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Kathleen Neel – Summit County Recorder

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SETTLEMENT AGREEMENT
AND
NON-REVOCABLE COMMERCIAL ACTIVITY PERMIT

This SETTLEMENT AGREEMENT ("Agreement") is entered into and NON-REVOCABLE COMMERCIAL ACTIVITY PERMIT ("Permit") is given on this 13 day November, 2015, by and between THE HIGHLANDS AT THE GOLF COURSE PROPERTY OWNERS' ASSOCIATION, INC. ("HOA"), whose legal address is PO Box 8029, Breckenridge, CO 80424, and NEW WEST PARTNERS, LLC ("NWP") whose legal address is PO Box 1597, 69 Marksberry Way, Breckenridge, CO 80424.

RECITALS

WHEREAS, NWP currently leases the property legally described as follows:

Lots 1 & 2, Highlands at Breckenridge Golf Course Tract No. 1
Summit County, Colorado

also known by street and number as 0069 and 0047 Marksberry Way, Breckenridge, CO 80424 ("Property");

WHEREAS, NWP operates a commercial business at the Property in accordance with a license issued by the Town of Breckenridge;

WHEREAS, NWP intends to purchase the Property on or before December 31, 2015;

WHEREAS, Section 11.2 of The Highlands at Breckenridge Declaration of Land Use Restrictions GOLF COURSE 1995 ("Declaration") states in applicable part "[a]ll commercial activity requires a permit from the Association under Section 11.7 below," and Section 11.7 of the Declaration states in applicable part "no Lot or Tract within the [HOA] Property may be used for any commercial activity unless such use is permitted by law and the Association has issued a written permit for such activity, which permit may be granted, denied or revoked in the Association's sole discretion;"

WHEREAS, the Plat that created the Property includes a note that Lots 1 and 2, in addition to permitted residential use, may be used only for a real estate sales office; and

WHEREAS, the HOA and NWP wish to enter into this Agreement and Permit to resolve any issues and concerns regarding NWP's operations at the Property and the permanent elimination of the real estate sales office or any other commercial use from the Property by December 31, 2020.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals and the mutual covenants contained herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the HOA and NWP agree as follows:

1. Property Agreement. So long as NWP acquires fee simple legal title to the Property on or before March 31, 2016:

a. NWP shall execute such document or documents as the HOA reasonably deems necessary to cause the real estate sales office use of the Property permitted by the note on the Plat to be eliminated on or before December 31, 2020.

b. All commercial use of the Property will cease on or before December 31, 2020.

c. NWP shall operate its real estate development and construction and property management businesses in the same manner in which it has operated since its occupation of the Property's building at 69 Marksberry Way ("Building") since January 1, 2015, except that NWP's property management business may be operated by an entity majority owned and controlled by NWP or its current owners. The Building will be used only as a professional office and only vehicles being used in connection with said purpose shall be parked at the Property. No construction equipment or materials shall be stored or used on the Property as part of NWP's business operations or otherwise. No heavy construction vehicles or equipment (i.e. dump trucks or front loaders) may be parked overnight at the Property.

d. NWP shall not permit additional use or sublease of the Property without a written amendment of this Agreement and Permit entered into between the HOA and NWP.

2. So long as NWP purchases the Property on or before March 31, 2016, the HOA hereby grants and conveys to NWP a Non-Revocable Commercial Activities Permit in accordance with the Declaration, effective from the date of this Agreement to December 31, 2020. This Permit will expire and terminate automatically as of December 31, 2020. It is agreed that it is and will be impractical and difficult to determine actual damages HOA will suffer by reason of NWP's violation of any of the conditions set forth in this Permit. The HOA shall be entitled to liquidated damages, and not as a penalty, the sum of $500 per day for each day NWP is in violation of any of the conditions set forth in the Permit. The HOA will additionally be entitled, notwithstanding Paragraph 3, to seek an immediate injunction from the Summit County District Court to stop any activity of NWP that is in violation of the Permit.

3. Disputes. Except as otherwise provided in Paragraph 2, any claim arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal proceedings by either party. Requests for mediation shall be filed in writing by the other party to the Agreement. The mediation shall be held at Judicial Arbiter Group, Inc. in Denver, Colorado, unless otherwise agreed by the parties. The parties shall share the mediator's fee equally. Should the HOA or NWP employ an attorney to enforce any of the provisions of this Agreement or to protect its interest in any matter arising under this Agreement, or to collect damages from this Agreement, the prevailing party shall be reimbursed for all reasonable costs and attorney's fees incurred in connection therewith. Any action or proceeding brought in relation to this Agreement shall be in Summit County, Colorado.

4. Notices. All notices required or permitted under the terms of this Agreement shall be in writing and shall be deemed given when a copy thereof, addressed as provided herein, is actually delivered, either personally or by overnight courier to a party at the address stated in the first paragraph of this Agreement, and to any successors of a party, at the address for such

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successor shown on the recorded conveyance to such successor or at such other address as the parties or such successor may notify the other party of in writing in the manner provided in this Section.

5. Severability. If any provisions of this Agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Agreement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

6. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the Agreement and may be modified only by an instrument in writing executed by both parties.

7. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed an original, and such counter parts together shall constitute one and the same instrument.

8. No Waiver. The waiver by any party to this Agreement of any term or condition of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

9. Recording. This Agreement may be recorded in the office of the Clerk and Recorder of Summit County, Colorado.

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IN WITNESS, WHEREOF, the parties have caused this instrument to be duly executed this ___ day of November, 2015.

THE HIGHLANDS AT THE GOLF COURSE
PROPERTY OWNERS' ASSOCIATION, INC.

BY: THOMAS M. BYLEDBAL, PRESIDENT

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

Subscribed and sworn to before me this 19th day of November, 2015, by THOMAS M. BYLEDBAL as PRESIDENT of THE HIGHLANDS AT THE GOLF COURSE PROPERTY OWNERS' ASSOCIATION, INC.

Witness my hand and official seal.
My commission expires: 9/27/19.

JILL BLOCK
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 19954015064
MY COMMISSION EXPIRES SEPTEMBER 27, 2019

Notary Public

NEW WEST PARTNERS, LLC

BY: DOUG GURLEA, MANAGER

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

Subscribed and sworn to before me this 16th day of November, 2015, by DOUG GURLEA as MANAGER of NEW WEST PARTNERS LLC.

Witness my hand and official seal.
My commission expires: July 31, 2017.

AMY FREEMAN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20134046045
MY COMMISSION EXPIRES JULY 31, 2017

Notary Public