

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

In consideration of the following recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Carowest Land, Ltd. (“Carowest”) and the City of New Braunfels, Texas (“the City”) enter into this Settlement Agreement and Release of Claims (the “Agreement”). Carowest and the City shall collectively be referred to herein as the “Parties,” and each individually a “Party.”

WHEREAS, in November of 2010, Carowest filed a lawsuit against the City and YC Partners, Ltd. d/b/a Yantis Company (“Yantis”), asserting various causes of action, in Cause No. C2010-1519D, *Carowest Land, Ltd. v. YC Partners, Ltd. d/b/a Yantis Company and the City of New Braunfels*, in the 433rd District Court of Comal County, Texas (the “2010 Lawsuit”);

WHEREAS Carowest’s claims in the 2010 Lawsuit included, in part, issues relating to land then owned by Carowest in Comal County, Texas, containing approximately 237.876 acres (the “Property”);

WHEREAS, on February 11, 2011, Carowest recorded in the Comal County Real Property Records, at Document No. 201106005447, a “Termination of Recreational Easement,” which purported to terminate the “Recreational Easement” on the Property recorded in the Comal County Real Property Records at Document No. 200906038570;

WHEREAS, on February 11, 2011, Carowest recorded in the Comal County Real Property Records, at Document No. 201106005448, a “Termination of Drainage Channel Easement,” which purported to terminate the “Drainage Channel Easement” on the Property recorded in the Comal County Real Property Records at Document No. 200906038567;

WHEREAS, in June of 2014, Carowest filed a petition in intervention in Cause No. C2014-0522A, *YC Partners, Ltd. d/b/a Yantis Company v. The City of New Braunfels*, in the 22nd District Court of Comal County, Texas (the “2014 Lawsuit”);

WHEREAS, in February of 2015, certain claims in the 2010 Lawsuit were severed into Cause No. C2015-0304A, *Carowest Land, Ltd. v. YC Partners, Ltd. d/b/a Yantis Company and the City of New Braunfels*, in the 22nd District Court of Comal County, Texas (the “2015 Lawsuit”);

WHEREAS, in March of 2017, certain claims in the 2010 Lawsuit were severed into Cause No. C2017-0474A, *Carowest Land, Ltd. v. YC Partners, Ltd. d/b/a Yantis Company and the City of New Braunfels*, in the 22nd District Court of Comal County, Texas (the “2017 Lawsuit”);

WHEREAS the City has filed counterclaims against Carowest in the 2010 Lawsuit that include a request for attorneys’ fees and costs, and has also requested attorneys’ fees and costs against Carowest in the 2015 Lawsuit and the 2017 Lawsuit;

WHEREAS the City contests and denies each of the claims and requests asserted by Carowest, and Carowest contests and denies each of the claims and requests asserted by the City, in the 2010 Lawsuit, the 2015 Lawsuit, and the 2017 Lawsuit;

WHEREAS the Parties desire to resolve and settle all claims that were or could have been asserted in the 2010 Lawsuit, the 2015 Lawsuit, or the 2017 Lawsuit, and to resolve and settle all claims that were or could have been asserted against each other in the 2014 Lawsuit, without any admission of liability or fault by any of the Parties;

NOW, THEREFORE, the Parties agree and represent as follows.

1. Settlement Payment. Within 21 days after the execution of this Agreement by both Parties, Carowest shall pay to the City a total of \$175,000.00 (the “Cash Consideration”).

2. Drainage Channel Easement. Within 21 days after the execution of this Agreement by both Parties, Carowest shall sign and record in the Comal County Real Property Records a cancellation and voidance of the Termination of Drainage Channel Easement. In addition, Carowest agrees to take no action to modify, terminate, or otherwise challenge the City’s Drainage Channel Easement on the Property absent written agreement by the City.

3. Satisfaction of “Letter Agreement” Referenced in Drainage Channel Easement. Upon Carowest’s performance of the actions required by Paragraphs 1 and 2 of this Agreement to be performed within 21 days of its execution, the Parties hereby acknowledge and agree that the “Letter Agreement” as defined on Page 1, Paragraph 1 of the Drainage Channel Easement shall be satisfied in full, and shall be of no further force or effect, and the parties shall have no further rights or obligations thereunder.

4. Dismissal of Claims. Within 14 days after the execution of this Agreement by both Parties, (a) the City shall file an agreed nonsuit or dismissal with prejudice of all claims and requests for relief the City has asserted in the 2010 Lawsuit, the 2015 Lawsuit, and the 2017 Lawsuit, and (b) Carowest shall file an agreed nonsuit or dismissal with prejudice of all claims and requests for relief Carowest has asserted in the 2010 Lawsuit, the 2014 Lawsuit, the 2015 Lawsuit, and the 2017 Lawsuit.

5. Releases.

(a) In exchange for the agreements and good and valuable consideration set forth herein, Carowest hereby releases and discharges the City, and the City’s past, present, and future employees, officials, and agents, from any and all claims or counterclaims, causes of action, remedies, damages, liabilities, debts, suits, demands, actions, costs, expenses, fees, controversies, set-offs, third-party actions or proceedings of whatever kind or nature, whether at law, in equity, administrative proceedings, arbitration, or otherwise, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, which it may have had or has ever had against any of them arising from or relating to the Lawsuit or the Property, or any other claims or causes of action that were or could have been brought in the Lawsuit, or that could have been asserted in connection with the Property. This Agreement is intended to resolve forever any and all claims that Carowest may now have or has ever had against the City relating to the Lawsuit or the Property.

(b) In exchange for the agreements and good and valuable consideration set forth herein, the City hereby releases and discharges Carowest, and Carowest’s past,

present, and future employees, officials, and agents, from any and all claims or counterclaims, causes of action, remedies, damages, liabilities, debts, suits, demands, actions, costs, expenses, fees, controversies, set-offs, third-party actions or proceedings of whatever kind or nature, whether at law, in equity, administrative proceedings, arbitration, or otherwise, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, which it may have had or has ever had against any of them arising from or relating to the Lawsuit or the Property, or any other claims or causes of action that were or could have been brought in the Lawsuit, or that could have been asserted in connection with the Property. This Agreement is intended to resolve forever any and all claims that the City may now have or has ever had against Carowest relating to the Lawsuit or the Property.

6. Termination of Recreational Easement. The Parties agree that the Termination of Recreational Easement recorded on February 11, 2011, was not valid. However, in additional consideration of Carowest's payment of the Cash Consideration to the City, the City agrees that the Recreational Easement recorded in the Comal County Real Property Records under Document No. 200906038570 is hereby terminated and shall be of no further force and effect from and after the Effective Date, and the City hereby releases unto Carowest all rights and interest of the City, its successors or assigns under or pursuant to such Recreational Easement. At Carowest's request, the City shall execute and acknowledge a Termination of Recreational Easement in recordable form reasonably acceptable to Carowest.

7. Authority, Competency, and Fairness. Each Party warrants and represents that they have full legal authority, standing, and capacity to enter into this Agreement, that their signatory has full legal authority, standing, and capacity to sign on behalf of such Party and is not under any form of legal disability or incapacity at the time of signing this Agreement, that this is an arms-length transaction entered into without undue influence or duress, that they join in the execution of this Agreement freely and voluntarily, that they have read fully and understand the terms of this Agreement, that they have had the opportunity to seek the advice of an independent attorney regarding this Agreement, and that they enter into and execute this Agreement without relying on any promises, conditions, terms, statements, or representations that are not expressly contained in this Agreement.

8. Costs, Expenses, and Attorneys' Fees. The Parties will each pay their own costs, fees, and expenses, including attorneys' fees, with respect to or relating to the Lawsuit. However, to the extent that further litigation is necessary due to an alleged breach of this Agreement by any of the Parties, the prevailing party in such further litigation is entitled to recover his or her reasonable and necessary attorneys' fees and costs associated with that litigation.

9. No Release of Claims for Breach of This Agreement. Notwithstanding any other language in this Agreement, nothing herein shall be deemed a release of any rights created by this Agreement.

10. No Prior Conveyance. The Parties, and each of them, expressly warrant that no claims, demands, controversies, actions, causes of action, liabilities, damages, injuries, losses, or other rights released, assigned, or waived herein have been previously conveyed, assigned, or transferred in any manner, whether in whole or in part, to any person, entity, or other third party.

11. Not a Mere Recital. This Agreement is contractual, not a mere recital, and is a full and final settlement of the matters designated herein and is binding on all members, owners, predecessors, successors, and/or assigns of each of the Parties.

12. No Admission of Liability. This Agreement is a compromise of disputed claims in order to avoid the further trouble and expense of litigation and shall not be construed as an admission of liability by any of the Parties.

13. Integration Clause. This Agreement contains the entire understanding between the Parties concerning the matters set forth herein, and there are no representations, warranties, agreements, promises, understandings, or arrangements, oral or written, express or implied, between the Parties relating to the subject matter of this Agreement except those recited herein. Also, this Agreement supersedes all previous representations, warranties, agreements, promises, understandings, or arrangements, oral or written, relating to its subject matter, all of which are canceled.

14. Amendment of Agreement. This Agreement may be amended only by written agreement signed by the Parties, and a breach of this Agreement may be waived only by written waiver signed by the party granting the waiver. The waiver of any breach of this Agreement shall not operate or be construed as a waiver of any similar or prior or subsequent breach of this Agreement.

15. Choice of Law. This Agreement is governed by the laws of the State of Texas.

16. Partial Invalidity. In the event any portion of this Agreement is deemed unenforceable, void, voidable, or of no force and effect, no other portion will be thereby affected, and the remainder of this Agreement will continue in full force and effect.

17. Adequate Consideration. Each of the Parties represents and warrants that each has received adequate consideration for their respective representations, warranties, and agreements herein.

18. No Construction Against the Parties. This Agreement has been prepared by the joint efforts of the Parties, and each of the Parties hereto acknowledges that they have read the Agreement and that the Agreement expresses the entire agreement concerning the settlement of the Lawsuit. This Agreement shall not be strictly construed against any party hereto.

19. Further Actions. The Parties agree they will each execute such other and further instruments and documents or take such other steps as may become necessary to carry out the intent of this Agreement.

20. Two or More Counterparts. This Agreement may be executed simultaneously in two or more counterparts, to be transmitted by facsimile, e-mail, or otherwise, and said counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth hereafter (the last of which date being the “Effective Date” hereof).

**CAROWEST LAND, LTD.,
By: Chupacabra Ranch, LLC, its General Partner**

By: _____

Name: _____

Title: _____

Date: _____

CITY OF NEW BRAUNFELS, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

RATIFIED AND APPROVED BY ITS CITY COUNCIL ON THE ____ OF AUGUST, 2022.