

MISC 2015077777



SEP 15 2015 14:05 P 8

misc 0J-3717 (Rep)

8 FEE 52.00 FB 0J-3717S

ATA
a

BKP _____ C/O _____ COMP PJ
DEF _____ SCAN _____ FV _____

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
9/15/2015 14:05:39.50



2015077777

FULLI

Space above reserved for recording information

After Recording Return to:
Mark B. Johnson
Fullenkamp, Doyle & Jobeun
11440 West Center Road
Omaha, NE 68144

TOLLING AGREEMENT

This Tolling Agreement (this "Agreement") is dated 9-15, 2015 (the "Effective Date") and is entered by and between Sanitary and Improvement District No. 528 of Douglas County, Nebraska, a political subdivision of the State of Nebraska (the "District"), and Stratford Park Development, L.L.C., a Nebraska limited liability company ("Stratford Park Development"; together, the "Parties").

WITNESSETH:

WHEREAS, the District was formed pursuant to the laws of the State of Nebraska on August 11, 2005;

WHEREAS, on or about January 23, 2007 the District levied special assessments against each of the lots then being platted/developed within the boundaries of the District (exclusive of those lots which were subject to previously levied special assessments), which special assessments were to be paid in equal annual installments over a period of ten (10) years (the "Special Assessments");

WHEREAS, Stratford Park Development is the legal owner of the real property legally described as follows:

- Lots 12, 13, 15 through 17, 22 through 25, 30, 37 through 39, 43,
- 62, 64 through 70, 72, 78, 80, 82, 88, 95, 98, 99, 102 through 104,
- 106, 112 through 116, 118 through 125, 128 through 130, 138,
- 151, 157 through 177, 179 through 182, 184 through 189, 194,
- 195, 201 through 204, 207 through 212, 214 through 221, 224,
- 226, 227, 229 through 235, 237 through 241, 243 through 267,

©

✓046781

269, 271 through 289, 293, 297 through 326, 332 through 338, 340, 342, 344 through 346, 348 through 351, 355, 357 through 362, 369, 375 through 377, 379 through 383, 385, 386, and 389 through 392, inclusive, all in Stratford Park, a subdivision as surveyed, plated and recorded in Douglas, County, Nebraska, and Lot 1 and Lot 3, Stratford Park Replat 1, a subdivision as surveyed, plated and recorded in Douglas, County, Nebraska (each a "Lot" and collectively, the "Lots");

OJ-37175

WHEREAS, the Lots are all located within the boundaries of the District and are subject to the Special Assessments;

WHEREAS, the Special Assessments, or a portion thereof, have not been paid in full as of the Effective Date;

WHEREAS, the Parties acknowledge that the District has a claim against Stratford Park Development in connection with the unpaid Special Assessments (the "Claims");

WHEREAS, the District's standing to institute proceedings to collect the unpaid Special Assessments levied against the Lots may or may not be subject to a statute of limitations under Nebraska law; and

WHEREAS, the Parties desire to make provision for the tolling of any applicable statutes of limitations or similar defenses, to make provision for the retention of any legal or equitable actions or defenses that the Parties may have, and to provide that no legal or equitable action may be initiated by or on behalf of the Parties against one another during the term of this Agreement.

NOW THEREFORE, in consideration of the premises, the mutual covenants and agreements hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound, the Parties hereby agree as follows:

1. Term of the Agreement. The term of this Agreement shall be from the Effective Date up to and including October 1, 2021 (hereafter referred to as the "Term").

2. Tolling of Statute of Limitations. Except as otherwise stated in Section 4, below, the Parties agree that the running of any and all applicable statutes of limitations, repose or other defenses or limitations on actions, including but not limited to, the time limitations for filing claims for foreclosure of the Special Assessments, that may apply to the Claims shall be tolled and suspended during the Term of this Agreement. The time between the Effective Date and October 1, 2021 shall not be included in computing any statute of limitations for claims relating to the subject matter set forth in this Agreement, nor will that time period be considered in a defense of laches or any other time-based doctrine or defense, rule, law or statute otherwise limiting the District's right to preserve and prosecute the Claims.

3. Minimum Payment Obligation. Notwithstanding anything contained herein to the contrary, during each calendar year of the Term of this Agreement, including calendar year 2015, Stratford Park Development shall be obligated to pay to the District, or cause to be paid to the District, at a minimum, the total outstanding Special Assessments (including accrued interest) on thirty (30) Lots (the "Annual Minimum Payment Obligation"). In the event that Stratford Park Development pays, or causes to be paid, more than the Annual Minimum Payment Obligation to the District in any given calendar, such excess payment shall be credited to the succeeding calendar years' obligations for the purposes of this Section 3. By way of illustration only, if during 2015 Stratford Park Development pays, or causes to be paid, the outstanding Special Assessments on thirty-five (35) Lots, five (5) Lots shall be credited against the Annual Minimum Payment Obligation for 2016 for the purposes of calculating the Annual Minimum Payment Obligation such that Stratford Park Development would be obligated to pay the District the total outstanding Special Assessments on twenty-five (25) Lots in 2016 to satisfy the Annual Minimum Payment Obligation. Stratford Park Development shall be permitted to carry-over any excess Special Assessment payments from year-to-year. In the event that Stratford Park Development fails to sell an adequate number of Lots in a given calendar year during the Term of this Agreement to satisfy its Annual Minimum Payment Obligation, when taking into account the carry-over allowance described above, Stratford Park Development shall have the obligation to make up any such shortfall within thirty (30) days after receipt of written notice from the District of such failure, which written notice shall be delivered in the District's sole discretion. In the event Stratford Park Development fails to make up any such shortfall within thirty (30) days after receipt of written notice from the District, this Agreement shall, upon the election of the District, in its sole discretion, terminate and be of no further force and effect and the Parties shall be entitled to all rights and remedies available under Nebraska law. Written notice of such election to terminate shall be delivered by the District to Stratford Park Development. In addition, Stratford Park Development agrees that in all events, any outstanding Special Assessments will be paid prior to or in conjunction with the conveyance of any Lot(s) to a third-party and, further, that all outstanding Special Assessments on the Lots shall be paid to the District by no later than October 31, 2021, which obligations shall survive the term of this Agreement.

4. Waiver of Right of Redemption In addition, notwithstanding anything contained herein to the contrary, as partial consideration for the District's agreement to enter into this Agreement, Stratford Park Development hereby knowingly and expressly waives any and all rights of redemption which Stratford Park Development may possess now or in the future under any present or future law in the event the District exercises its rights to foreclose the Special Assessments in accordance with Nebraska Law. In addition, at the District's request, Stratford Park Development agrees to provide such written waiver of its redemption rights prior to the conclusion of such foreclosure action.

5. Remedies and Defenses Upon Expiration of the Term of this Agreement. Except as set forth in Section 4, above, upon expiration of the Term of this Agreement, the Parties shall retain any and all legal and equitable remedies and defenses they may have or may believe they have arising from or related to the Claims.

6. No Legal Action During the Term of this Agreement. Except as otherwise stated herein, during the Term of this Agreement, the Parties shall not initiate any legal or equitable action which in any way relates to or arises from the Claims.

7. No Admissions. This Agreement shall not be offered in evidence in any action or proceeding except to prove that the statute of limitations was tolled for the period of time during which this Agreement was in effect. Except as set forth in Section 4, above, by signing this Agreement, (a) no party is admitting to the existence or merits of any claim or defense whatsoever; and (b) no party is waiving any right to prosecute any matter against any other party at any time.

8. Entire Agreement; Assignment. This Agreement contains the entire agreement between the Parties with respect to the subject matter, and no statement, promise, or inducement made by any of the Parties or agent of the Parties that is not contained in this Agreement shall be valid or binding, and this Agreement shall not be enlarged, modified, or altered except in writing signed by the Parties. This Agreement may not be assigned, transferred and/or conveyed by Stratford Park Development to a third-party without the District's prior written consent, which consent may be withheld, conditioned or delayed in District's sole discretion.

9. Execution; Binding Effect. This Agreement may be executed in counterparts and via facsimile, all of which shall have full force and effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs, executors, administrators and other personal or legal representatives, including any grantee or transferee of any right, title, or interest in and to the Lots. The agreements contained in this Agreement shall run with the land, and shall be binding in perpetuity until the Term of this Agreement has expired by its terms or until such time as the special assessments levied on any such Lot are paid in full, whichever occurs first.

10. Choice of Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of Nebraska, without regard to choice of law rules therefor that might apply the laws of any other jurisdiction.

11. Indexing of this Tolling Agreement. Stratford Park Development hereby consents to the recording of this Agreement with the Douglas County Register of Deeds with respect to all of the Lots. As such, this Agreement shall be recorded and indexed against all of the Lots.

12. Joinder by Mortgagees. Each of the parties hereto represent and warrant to the other party hereto that there are no holders of mortgages or other liens on its respective parcel other than by those holders of mortgages and other liens joining in this Agreement.

13. Consultation with Advisors; Independent Counsel. Stratford Park Development acknowledges that Fullenkamp, Doyle & Jobeun represents the District and does not represent Stratford Park Development in any respect. Further, Stratford Park Development acknowledges that it has reviewed this Agreement in its entirety, has consulted such legal, tax or other advisors as it deems appropriate and understands and agrees to each of the provisions of this Agreement and further acknowledges that it has entered into this Agreement voluntarily. Stratford Park

Development further acknowledges that the District, its trustees, attorneys and agents have made no representations to Stratford Park Development in connection with or related to this Agreement to induce Stratford Park Development to execute this Agreement.

14. Payment of Real Estate Taxes. Stratford Park Development shall pay each installment of all taxes of every kind, now or hereafter levied against the Lots or any part thereof, before delinquency, without notice or demand, and shall provide the District with evidence of the payment of same at least ten (10) days prior to such delinquency date. Stratford Park Development's failure to comply with the terms of this Section 14 shall, upon the election of the District, in its sole discretion, result in the termination of this Agreement, after which point the Parties shall be entitled to all rights and remedies available under Nebraska law. Written notice of such election to terminate shall be delivered by the District to Stratford Park Development.

15. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

16. Ambiguities. Each party and its counsel have participated fully in the review and drafting of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

[Remainder of Page Left Intentionally Blank; Execution Pages Follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SANITARY AND IMPROVEMENT
DISTRICT NO. 528 OF DOUGLAS
COUNTY, NEBRASKA

Jana Faller
Clerk

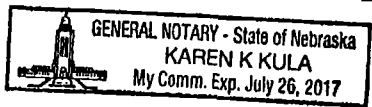
Chad LaMontagne
Chairman

STATE OF NEBRASKA)
) ss.
COUNTY OF Douglas)

Before me, a Notary Public qualified for said County and State, personally came Chad LaMontagne, Chairman of Sanitary and Improvement District No. 528 of Douglas County, Nebraska, known to me to be the identical person who signed the foregoing Agreement, and acknowledged the execution thereof to be his voluntary act and deed of said district.

WITNESS my hand and Notary Seal on this 15th day of Sept. 2015.

Karen K. Kula
Notary Public



**STRATFORD PARK DEVELOPMENT,
L.L.C., a Nebraska limited liability
company**

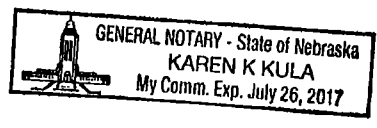
By: Barbara Udes Shaw
Name: Barbara Udes Shaw
Its: Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF Douglas)

Before me, a Notary Public qualified for said County and State, personally came Barbara Udes Shaw, the Manager of Stratford Park Development, L.L.C., a Nebraska limited liability company, known to me to be the identical person who signed the foregoing Agreement, and acknowledged the execution thereof to be his voluntary act and deed of said limited liability company.

WITNESS my hand and Notary Seal on this 15th day of Sept. 2015.

Karen K. Kula
Notary Public



CONSENT BY LENDER

BHD, LLC, a Nebraska limited liability company, is the Beneficiary of a Deed of Trust dated January 12, 2006 and recorded January 12, 2006, as Instrument No. 2006004120 of the Records of Douglas County, Nebraska, as amended by that certain Amendment to Deed of Trust dated October 13, 2009 and recorded October 21, 2009, as Instrument No. 2009113642 of the Records of Douglas County, Nebraska (together, the "Deed of Trust"), which Deed of Trust affects the Lots. The Beneficiary hereby consents to this Tolling Agreement and agrees that the Deed of Trust will be subordinate, bound by and subject to this Tolling Agreement.

Dated this 15th day of Sept. 2015.

BHD, L.L.C.,
a Nebraska limited liability company

By: *Barbara Udes Shaw*
Name: Barbara Udes Shaw
Its: Manager

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged, subscribed and sworn to before me by Barbara Udes Shaw, the Manager of BHD, L.L.C., a Nebraska limited liability company, on behalf of said limited liability company, this 15 day of Sept., 2015.

[Seal]

Karen K. Kula
Notary Public

