

TOLLING AGREEMENT

This Tolling Agreement (“Agreement”) is made this 13th day of March, 2019 (the “Effective Date”), by and among Somerset Homeowners Association (“SHOA”) and Somerset Estate Homeowners Association (“SEHOA”) (SHOA and SEHOA shall be collectively referred to as the “Parties”).

Recitals

- A. From November 22, 1988 through March 29, 2018, residents of SHOA and SEHOA were governed by a common homeowners association and managed all affairs relating to the combined neighborhood (including management, maintenance and improvement of outlots, rights of way, and common space within the boundaries of the neighborhood (the “Real Estate”) and management, acquisition and payment of fees relating to water rights owned by the combined homeowners association (the “Water Rights”) generating water needed to maintain the Real Estate and otherwise maintain and improve the aesthetic appeal of the neighborhood). In May 2017, a court of competent jurisdiction declared that the 1988 merger that formed the combined HOA was invalid.
- B. After the entry of the court order, SEHOA was formed as a separate homeowners association under Colorado law for residents within its boundaries (and SEHOA has assumed management of, and has been responsible for, the Real Estate identified in Exhibit A). SHOA continued to operate as a separate homeowners association for residents within its boundaries (and SHOA has assumed management of, and has been responsible for, the Real Estate identified in Exhibit B).
- C. As a result of the declaration of invalidity respecting the merger, the Parties may have claims against each other relating to the ownership, control, and/or use of the Real Estate and the Water Rights (the “Claims”) which Claims may be the subject of future litigation between the Parties. The Parties desire to allow time to resolve these issues in a manner that is beneficial to both Parties and all of the residents of SHOA and SEHOA without the need to file litigation relating to the Claims.
- D. Without a tolling agreement, either Party may be compelled to file suit to assert such Claims prior to the expiration of the applicable statutes of limitations. Both Parties desire to determine whether such Claims may be resolved without the expense or delay of litigation.
- E. The Parties have entered into that certain MOU dated February 20, 2019, as amended on March 12, 2019, (together referred to herein as the “2019 MOU”) which addresses the Parties’ continuing services and comingled expenses through December 31, 2019. The 2019 MOU expressly provides that it does not resolve all disputes between the parties and shall not constitute a release of any claims, whether past, present or future, and whether known or unknown. The scope of the 2019 MOU is limited to the items enumerated in the paragraph entitled Purpose, and does not address, and shall in no way constitute, a compromise of SEHOA’s or SHOA’s claimed interest in any property, including (i) the Water Defense Fund, (ii) shares to water rights or shares in legal entities which hold water rights (including any consideration received from the sale, exchange, disposition or similar

transaction involving any such water shares or rights), (iii) units in Colorado-Big Thompson Project water (including any consideration received from the sale, exchange, disposition or similar transaction involving in any such units), or (iv) outlots (including any consideration received from the sale, exchange, disposition or similar transaction involving in any such outlots).

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Tolling. The Parties agree to toll the running of any and all statutes of limitations, statutes of repose, doctrine of laches, or other similar time limits applicable to any of the Claims that SEHOA may have against SHOA, and SHOA may have against SEHOA, for a period of two years after the Effective Date of this Tolling Agreement or March 13, 2021 ("the Tolling Period"). The Parties agree that the "Tolling Period shall not be included in any time period for purposes of any statute of limitations, statute of repose, laches, or any other time-related legal or equitable doctrine otherwise available to either Party in any way related to the Claims.

2. Forbearance. Each Party agrees to forego initiating litigation on the Claims during the Tolling Period unless the Party provides written notice to the other Party at least sixty (60) days prior to initiating an action on the Claims. If, however, (a) either party fails to fulfill its obligations under the 2019 MOU (where such failure is not cured within 7 days after written notice), or (b) in the event that the Parties do not agree to continue the terms of the 2019 MOU, as may be modified by the Parties, respecting the Real Estate and Water Rights for calendar year 2020, then either Party may terminate the Tolling Period by providing 15 days' written notice to the other Party.

3. Disposition of Property Rights. Neither Party may, during the Tolling Period, take any action to sell, convey, transfer, assign, pledge, encumber or otherwise take action adversely affecting their respective ownership rights with respect to the Real Estate or the Water Rights without the express written consent of the other Party.

4. Reservation of Rights. Except for the express reciprocal waiver of affirmative defenses set forth in Paragraph 1 of this Agreement, nothing in this Agreement is or shall be deemed to constitute a waiver of any rights, claims, or defenses of any party or to revive any claims otherwise barred, waived or otherwise limited or restricted prior to the Effective Date. The Parties expressly reserve all rights, claims, and defenses they may have against one another, subject only to the specific terms of this Agreement. Any claims for which the applicable statute of limitations has already expired are not revived by this Agreement.

5. No Admissions. Nothing herein shall constitute an admission by either Party with respect to the claims of the other Party. Nothing herein shall constitute an admission by SHOA or SEHOA concerning any issue in the event litigation is ultimately commenced.

6. Authority/Binding Nature. Each person executing this Agreement represents and warrants that such signatory has full, legal, individual and/or corporate authority to act for and bind the party for which such signatory is signing. This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, agents, employees, representatives, insurers and assigns.



7. Notice. Any notice required or allowed under this Agreement shall be sent to the following address by email or U.S. mail:

If to SHOA:

Keith Moskowitz
8463 Greenwood Dr.
Niwot, CO 80503
KMoskowitzlaw@gmail.com

With a copy to:

Sue Grampp, President
8329 Pawnee Lane
Niwot, CO 80503

Michael J. Repucci
Johnson & Repucci, LLP
850 W. South Boulder Road, Suite 100
Louisville, CO 80027

If to SEHOA:

Marc Arnold, President
8243 Cattail Drive
Niwot, CO 80503
marc@somersetstates-hoa.com

With a copy to:

Star L. Waring
Dietze and Davis, P.C.
2060 Broadway, Suite 400
Boulder, CO 80302
swaring@dietzedavis.com

Notice shall be deemed to have been provided on the date the notice is emailed or the date the notice is mailed.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior written or oral agreements, negotiations, and discussions. No waiver or modification shall be effective unless executed in writing by the Parties. Execution of this Agreement signifies that each party has read the document thoroughly, has had any questions concerning the meaning or effect, legal or otherwise, of this Agreement and each of its terms explained by an advisor of its choosing and chooses to execute this Agreement of its own free choice and volition, assuming any risk of proceeding without further inquiry.

9. Governing Law and Venue. Colorado law governs this Agreement. The Parties consent to exclusive jurisdiction and venue in Boulder County, Colorado.

10. Attorney Fees and Costs. In the event of a dispute over this Agreement, the Party in whose favor it is enforced shall recover costs and attorney fees from the party against whom it is enforced.

11. Counterparts. This Agreement may be executed in counterparts and all counterparts, which when taken together, shall constitute one, fully integrated Agreement. Electronic or facsimile signatures are binding and shall be given full effect.

This agreement is invalid and of no effect if not executed by both parties by March 27, 2019.

DONE AND MADE the date and year first above written.

Somerset Homeowners Association

Somerset Estates Homeowners Association

By: Sue Grampp
Sue Grampp
President

By: Marc Arnold
Marc Arnold
President

19 March 2019
Date

16 MAR 2019
Date

Handwritten initials:
CWA
SEA

Exhibit A
SEHOA Managed Real Estate

Outlot J Somerset Estates, Block 1

Outlots B, C, D, F, J, and K Somerset Estates, Blocks 2-5

Boulder County Right of Ways within Somerset Estates

According to the plats for the Community filed in the office of the Boulder County Clerk and Recorder, Colorado, at Reception No. 1004497, Plan File P-23 F-4 #36, 37, Film 1595; Reception No. 1203364 Plan File P-27 F-2 #42, 43, 44, and 45, Film No. 1746; Reception No. 1406740 Plan File P-31 F-1 #44, Film No. 1952; Reception No. 1434850 Plan File P-31 F-4 #18, Film No. 1983; and Reception No. 1406742 Plan File P-31 F-1 #45, Film No. 1952.

Noting that a portion of Outlot D as described in the Consolidated, Amended and Restated Declaration for Somerset Estates is operated by the Somerset Swim & Tennis Club (SSTC), a Colorado Nonprofit Corporation, and the Association has no liability or responsibility for the Real Property, the Facilities or the activities and affairs of SSTC.

Exhibit B
SHOA Managed Real Estate

Outlots A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, Cottonwood Hills

Boulder County Right of Ways within Cottonwood Hills

According to the plats for the Community filed in the office of the Boulder County Clerk and Recorder, Colorado, at Reception No. 622968, Plan File P-15 F-4 #15, Film 1304; and Reception No. 908400 Plan File P-22 F-1 #12, Film No. 1520.