

MUTUAL SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Agreement") is entered into between EVERGREEN ALLIANCE GOLF LIMITED, L.P. (hereinafter "EAGL") and the CITY OF CARROLLTON, TEXAS (hereinafter "City") and is effective on August 5, 2015. The City and EAGL are collectively referred to as the "Parties". This Agreement is intended to settle all matters in controversy between the Parties in connection with and arising out of that certain Carrollton Municipal Golf Course (Indian Creek) and Pro Shop and Clubhouse Including Course Maintenance, Management Services Agreement (hereinafter "Golf Contract").

The Parties desire to settle the differences between City and EAGL and avoid the uncertainties, expense, and risk of litigation, and enter into this Agreement of their own accord and free will after consulting with their own counsel. The Parties intend that by this Agreement, the Golf Contract and all matters, whatsoever, currently in controversy between them, or that could have been in dispute or alleged, will be fully, finally, and forever settled under the terms of this Agreement.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, obligations and promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree as follows:

1. Termination. The Golf Contract shall terminate effective immediately. The Parties acknowledge and agree that any rights or obligations set forth in Article X, Termination, of the Golf Contract have been fully satisfied, or are settled, released, and waived by the Parties in exchange for this Agreement. The Parties expressly acknowledge that the Settlement includes compensation to EAGL for any and all Indian Creek logo merchandise from the Pro Shop ("Merchandise"), as provided for in Article X(B) of the Golf Contract. EAGL shall provide such Merchandise to City, without demand, upon execution of this Agreement. The Parties further agree that all obligations of EAGL to the City existing currently or in the past are hereby satisfied and that there are no further amounts owed by EAGL to the City for any expenses arising out of the Golf Contract. The Parties further agree that all obligations of the City to EAGL existing currently or in the past are hereby satisfied and that there are no further amounts owed by the City to EAGL for any expenses, fees, or costs arising out of the Golf Contract.

2. Mutual Settlement and Release. In exchange for the City's payment of the total sum of Two Hundred Seventy-Seven Thousand Five Hundred and No/100 Dollars (\$277,500.00) ("Settlement") to EAGL, the City and EAGL agree to fully completely, finally, and forever compromise, settle, remise, release, acquit, and discharge each other, their partners, representative (including attorneys), agents, employees, elected and appointed officials, successors and assigns and all other persons or entities in privity with them, from any and all claims, demands, debts, liabilities, and causes of action, whether known or unknown, in any manner arising out of any of the matters which are or could have been alleged in connection with or arising out of the Golf Contract, including without limitation, any claims for damages or injuries or violations of federal or state constitutional, statutory, contractual, or common law

rights arising out of the Golf Contract. EAGL and the City acknowledge they are releasing each other from everything, including all claims for damages, whether actual or exemplary, for economic, physical, mental, emotional, or any other type of description of injury or harm, including attorney's fees, expenses, or statutory penalties, arising from the Golf Contract. In the unlikely event that a claim was not released, EAGL and the City, in exchange for the Settlement recited herein, assigns such claims to the other.

3. **Nonadmission of liability.** This Agreement shall not be construed in any way as an admission by City or EAGL of any liability or responsibility whatsoever, or as an admission by City or EAGL of any breach of contract, wrongdoing, or violation of the law whatsoever; the consideration given by the Parties to each other under this Agreement is solely for the purpose of avoiding the expense and uncertainty of litigation. EAGL represents and warrants that it owns the claims being released in this Agreement and that no other person or entity has the authority to bring or prosecute those claims on EAGL's behalf. EAGL agrees to hold City harmless from any claims that might be asserted by, through, or under it against the City relating to any of the matters release by this Agreement, and that EAGL will indemnify City from any loss, including attorney's fees and expenses and costs of court, arising from claims released by this Agreement.

4. **No representations.** EAGL acknowledges that, except as expressly set forth herein, no representations of any kind or character have been made to EAGL by any party or by any representative, agent, or employee for City. The Parties acknowledge that this Agreement correctly sets forth each party's understanding of the provisions, agreements, and obligations contained herein and that it shall be deemed drafted equally by both Parties such that any presumption of principle that the language herein is to be construed against any party shall not apply.

5. **Severability.** Should any provision of this Agreement be declared invalid, the validity of the remaining terms or provisions shall not be affected and shall remain in full force and effect. Notwithstanding the preceding sentence, should any action be taken by EAGL to revoke all or any part of this Agreement, the entire Agreement shall be void.

6. **Remedies for Breach.** Any breach of this Agreement by EAGL, will result in immediate forfeiture of the Settlement, and EAGL shall immediately repay any amount of the Settlement received from City. City shall be entitled to immediate injunctive relief to remedy any breach of this Agreement. The remedies set forth above are in addition to, and not in lieu of, any other legal or equitable remedies available to City.

7. **Binding Effect.** This Agreement shall inure to the benefit of the Parties, their respective heirs, beneficiaries, personal representatives, successors, and assigns. The undersigned specifically represents that they are authorized to execute this Agreement by the respective Parties and that the parties have the rights and capacities to perform the acts and grant the rights contemplated by this Agreement.

8. **Written Modification.** This Agreement may not be changed or modified unless the change is in writing and signed by both parties. Any assignment of this Agreement must be approved in writing by both Parties.

9. **Choice of Law.** This Agreement is made and entered into in the State of Texas, and shall be interpreted, enforced, and governed under the laws of that state without regard to the conflict of laws.

10. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between EAGL and City and supersedes all prior agreements and understandings between EAGL and City. This Agreement may be executed in any number of counterparts, each deemed to be an original.

11. **Effective Date.** This Agreement shall be effective on August 5, 2015.

EAGL
EVERGREEN ALLIANCE GOLF LIMITED, L.P.

THE CITY OF CARROLLTON

By: _____
Name: Joe Munsch
Title: President

By: _____
Name: Leonard Martin
Title: City Manager
Attest:

Krystle Nelinson, City Secretary

Approved as to Content:

Erin Rinehart, Assistant City Manager