

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter “Agreement”) is entered into this ____ day of February, 2023 (“Effective Date”) by and between Beaver Valley Improvement Association, (hereinafter “BVIA”), an Arizona Nonprofit Corporation; and Beaver Land, LLC (hereinafter “Beaver Land”), an Arizona limited liability company; its member Michael Armstead and Beaver Valley Water Company, Inc., (hereinafter “BVWC”) an Arizona Corporation; its sole director and president Michael Armstead (hereinafter “Armstead”) (collectively, “Defendants”). Together, BVIA, Beaver Land, BVWC and Armstead shall be referred to as the “Parties” or, singularly, “Party”.

RECITALS

WHEREAS, BVIA is the fee simple owner of 911 W. Beaver Flat Road, a portion of Gila County Assessor Parcel Number (“APN”) 302-17-338C, previously known as APN 302-17-048A, a portion of Tract B of Beaver Valley Estates, Payson, Gila County, Arizona.

WHEREAS, Beaver Land is the fee simple owner of Tract D, of Beaver Valley Estates, Payson, Gila County, Arizona, APN 302-17-050.

WHEREAS, BVWC is the holder of the Arizona Corporation Commission Certificate of Convenience and Necessity (“CC&N”) to provide domestic water services to Beaver Valley Estates, Payson, Gila County, Arizona.

WHEREAS, Armstead is the sole member of Beaver Land; the sole director and president of BVWC.

WHEREAS, certain disputes arose between the Parties resulting in a civil action being filed in Gila County Superior Court, Case No. S0400CV201900254 (“Litigation”), resulting in a Ruling on Under Advisement Action dated October 15, 2021 in which the Court granted partial summary judgment in favor of BVIA against Beaver Land, BVWC and Armstead, denying summary judgment in two remaining counts and one remaining counterclaim.

WHEREAS, the Parties agree that they have entered into this Agreement to resolve the Litigation and to satisfy any and all remaining matters between them related to the Litigation, and to avoid the uncertainty and expense of further litigation, and that entering into this Agreement is not, and shall not be construed as, an admission of liability or wrongdoing by any Party related to the remaining matters.

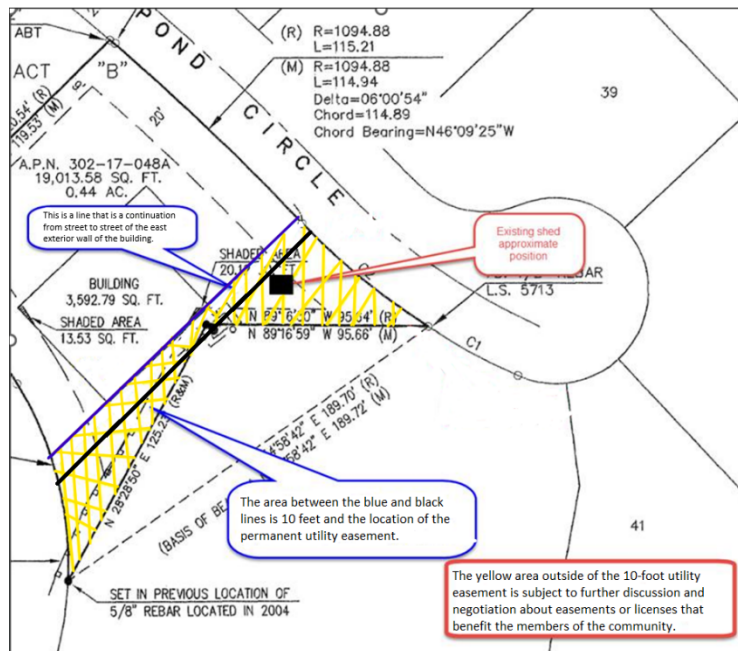
NOW, THEREFORE, pursuant to Arizona Rules of Civil Procedure (“Ariz.R.Civ.P.”), Rule 80(a) and in consideration of the mutual promises and covenants provided herein, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree that the Recitals are included as part of this Agreement, and they further agree as follows:

AGREEMENT

1. Consideration; Covenants.

- a) The Parties agree that the Court's Ruling on Under Advisement Action dated October 15, 2021 shall be a non-appealable final judgment in this matter, pursuant to Ariz.R.Civ.P. Rule 54.
- b) The Parties agree to file a notice with the Court regarding its Ruling on Under Advisement, more specifically described and attached as **Exhibit A**.
- c) The Parties agree that a Party may file a motion for costs and attorney's fees related to the Litigation pursuant to Ariz.R.Civ.P. Rule 54(f) and Rule 54(g). Any such award may be appealed by a Party. The Parties agree that any award entered by the Court against any of the Defendants will be adjusted in the form of judgment to be 50% of the award entered by the Court. However, if the Defendants appeal such award, the amount of the fee award will be determined by the Court of Appeals without this 50% reduction. This provision does not create an independent right to recover attorneys' fees. In other words, any application for fees would still need to have an independent basis to justify the award. By agreeing to this provision, BVIA does not concede that Defendants are entitled to an award of fees and Defendants do not concede that BVIA is entitled to an award of fees. Pursuant to this Agreement, BVIA will voluntarily dismiss with prejudice its remaining Count Three and Count Four of its Complaint. Beaver Land, BVWC and Armstead will voluntarily dismiss with prejudice remaining Count Three of their Counterclaim.
- d) Pursuant to this Agreement, BVWC shall repair its excavations under and in the BVIA's building located at 911 W. Beaver Flat Road, at its expense, using an Arizona licensed contractor, within 90 days of the execution of this agreement.
- e) Pursuant to this Agreement, Armstead – on behalf of Beaver Land and BVWC – within one (1) month of the execution of this Agreement, will withdraw his appeals of the Gila County Board of Variances grant(s) of variance to the Water Wheel Fire & Medical District on April 3, 2018 and to BVIA on November 30, 2018.
- f) Pursuant to this Agreement, BVIA will abandon, within one (1) month of execution of this Agreement, the lot line adjustment recorded upon the Official Records of Gila County at Instrument No. 2005-003376, thus boundary between parcels Tract B and Tract D will return to their original location according to the plat of record in the office of the Gila County Recorder, in Map 331.

g) Pursuant to this Agreement, within eighteen (18) months of the execution of this Agreement, BVWC shall abandon and relocate the main waterlines that lay under the building located at 911 W. Beaver Flat Road, (Tract B of Beaver Valley Estates). Upon BVWC providing a copy of the proposed engineering and surveyed location of the proposed relocated water mains, BVIA shall grant a ten (10) foot non-exclusive public water utility easement, that runs with the land, to benefit BVWC, successors and assigns, within the eastern portion of its land as illustrated below. Any current utility facilities, including but not limited to, the propane tank and propane service lines, shall remain with the non-exclusive water utility easement at their current locations.



- i. The relocated water mains shall not be placed within four (4) feet of the existing building structure and foundation.
 - ii. Such grant of easement will contain a detailed legal description of said easement and recorded upon the official records of Gila County.
- h) Pursuant to this Agreement, upon BVWC locating, surveying, and legally describing the location of the existing underground waterlines underneath BVIA's common property and community roadways, except as to 911 W. Beaver Flat Road, Tract B on the original plat of Beaver Valley Estates, recorded at Map 311 of the official records of Gila County (the "Excluded Portion"), BVIA will grant non-exclusive underground public-utility easements, of five (5) feet from either side of the centerline of the waterlines existing as of the Effective Date. Such grant(s) of easement will contain a detailed legal description of said easement and

recorded upon the official records of Gila County. Nothing in this Agreement, shall grant easements upon real property not legally owned by the Parties.

- i) The Parties agree that they will cooperate and coordinate in the improvement, replacement, and repair of waterlines under Beaver Valley Estate community roadways and BVIA's maintenance, repair, and improvement of the community roadways, so that any improvements will not conflict with improvements of the other Party.

2. Compromise of Disputed Claims.

The Parties to this Agreement understand and agree that this Agreement is made in compromise of the remaining disputed claims in the Litigation, that all Parties to this Agreement deny any and all liability for such remaining claims and counterclaims, and that neither the Consideration nor this Agreement shall be construed as an admission of liability on the part of any Party or its agents, its present and former members, officers, directors, agents, spouses, attorneys, heirs, successors and assigns, and subsidiaries from remaining claims and counterclaims.

3. Mutual General Releases.

In consideration of and upon execution of this Agreement and the covenants as set forth in paragraphs 1 and 2 above, each Party on behalf of any or all of its present and former officers, directors, agents, spouses, assigns, heirs, successors, entities, affiliates, partners and subsidiaries, do hereby completely release and forever discharge the other Parties, their present and former officers, directors, agents, spouses, attorneys, heirs, successors and assigns, partners, and subsidiaries from all claims, actions, suits, arbitrations, debts, accounts, covenants, contracts, controversies, agreements, promises, damages, judgments, executions, and demands which the Parties may have had, claims to have had, now has, or may claim to have, at law or in equity, which concern in any way the Litigation, with the sole exception of claims to enforce this Settlement Agreement. Parties agree that nothing in this agreement prevents the Parties or individual members or customers of the Parties from exercising their rights in conducting business. (e.g., BVWC water service agreements with its customers.)

4. Comprehensive of Agreement.

The Parties warrant and represent that they have investigated to their complete satisfaction all claims and all facts, circumstances, and allegations arising out of the subject matter of the Litigation or any other matters between the Parties, and that they have knowingly and voluntarily agreed to enter into this Agreement despite the possibility that their decision may have been materially affected by claims or by facts, circumstances, or allegations which they erroneously believe to be true or which they do not know or have reason to know for any reason, including without limitation ignorance, mistake, inadvertence, neglect, negligence, fraud,

fraudulent inducement, or intentional misconduct of any Party or non-party or any attorney, expert, consultant, representative, or agent of any Party or non-party.

5. Consultation with Counsel.

The Parties warrant and represent that they have fully read this Agreement, that they have fully discussed all the terms, conditions, and consequences of this Agreement with attorneys of their own choice, that they have freely and without reservation relied upon the advice of their attorneys in entering this Agreement, and that they therefore completely understand and voluntarily accept all the terms, conditions, and consequences of this Agreement.

6. Good Faith Investigation.

The Parties warrant, represent, and agree that this Agreement has been entered into in good faith with each side having conducted its own investigation.

7. Lack of Promise or Inducement.

The Parties warrant and represent that no promise or inducement has been offered, made, or accepted by anyone in connection with this Agreement except for the mutual covenants expressly set forth herein, and that they have accepted and executed this Agreement without reliance upon any statements, claims, or representations made by the released Parties or their attorneys, consultants, representatives, or agents.

8. Voluntary Agreement.

This Agreement has been negotiated and executed voluntarily and is not the result of duress, fraud, undue influence, or any threat of any kind.

9. Successors in Interest.

This Agreement shall bind and inure to the benefit of all Parties including without limitation each of their affiliated entities, companies, corporations, trusts or other business entities, officers, directors, members, managers, employees, and agents, and the executors, administrators, personnel representatives, heirs, successors and assigns of each Party.

10. Governing Law and Venue.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona in effect on the date of this Agreement. If it is necessary for any Party to take legal action to enforce the provisions of this Agreement or if a dispute should arise between the Parties as a result of negotiated terms of this Agreement, it shall be submitted to the Honorable

James Hancock, Judge, Arizona Superior Court (Ret.), for resolution by binding non-appealable arbitration. If the Honorable James Hancock is unable to or unwilling to act as arbitrator, the Parties agree to select another arbitrator to resolve their dispute. The prevailing Party of any such action shall be entitled to its reasonable attorneys' fees, expenses, and costs.

11. Severability.

Should any provision or portion of this Agreement be deemed void or contrary to law, all remaining portions and provisions shall nonetheless remain in full force and effect.

12. Amendment of Agreement.

This instrument contains the entire Agreement between the Parties, and no part of this Agreement shall be modified, amended, or waived in any respect, except by a written instrument executed by all of the Parties.

13. Opportunity to Comment; Construction of Agreement.

All Parties and their counsel have had an opportunity to comment on the terms of this Agreement prior to execution, and the provisions of this Agreement shall be construed as being drafted by all Parties and shall not be construed against any particular Party.

14. Authorized Signatures.

Any signatory on this Agreement warrants and acknowledges that he or she is authorized by the entity or individual on behalf of which the signatory is executing this Agreement to execute this Agreement on its behalf.

15. Additional Documents.

Each Party agrees, acting in good faith and upon request, to execute such further or additional documents, and take such actions, as may be necessary to fully carry out the intent and purposes of this Agreement.

16. Counterparts.

This Agreement can be signed in counterparts and all of them, taken together, will constitute one Agreement. Signatures delivered by facsimile or other electronic transmission shall be as effective as and binding as original signatures.

[SIGNATURES ON NEXT PAGE(s)]

The Parties Understand That Upon Signing Below, This Document Will Become A Legally Enforceable Agreement Under Which They Will Be, Giving Up Rights And Claims They May Have On The Terms Stated In This Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date first above written.

BEAVER VALLEY IMPROVEMENT
ASSOCIATION, INC.

By _____
William O. Campbell, President

BEAVER LAND, LLC.

By _____
Michael Armstead, Member

BEAVER VALLEY WATER COMPANY,
INC.

By _____
Michael Armstead, President

EXIHIBT “A”

(copy of notice attached)

BRENTWOOD LAW GROUP, PLLC
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Attorneys for Defendants

SUPERIOR COURT OF ARIZONA
GILA COUNTY

BEAVER VALLEY IMPROVEMENT
ASSOCIATION, a domestic nonprofit
corporation,

Plaintiff/Counter-Defendant,

v.

BEAVER LAND, LLC a domestic
limited liability company; its member
MICHAEL ARMSTEAD; BEAVER
VALLEY WATER COMPANY, INC., a
domestic for-profit corporation, its sole
director and president MICHAEL
ARMSTEAD,

Defendants/Counterclaimants.

Case No. S0400CV201900254

JOINT NOTICE

(Assigned to Hon. Timothy M. Wright)

Plaintiff Beaver Valley Improvement Association and Defendants Beaver Land, LLC, Beaver Valley Water Company, Inc., and Michael Armstead (the “Parties”) provide this joint notice of settlement. The Parties provide as part of their settlement this notice that they desire to omit from the Court’s ruling dated October 15, 2021 (the “Ruling”) the following:

“In summary, Defendants have brought forth no evidence to contradict Plaintiff’s position.” Ruling at p. 2.

“Neither excavation was with Plaintiff’s permission or consent.” Ruling at p. 3.

“Defendants have not denied that they entered Plaintiff’s property without permission or consent on two separate occasions.” Ruling at p. 3.

The Parties recognize that this Notice itself does not modify the Ruling; but rather, the Notice states their desire to omit from the Ruling the items referenced above as part of the consideration for the settlement between the Parties.

DATED: 2/15/2023

LAW OFFICE OF TONY S. CULLUM, PLLC

By */s/ Tony S. Cullum* (with permission)

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HENZE COOK MURPHY, PLLC

By */s/ Kiersten A. Murphy* (with permission)

Kiersten A. Murphy
Attorneys for Plaintiff

BRENTWOOD LAW GROUP PLLC

By */s/ Stephen Brower*

Stephen Brower
Attorneys for Defendants

KISSEE SOLUTIONS, PLLC

By */s/ Sherra Kisse* (with permission)

Sherra Kisse
Attorneys for Defendants

ORIGINAL of the foregoing electronically filed
with the Clerk of the Gila County
Superior Court and copy e-served
2/15/2023 to:

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Copy e-mailed on 2/15/2023 to:

The Honorable Timothy M. Wright
Gila County Superior Court – Division Two
c/o Veronica Guadiana, Judicial Assistant
1400 E. Ash Street
Globe, AZ 85501
Email: vGuadiana@courts.az.gov

/s/ J. Wresh