that the Property is posted "No Trespassing" by WCC; and (iv) that WCC intends to prosecute trespass in accordance with Virginia Code §18.2-119, and other applicable law. The intent of the joint statement is to provide a factual account of the terms of the Settlement Agreement, deter complaints lodged by neighboring residents for an improper purpose, and to discourage trespass to the extent possible.

7. No Admission of Liability/Waiver of Claims. Nothing contained in this Settlement Agreement shall be deemed a waiver of any claims, positions, arguments or assertions by either the City or WCC in the Litigation or otherwise. However, so long as WCC is in compliance with this Settlement Agreement, then the City will not take any enforcement actions with respect to the Property.

8. Producer's Permit. WCC, through its affiliate JBWK, LLC ("JBWK"), holds a producer's permit to farm and harvest sod and other plants on the Property. JBWK will not be denied annual renewals of the producer's permit unless and until the Property is rezoned. The parties further agree that (i) nothing contained in this Settlement Agreement creates a right for JBWK to transfer any producer's permit beyond what may exist at law irrespective of this Settlement Agreement; and (ii) through this Settlement Agreement, JBWK is foregoing any

farming operations it may have intended in the Farm Plots, and thus the fact that it is foregoing farming operations during the pendency of this Settlement Agreement will not be used to the prejudice of WCC or JBWK in any future litigation between the parties.

9. This Settlement Agreement constitutes the entire agreement between the parties with respect to the matters set forth herein, and it supersedes any and all prior oral or written agreements, commitments or understandings with respect to such matters.

10. This Settlement Agreement shall be governed by and interpreted in accordance with laws of the Commonwealth of Virginia. This Settlement Agreement is entered into in resolution of the Litigation. Accordingly, the United States District Court for the Eastern District of Virginia, Norfolk Division, shall retain jurisdiction and authority to construe and enforce the terms of this Settlement Agreement.

11. This Settlement Agreement shall be modified or amended only by an instrument in writing duly executed by both parties.

12. The parties agree that this Settlement Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute a single agreement. Each party executing this Settlement Agreement represents and warrants to the other party that it has the full authority and authorization to do so, and that each such party will be legally bound by the terms hereof.

13. The parties agree that the sale and/or transfer of the Property to any third-party, exclusive of WCC, JBWK, the Avet Group, LLC (individually and collectively, the "Owner Entities"), any owner or manager of one or more of the Owner Entities, or any company owned or controlled by one or more of the Owner Entities or any owner or manager of one or more of the Owner Entities (the "Permitted Transferees"), shall terminate the Settlement Agreement. The termination date shall be deemed the date of the recording of a deed reflecting the new and/or different ownership of the Property in City's land records. The sale and/or transfer of the Property to any of the Permitted Transferees shall not terminate the Settlement Agreement and any such Permitted Transferee shall be obligated to perform, in full, all obligations of WCC under this Settlement Agreement.

SIGNED April 6, 2022.

SIGNED April 6, 2022.

CITY OF VIRGINIA BEACH, VIRGINIA

WC CAPITAL, LLC

By: 

By: 

Title: Gerald L. Harris  
Senior City Attorney

Title: Covent