

## SECOND AMENDMENT TO TOLLING AGREEMENT

This Second Amendment to Tolling Agreement (“Second Amendment”) is entered into by and between Discovery Builders, Inc. (“Discovery”) and West Coast Home Builders, Inc. (“WCHB”), on the one hand, and the County of Contra Costa and the Contra Costa County Board of Supervisors (collectively “County”), and the East Contra Costa Fire Protection District and Board of Directors of the East Contra Costa Fire Protection District (collectively “Fire District”), on the other hand. Discovery, WCHB, County and Fire District will sometimes be collectively referred to herein as “Parties” and individually as “Party.”

WHEREAS, on February 24 and 25, 2021, the Parties entered into a Tolling Agreement (“Tolling Agreement”) relating to claims arising from actions taken by the Contra Costa County Board of Supervisors during its November 3, 2020 meeting, wherein the Contra Costa County Board of Supervisors held a public hearing, concurred with findings in a Fire District Notice of Findings Report, and adopted Ordinance No. 2020-27, an ordinance that establishes fire facility development impact fees for that portion of the County that is located within the boundaries of the Fire District, and authorizes the County to impose the fees and the Fire District to collect, retain, and expend the fees.

WHEREAS, on or about April 30, 2021 to May 4, 2021, the Parties entered into an Amendment to Tolling Agreement (“First Amendment”) wherein the Parties amended Paragraph 1 of the Tolling Agreement to change the Tolling Period therein to read “from February 24, 2021 through and including April 30, 2022.

WHEREAS, on September 14, 2021 and on September 16, 2021, the Contra Costa County Fire Protection District (“Con Fire”) and the Fire District, respectively, adopted substantially similar resolutions (Con Fire Resolution No. 2021/8 [as amended by Con Fire Resolution No. 2022/3] and Fire District Resolution No. 2021-32) to annex the Fire District to Con Fire, dissolve the Fire District and name Con Fire as successor agency pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code Section 56000, *et seq.* Pursuant to Con Fire Resolution No. 2021/8, as amended by Resolution No. 2022/3, Con Fire confirmed that certain categories of contracts, including the Tolling Agreement and all amendments thereto, entered into by the Fire District would, upon annexation, be transferred to Con Fire as the successor to the Fire District.

WHEREAS, on March 9, 2022, the Contra Costa Local Agency Formation Commission adopted Resolution No. 21-11 approving the annexation of the Fire District to Con Fire and the dissolution of the Fire District, effective June 30, 2022.

WHEREAS, the Parties wish to confirm that, since the Tolling Period contained in this Tolling Agreement extends beyond the June 30, 2022 date on which the Fire District is dissolved and on which Con Fire becomes the Fire District’s successor, Con Fire will succeed to and become bound by the obligations of the Fire District in this Tolling Agreement.

WHEREAS, the Tolling Agreement and First Amendment were entered into in recognition that it would be productive for some or all of the Parties to engage in discussions to

try to resolve their differences without having to simultaneously incur the cost and expense of litigation while these discussions occurred.

WHEREAS, the Parties have continued to make progress in their discussions and believe that they may be able to avoid litigation by amending the Tolling Agreement to extend the Tolling Period.

WHEREAS, the Parties wish to enter into this Second Amendment to toll the applicable statutes of limitations and other time-related rules, doctrines, claims or defenses identified in the Tolling Agreement for an additional period of time.

NOW, THEREFORE, to minimize the cost and expense of potentially avoidable litigation, and in consideration of the mutual promises, representations, terms and conditions contained herein, and of other good and valuable consideration, the reasonableness and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

1. The Parties hereby amend Paragraph 1 of the Tolling Agreement to change the Tolling Period therein to hereinafter read: “from February 24, 2021 through and including December 31, 2022 (“Tolling Period”).”

2. The Parties hereby add a new paragraph 9 to the Tolling Agreement that states as follows:

“The Parties acknowledge that the Fire District is dissolving on June 30, 2022 and that the Tolling Period extends beyond that date. The Parties hereby confirm their understanding that the Contra Costa County Fire Protection District (“Con Fire”) will become the successor agency of the Fire District as of that date and, in that capacity, Con Fire will succeed to all of the rights and obligations of the Fire District, including the Fire District’s agreement herein to the Tolling Period set forth in Paragraph 1 of the Tolling Agreement.”

3. All other terms, conditions and provisions of the Tolling Agreement, as amended by the First Amendment, shall remain the same.

**IN WITNESS WHEREOF**, each of the Parties has executed this Agreement on the dates set forth below.

Dated: April \_\_, 2022

DISCOVERY BUILDERS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: April \_\_\_, 2022

WEST COAST HOME BUILDERS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: April \_\_\_, 2022

COUNTY OF CONTRA COSTA and  
CONTRA COSTA COUNTY BOARD OF  
SUPERVISORS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: April \_\_\_, 2022

EAST CONTRA COSTA FIRE  
PROTECTION DISTRICT and BOARD OF  
DIRECTORS OF EAST CONTRA COSTA  
FIRE PROTECTION DISTRICT

By: \_\_\_\_\_

Name: Brian Helmick

Title: Fire Chief

**APPROVED AS TO FORM**

Dated: April \_\_\_, 2022

SHARTSIS FRIESE LLP

By: \_\_\_\_\_

Paul P. "Skip" Spaulding, III

Attorneys for DISCOVERY BUILDERS,  
INC. and WEST COAST HOME BUILDERS,  
INC.

Dated: April \_\_\_, 2022

MARY ANN MCNETT MASON, COUNTY  
COUNSEL

By: \_\_\_\_\_  
Thomas L. Geiger, Assistant County  
Counsel

Attorneys for COUNTY OF CONTRA  
COSTA AND CONTRA COSTA COUNTY  
BOARD OF SUPERVISORS

Dated: April \_\_\_, 2022

HANSON BRIDGETT LLP

By: \_\_\_\_\_  
Shayna M. van Hoften

Attorneys for EAST CONTRA COSTA FIRE  
PROTECTION DISTRICT; and BOARD OF  
DIRECTORS OF EAST CONTRA COSTA  
FIRE PROTECTION DISTRICT

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