

SETTLEMENT AGREEMENT AND RELEASE

Palm Realty, Inc., Fischer Sand & Aggregate, LLP, and Arcon Land IV, LLC (“Plaintiffs”), and the City of Apple Valley (“the City”), hereby agrees and covenants as follows:

1. The parties to this Settlement Agreement and Release (“this Agreement”) wish to avoid the time, expense, inconvenience, and uncertainties of litigation. Accordingly, without any of the parties admitting any liability or admitting the validity of any claim, counterclaim, cause of action, or defense asserted in this action, the parties wish to resolve and settle all disputes, claims, counterclaims, cause of actions, and defenses arising from the events that were the subject matter of the lawsuit described in Paragraph 2 of this Agreement.
2. The parties to this Agreement desire to dismiss with prejudice the lawsuit entitled “*Palm Realty, Inc. et al. v. City of Apple Valley*,” Case No. 19HA-CV-15-464, in the Dakota County District Court of Minnesota (“the Action”).

THEREFORE, in consideration of the foregoing, and the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

- A. This Agreement is entered into in good faith for the purpose of settling completely those disputes of the parties to this Agreement with regard to the matters involved in the Action.
- B. The City shall waive the \$59,592 in fees in lieu of park land dedication for the 13-lot plat of Embry Place that the City approved on October 9, 2014. The City shall return to Plaintiffs the check in the amount of \$59,592 that Plaintiffs had placed in escrow, consistent with Minnesota Statutes section 462.358, subdivision 2c, for the 13-lot plat of Embry Place. Plaintiffs shall return to the City the \$32,440.39 check that the City previously provided as a partial refund of the escrowed fees.
- C. On July 14, 2016, the City amended its fee schedule for park dedication to change the land value multiplier to \$75,000 per acre. As of the effective date of this Agreement, the City’s park fee in lieu of dedication calculation is:
 - $(\# \text{ of units}) \times 2.7 (\# \text{ persons per unit}) \times .00955 \times \$75,000 = \text{park fee in lieu of dedication.}$

The City shall apply the above referenced park fee ordinance to the park fee in lieu of dedication required for Embry Place Second Addition Development Agreement (“Development Agreement”). Within three (3) days of the execution of this Agreement, the City shall provide revised pages for the Development Agreement memorializing this revision to the park fee in lieu of

dedication. Until revised by the City, the above referenced park fee ordinance will apply to all additional phases of the Embry Place Development.

- D. Except only for the representations or obligations of the parties under this Agreement, Plaintiffs and any and all of their beneficiaries, employees, agents, representatives, successors, assignees, transferees, joint ventures, attorneys, and insurers, hereby release and discharge the City, and their past and present officers, directors, partners, elected officials, board members, employees, agents, representatives, affiliates, divisions, successors, stockholders, assignees, transferees, joint ventures, attorneys, insurers, and risk pools (including the League of Minnesota Cities Insurance Trust) from all manner of claims, demands, actions, causes of actions, suits, debts, dues, sums of money, accounts, bills, covenants, contracts, rights, obligations, controversies, agreements, promises, and demands whatsoever, whether in law or equity, they ever had, or now have, or hereafter may have, whether known or unknown, involving the matters at issue in the Action.
- E. Except only for the representations or obligations of the parties under this Agreement, the City and any and all of their beneficiaries, employees, agents, representatives, successors, assignees, transferees, joint ventures, attorneys, and insurers, hereby release and discharge the Plaintiffs, and their past and present officers, directors, partners, elected officials, board members, employees, agents, representatives, affiliates, divisions, successors, stockholders, assignees, transferees, joint ventures, attorneys, insurers, and risk pools from all manner of claims, demands, actions, causes of actions, suits, debts, dues, sums of money, accounts, bills, covenants, contracts, rights, obligations, controversies, agreements, promises, and demands whatsoever, whether in law or equity, they ever had, or now have, or hereafter may have, whether known or unknown, involving the matters at issue in the Action.
- F. Each party will bear its own costs, expenses, and attorney fees that it has incurred in connection with or arising out of the Action.
- G. This Agreement shall be binding upon the successors and assigns of the parties, whether by way of merger, consolidation, operation of law, assignment, purchase, or other acquisition.
- H. All questions with respect to the construction of this Agreement and the rights and liabilities of the parties to this Agreement shall be governed by the laws of the State of Minnesota.
- I. This Agreement effects the settlement and release of claims and defenses, which are denied and contested by the parties, and nothing contained in this Agreement shall be construed as an admission of liability by either party.
- J. The parties will dismiss with prejudice the Action after execution of this Agreement and the City completes its obligations under Paragraphs B and C

of this Agreement. The attorneys for the parties shall arrange to file the Stipulation to Dismiss With Prejudice with the Court within 10 business days from when the City completes its obligations under Paragraphs B and C of this Agreement.


- K. Each party represents and warrants that it has not assigned or transferred, or purported to assign or transfer, any of the claims released pursuant to this Agreement to any other person and that it is fully entitled to compromise and settle such claims. Each party shall indemnify the other against all costs, expenses, and judgments, including all attorney fees incurred, in the event that any third party shall assert any of the claims released pursuant to this Agreement based on a purported assignment or transfer of rights by a party to this Agreement.
- L. This Agreement and its attachments and addenda represent the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all prior and contemporaneous oral and written agreements and discussions. Each of the parties covenants that it has not entered into this Agreement as a result of any representation, agreement, inducement, or coercion, except to the extent specifically provided in this Agreement. Each party further covenants that the consideration recited in this Agreement is the only consideration for entering into this Agreement, and that no promises or representations of other or further consideration have been made by any person. This Agreement may be amended only by a written agreement executed by all parties.
- M. This Agreement is the result of arms-length negotiations among the parties. All parties have participated in the negotiations, have had an equal opportunity to participate in the drafting and revision of this Agreement, and have had the opportunity to review this Agreement with their counsel. No ambiguity shall be construed against any party based upon a claim that the party in question drafted ambiguous language.
- N. This Agreement may be executed by the parties by facsimile or email and in identical counterparts, each of which shall constitute an original for all purposes.
- O. If any provision of this Agreement is found invalid by a court of competent jurisdiction, that provision will be severed from the Agreement and the remaining provisions will remain valid and enforceable.
- P. Plaintiffs, by executing this Agreement, agree that the City shall have until July 29, 2016, at 11:59 p.m. to meet and consider approval or rejection of this Agreement. From the time of execution hereof until such time, this Agreement and the offer of Plaintiffs as evidenced by the execution hereof, shall be irrevocable by Plaintiffs. If the City does not approve this Agreement by the

above date and time, and if no extension is negotiated, then this Agreement shall be null and void.

WHEREFORE, the parties have executed this Settlement Agreement and Release effective as of the date first written.

PLAINTIFFS

Palm Realty, Inc.

Dated: July 21, 2016 By: 

Fischer Sand & Aggregate, LLP

Dated: 7-21-2016 By: 

Arcon Land IV, LLC

Dated: _____ By: _____

THE CITY OF APPLE VALLEY

Dated: _____ By: Mary Hamann-Roland, Mayor

Dated: _____ By: _____

above date and time, and if no extension is negotiated, then this Agreement shall be null and void.

WHEREFORE, the parties have executed this Settlement Agreement and Release effective as of the date first written.

PLAINTIFFS

Palm Realty, Inc.

Dated: _____

By: _____

Fischer Sand & Aggregate, LLP

Dated: _____

By: _____

Arcon Land IV, LLC

Dated: July 21 2016

By: Scott Johnson, President

THE CITY OF APPLE VALLEY

Dated: _____

By: _____
Mary Hamann-Roland, Mayor

Dated: _____

By: _____

Tom Lawell,
City Administrator

Dated:

By:

Pamela Gackstetter, City Clerk