

TOLLING AGREEMENT

THIS AGREEMENT (this "Agreement") is entered into this 1st day of July, 2018 ("the Effective Date"), by and between Somerset Owners Association (the "Association") and Somerset Country Club, Inc. (the "Club"), collectively hereafter "the Parties" unless separately stated.

RECITALS

A. Prior to August 18, 2014, the Club operated the golf course commonly known as Somerset Golf Course (the "Course"). The Course constituted the "Property," which was purchased by the Association from the Club pursuant to that certain Real Property Purchase Agreement and Joint Escrow Instructions (the "Purchase Agreement") dated August 18, 2014, between the Club and the Association. As part of the Purchase Agreement, the Association and the Club also entered into that certain Commercial Lease dated February 25, 2015 (the "Lease"), pursuant to which the Club leased back from the Association substantially all of the property that was sold to the Association by the Club pursuant to the Purchase Agreement.

B. Recently a rockery wall, an adjacent slope, and the surrounding area on a fairway on the Course suffered catastrophic failure (the "Damaged Area"). Some or all of the Damaged Area is part of the Property purchased by the Association from the Club and leased back to the Club. The Parties reserve all rights to determine this issue. After the Damaged Area was discovered by both the Club and the Association, the Association made demands on the Club to repair and replace the Damaged Area pursuant to the terms of the Lease and the Purchase Agreement. The Club then responded by stating it was not clear who had the duty to repair the Damaged Area based upon, among other things, whether some all, or none of the Damaged Area

was on Club property and uncertainty as to the cause of the failure. The Association's position was communicated to the Club by a letter dated October 27, 2017, sent by the Association's lawyer to the Club, a true and correct copy of such letter is attached hereto as Exhibit A and incorporated herein by this reference.

C. After the Club received the initial letter referred to above, there were discussions between the Club and the Association pertaining, among other things, to payment for repairs to the Damaged Area. During that period of time the Association engaged a third party, Construction Materials Engineers, Inc. ("CME"), to investigate the Damaged Area and, to the extent possible, determine the causes of the wall failure.

D. On November 7, 2017, The Association, through its counsel, wrote to the Club agreeing to postpone the enforcement of certain rights that the Association believed it had pursuant the Lease and Purchase Agreement to require the Club to repair the Damaged Area or suffer the possible termination of the Lease and a claim for damages from the Association. A true and correct copy of the letter that the Association sent to the Club, through its counsel, is attached hereto as Exhibit B and incorporated herein by this reference.

E. In the letter attached hereto as Exhibit B, the Association's counsel acknowledged that the Association was waiting for the report from CME and that the Association would not enforce any of its rights until such time as the report was completed and provided to the Club with an appropriate time frame for the Club to review the report. Soon thereafter CME issued its report ("the Report"), which has been provided to the Club and its counsel.

F. The Association asserts that the repair of the wall and surrounding area in the Damaged Area will cost \$679,909.16 (the "Damaged Area Repair Amount"). The Club does not admit this assertion.

G. The Association asserts that pursuant to the Lease, the Purchase Agreement, and the Report, the Club is responsible to repair the Damaged Area, and that failure to repair the Damaged Area is a breach of either or both the Purchase Agreement and/or the Lease; however, the Club disputes and denies those assertions and other assertions as recited above, and itself asserts that the Association is responsible to repair the Damaged Area, and as such the Club's refusal to repair the Damaged Area is not a breach of either the Purchase Agreement or the Lease; and the Association disputes and denies those assertions ("the Dispute").

H. Having determined based on communications from the Club that the Club was not going to repair the Damaged Area, the Association entered the Damaged Area and commenced repairs of Damaged Area. Nearly simultaneously with the failures in the Damaged Area, other rockery walls on the Association's property were determined to have construction defects. At least two of those walls have also failed, requiring the Association to commence repairs of those walls as well. In light of the wall failures in the Damaged Area and the other wall failures as described above, the Association has renegotiated certain bank loans in part to make funds available for wall repairs, including the repairs to the Damaged Area ("the Loan"). The proceeds of the Loan exceed \$679,909.16. The Club does not admit that this sum is accurate.

I. In late December of 2017, the Association filed and served an NRS Chapter 40 Notice of Construction Defects on Somersett Development Company, Ltd., the developer of the Association and the Course ("the Developer") asserting design and construction defects in the

construction of the rockery walls in the common area of the Association, including the rockery wall structures which are part of the Damaged Area ("the Notice"). Also in late December of 2017, the Association filed a civil Complaint in the Second Judicial District Court of the State of Nevada (the "Action") against the Developer, also asserting design and construction defects in the construction of the rockery walls on the common area of the Association, including the rockery wall structures which are part of the Damaged Area.

J. Pending the Notice and the Action in which funds may be recovered from the Developer or other third parties to pay in whole or in part for the cost of the repairs to the Damaged Area, the Association and the Club desire to avoid the expense and uncertainty of litigation regarding the Dispute, and the issues and claims arising from and related to the Dispute. In that regard the Association and the Club also desire to preserve their legal positions with regard to the Dispute, and the issues and the claims arising from and related to the Dispute, by entering into a tolling agreement for that purpose. At the same time however, the Association desires to be compensated for the interest and certain other costs it has incurred in relation to the Loan, and is therefore only willing to enter into a tolling agreement if the Club will pay the Association a modest sum on a monthly basis to somewhat off-set the cost of the portion of the Loan which is allocated to the repair of the Damaged Area.

NOW THEREFORE, for good and valuable consideration, the sufficiency, adequacy and receipt of which is hereby acknowledged, including without limitation the avoidance of the expense and uncertainty of litigation regarding the Dispute, and the issues and claims arising from and related to the Dispute, pending the outcome of the Notice and/or the Action, or the expiration of this Agreement, whichever occurs first, the Parties hereby consent, stipulate and agree as follows:

AGREEMENT

1. Rights of Action Tolloed, and Tolling Period Defined. The Association and the Club each hereby consent, stipulate and agree that they will not take any legal, equitable, statutory or other action against each other with respect to the Dispute, or any of the issues or claims arising from or related to the Dispute (“Actions Tolloed”), from the Effective Date through and including 12:00 PM midnight on June 30, 2019 (“the Tolling Period”).

2. Statutes and Periods of Limitations and Repose Tolloed. The Association and the Club each hereby consent, stipulate and agree that the applicable statutes and periods of limitations of any kind and nature whatsoever, including without limitation statutes of repose, which arise from the Dispute, or which in any way pertain to the dispute, whether legal, statutory, equitable, or otherwise, either held by the Parties as of the Effective Date, or arising during the Tolling Period, shall be tollod for the duration of the Tolling Period, unless this Agreement is terminated during the Tolling Period by an uncured material breach of this Agreement by either Party, or by notice of termination of this Agreement by either Party as set forth below.

3. No Tolling of Other Rights or Periods. The Association and the Club each hereby consent, stipulate and agree that except as expressly stated above, no rights of action, or rights, duties, or obligations among and between the Parties of any kind whatsoever, either held by the Parties as of the Effective Date, or which may arise during the Tolling Period, shall be tollod by this Agreement. The Parties further stipulate and agree that except as expressly stated above, no statutes or periods of limitations, or repose, of any kind whatsoever, which may have accrued as

of the Effective Date, or which may accrue during the Tolling Period, shall be tolled by this Agreement.

4. No Waiver; All Rights Reserved. Entry into this Agreement by the Parties does not constitute a waiver of any of their respective rights of action or defenses, whether legal, statutory, equitable, or otherwise, as it pertains to the Dispute, whether known or unknown, arising from or related to the Purchase Agreement, the Lease, the Dispute, or any of the issues or claims arising from or related to the Dispute. The Parties reserve all rights as to all issues pertaining to the Dispute.

5. Effective Only Upon Full and Complete Execution. This Agreement shall become effective only upon its full and complete execution by the Parties and their respective counsel.

6. Continuing Compliance with the Lease and Purchase Agreement. The Association and the Club each hereby consent, stipulate and agree that except as expressly stated herein, the terms, conditions, and obligations of the Parties pursuant to the Lease and the Purchase Agreement shall remain in full force and effect during the Tolling Period and thereafter, notwithstanding the entry by the Parties into this Agreement. The Parties further consent, stipulate and agree that any uncured breach of either the Lease or the Purchase Agreement by either Party shall be an event of uncured default by the breaching party of this Agreement.

7. Monthly Payments. Subject to all reserved rights and points of contention, the Club acknowledges that the Association entered into the Loan,, and that a portion of the Loan is being used to pay for repairs to the Damaged Area. The Club hereby stipulates and agrees that

commencing on July 1, 2018, and throughout the Tolling Period unless this Agreement is terminated prior to the end of the Tolling Period, it shall pay a 1 monthly payment to the Association in the amount of \$500.00 per month (“the Monthly Payment”). The Parties further stipulate and agree that the Monthly Payment amount will be invoiced monthly to the Club, and that payment shall be issued by the Club to the Association within ten (10) calendar days after the Club’s receipt of the invoice. Monthly Payments shall be an off-set against damages owed to the Association by the Club in the event of settlement or litigation in which the Association prevails. The Club reserves the right to add Monthly Payments to any award it may obtain against the Association if there is litigation in which the Club prevails.

8. Termination by Notice. At any time during the Tolling Period, either Party may at its discretion, and without the need for cause of any nature, terminate this Agreement upon thirty (30) calendar days written notice to the other Party. Such notice of termination shall be given by both email and overnight delivery via FedEx or similar carrier to both Parties and their counsel to the email and physical addresses set forth below the signature lines provided at the end of this Agreement. There shall be no extension of the thirty (30) calendar day period for manner of delivery, holidays or weekends.

9. Termination Upon Uncured Breach. Any deviation from strict compliance with the terms and conditions of this Agreement by either Party, including without limitation the timely making of payments called for herein, or in the Purchase Agreement, or the Lease, shall be deemed a material breach of this Agreement which shall cause this Agreement to be terminated. The Parties shall each have a five (5) calendar day period following written notice of breach within which to cure any breach of this Agreement. Such notice of termination shall be given by both email and overnight delivery via FedEx or similar carrier to both Parties and their

counsel to the email and physical addresses set forth below the signature lines provided at the end of this Agreement. There shall be no extension of the five (5) calendar day period for manner of delivery, holidays or weekends.

10. Recovery From the Developer. If within the Tolling Period, the Association receives a recovery from the Developer in connection with the Action, whether by trial of the Action, by settlement of the Action, or otherwise, then the Association and the Club agree to negotiate informally to determine what, if any, portion of the net proceeds of any such recovery is attributable to the cost of repairing the Damaged Area. If after such informal negotiations a resolution of the issue of apportionment cannot be resolved, either Party may declare this Agreement terminated without having to provide thirty (30) day notice as above.

11. Attorney's Fees, Jurisdiction, and Choice of Law. In the event of any action, suit or other proceeding regarding the interpretation, validity, performance or a breach of any terms and conditions of this Agreement, the prevailing party shall recover reasonable attorneys fees, costs and expenses incurred in each and every such action, suit or other proceeding, including any and all appeals and/or petitions relating thereto. Any such action shall be brought in the Second Judicial District Court of the State of Nevada, and the laws of the State of Nevada shall govern the interpretation and enforcement of this Agreement.

12. Mutually Drafted Agreement. This Agreement shall be construed in all respects as mutually drafted, and shall not be construed in any way against any Party on the grounds that such Party was the drafter of this Agreement.

13. Authorized to Enter Into this Agreement. The Parties represent and warrant that they are duly authorized to enter into this Agreement, and that the individuals signing on their behalf are duly authorized to do so.

14. Binding on Successors and Assigns. This Agreement shall be binding on the Parties, and their successors and assigns, if any.

15. Written Modification Only. This Agreement can only be modified, amended, or extended by a writing signed by each of the Parties.

16. Execution in Counterparts; Electronic Transmittal. This Agreement may be executed in counterparts, and any executed copy thereof, when taken with other executed copies, shall be considered and deemed the original thereof. Documents transmitted electronically shall be deemed originals.

17. Parties Represented by Own Counsel. The Parties stipulate and agree that they have each been represented by legal counsel in the negotiation, drafting and execution of this Agreement. The Parties further stipulate and agree that this Agreement was executed voluntarily, without any duress or undue influence by any of the Parties hereto. The Parties stipulate and agree that they have read and understand this Agreement and its legal effect.

18. Integration. This Agreement contains the entire agreement of the Parties as to the subject matter pertaining hereto. This Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no unwritten oral agreements between the Parties in connection with the subject matter pertaining hereto.

19. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part, then such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement.

20. Paragraph Titles for Reference Only. The paragraph titles set forth in this Agreement are provided for reference only, and shall not be deemed to limit or contradict the provisions of the paragraphs to which they refer.

21. Time is of the Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the parties to this Agreement.

22. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement will be deemed to be inserted herein, and this Agreement shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, then upon request of any Party hereto,

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THE REMAINDER OF THIS PARAGRAPH AND THE SIGNATURE BLOCKS
APPEAR ON THE NEXT PAGE.

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this Agreement shall forthwith be physically amended to make such insertion.

IN WITNESS WHEREOF, the Parties hereto have agreed to each of the terms and conditions stated in this Agreement and signed this Agreement as of dates identified below.

Date: 7-20-18

Somerset Country Club, Inc.

By: 

An authorized signatory
email: garmstrong@somersetcc.com

Date: 7/25/18

Somerset Owners Association

By: 

An authorized signatory
email: TDMD@N.E.R.B.Y.C.I.R.C.U.I.T.COM

Date: 7-23-18

Approved as to Form by
Counsel for Somerset Country Club, Inc.

By: 

John F. Kirsch, Esq.
John F. Kirsch Attorney at Law
432 Court Street
Reno, NV 89501
jfkirsch5@gmail.com

Date: 7.23.18

Approved as to Form by
Counsel for Somerset Owners Association

By: 

Michael Schulman, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
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Reno, NV 89511
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