

TOLLING AGREEMENT

This Tolling Agreement (the “Agreement”), is entered into as of this _____ day of _____, 2016 (the “Effective Date”), by and between is made and entered into by and between Easter Mountain Ranch, L.L.C. (hereinafter, “EMR”) and the County of Cochise, a body politic and corporate (hereinafter, “County”).

WHEREAS, on October 25, 2011, the County Board of Supervisors approved the rezoning of the 556-acre EMR lands (“EMR Property”) from RU-4 to SR-2 subject to six conditions of rezoning (“Rezoning”); and

WHEREAS, EMR agreed to an “Acceptance of Conditions: Rezoning Approval, Docket No. Z-11-06 (Easter Mountain [*sic*], LLC)” (“Acceptance”) which Acceptance was recorded in the official records of Cochise County, Arizona, on November 16, 2011, as Document No. 2011-24675; and

WHEREAS, EMR contends that it has satisfied all County subdivision regulations and all conditions set forth in the Acceptance and that EMR’s land are proper for subdivision development (“Development”); and

WHEREAS, on July 14, 2015, in a public hearing, the County Board of Supervisors voted to deny EMR’s request for approval of a subdivision Tentative Plat for EMR’s lands; and

WHEREAS, EMR contends that the Acceptance and its recordation constituted a binding contract between EMR and the County; and

WHEREAS, EMR incurred costs and expenses for surveying, engineering, and other associated costs for the preparation of a Tentative Plat for the EMR Property following the Acceptance; and

WHEREAS, EMR contends that the County’s denial of the approval of a subdivision Tentative Plat for EMR’s lands constitutes a breach of contract by the County; and

WHEREAS, EMR contends that the County’s denial of the approval of a subdivision Tentative Plat for EMR’s lands renders the County liable to EMR for damages for breach of contract; and

WHEREAS, EMR contends that the County’s denial of the approval of a subdivision Tentative Plat for EMR’s lands renders the County liable to EMR for damages and other relief for other legal, statutory, equitable and constitutional claims against the County (“EMR’s Claims”); and

WHEREAS, EMR believes that it may seek damages, among other remedies, against the County; and

WHEREAS, EMR has timely served the County with a Notice of Claim pursuant to A.R.S. § 12-821.01; and

WHEREAS, the statute of limitations on some of EMR's claims against the County will run on July 15, 2016.

NOW, THEREFORE, in consideration of the mutual promises of the parties, the parties hereto agree as follows:

1. The recital provisions set forth above are deemed a part of this Agreement.
2. The period between the Effective Date of this Agreement, and the Termination Date as hereinafter defined, shall not be included in determining the applicability of any statute of limitations including any notice of claim required to be made pursuant to A.R.S. §12-821.01, laches, or any other defense based on the lapse of time in any action between the parties arising out of or relating to EMR's Development. The parties intend that each will possess all rights or defenses that exist at the Effective Date of this Agreement on the Termination Date of this Agreement.
3. Any statute of limitations, statute of repose, or any similar limitations period, or any other defenses based on the lapse of time (including, without limitation, ratification, waiver, estoppel or laches) are tolled with respect to EMR's Claims during the period between the Effective Date of this Agreement and the Termination Date, as defined below, (the "**Tolling Period**"). The Tolling Period shall not be included in determining the calculation or application of any statute of limitations or any similar limitations period, or any other defense based on the lapse of time in any action or proceeding brought hereafter by EMR against the County.
4. Nothing in this Agreement shall have the effect of reviving any claims that were otherwise barred by any statute of limitations, statute of repose, or similar limitations period, and any other defense in law or equity as of the Effective Date of this Agreement. This Agreement shall not be deemed an admission by the parties for any purpose, including but not limited to personal jurisdiction, the applicability, running, expiration, or non-expiration of any statute of limitations or statute of repose prior to the Effective Date, or the existence of any actual or potential liability by any party to any person on any claims whatsoever.
5. The "**Termination Date**" of this Agreement shall be 30 days following written notice of termination by either party to the other in accordance with paragraph 5 of this Agreement.
6. Any notice, consent, waiver, request or other communication required or provided to be given under this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when: (1) delivered personally; (2) on the first business day which is three days following mailing by certified or registered mail, return receipt requested, postage prepaid, (3) the next business day after dispatch by a nationally recognized overnight delivery service; or (4) upon successful completion of transmission via facsimile, provided that a copy is simultaneously deposited for delivery via U.S. Mail; addressed to the party's address as follows:

If to the County:

Britt W. Hanson
Chief Civil Deputy County Attorney
Cochise County Attorney's Office
150 Quality Hill Road
PO Drawer CA
Bisbee, Arizona 85603

If to EMR:

Stephen J. Lenihan
The Lenihan Law Firm, P.C.
1050 East River Road, Suite 300
Tucson, Arizona 85718

Any party may change the address by which it should be given notice by giving written notice of the change of address in the manner set forth above.

7. This Agreement comprises the entire agreement of the parties with respect to the tolling of statute of limitations or any other defense based on the lapse of time. This Agreement may be modified, amended, or supplemented only by a written instrument signed by all of the parties.

8. This Agreement shall be interpreted in accordance with the substantive law of the State of Arizona without application of choice of law rules

9. This Agreement is drafted by both Parties, and any rule of construction interpreting the Agreement against the drafter shall not be applied.

10. The provisions of this Agreement shall be deemed severable, and if any provision is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

11. This Agreement may be executed in counterparts and by facsimile; each counterpart shall constitute an original. Facsimile transmissions of signatures shall be accepted and binding as originals.

12. Each undersigned party represents, warrants, and states that the individual whose signature appears below on its behalf is duly authorized to execute this Agreement on its behalf.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

