

TOLLING AGREEMENT
(101 Blossom Hill Road, Town of Los Gatos)

Extension of 60-Day Deadline for Town to Hear Appeal of April 16, 2025 Incompleteness Determination, Extension of 90-Day Deadline for Applicant to Resubmit Application, Tolling Agreement, and Withdrawal of Toby Long as Applicant)

This Tolling Agreement (101 Blossom Hill Road, Town of Los Gatos – Extension of 60-Day Deadline for Town to Hear Appeal of April 16, 2025 Incompleteness Determination, Extension of 90-Day Deadline for Applicant to Resubmit Application, Tolling Agreement, and Withdrawal of Toby Long as Applicant) (this “Agreement”), dated as of the date all parties sign this Agreement (the “Effective Date”), is entered into by and among Toby Long, AIA (“Long”) and Lonny L. Oswalt (“Oswalt,” together with Long, “Applicant”), and the Town of Los Gatos (the “Town”). Long, Oswalt, and the Town are referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

A. Oswalt owns that certain real property located at 101 Blossom Hill Road, Los Gatos, CA; APN: 529-11-036 (the “Property”). The Property consists of a commercial structure located on 1.06 acres.

B. On June 4, 2024, Applicant submitted to the Town a Preliminary Application (the “Preliminary Application”) under Gov. Code § 65941.1 for a project at the Property (the “Project”), proposing to demolish the existing commercial structure and construct a seven-story multi-family residential structure consisting of 63 residential units. Applicant asserts that the Project is a “builder’s remedy project” as defined in the Housing Accountability Act, Gov. Code § 65589.5 et seq. (“HAA”). The Project and Town are also subject to provisions of Density Bonus Law, Gov. Code § 65915 (“DBL”), the Permit Streamlining Act, Gov. Code § 65920 et seq. (“PSA”), and other relevant provisions of state law. The submission of the Preliminary Application entitled the Project to certain protections under the HAA.

C. On November 26, 2024, Applicant submitted a project application (the “Application”) to the Town under the provisions of the PSA.

D. On December 23, 2024, the Town issued to Applicant a first notice of incompleteness regarding the Application under the provisions of Gov. Code § 65943.

E. On March 20, 2025, Applicant resubmitted the Application in response to the Town’s first notice of incompleteness.

F. On April 16, 2025, Joel Paulson, in his capacity as Town Community Development Director (“CDD”), issued to Applicant a letter under the provisions of Gov. Code § 65943 with a determination that the Application remained incomplete after its most recent resubmittal under the PSA. Applicant disputes this determination, believing that the Application is complete.

F. Also, on April 16, 2025, Town Planning Manager Sean Mullin verbally stated to Applicant the Town's position that, because the Application had not been completed within 90 days of receiving the first notice of incompleteness, the Preliminary Application had expired and was of no further force or effect, as provided in Gov. Code § 65941.1(e)(2) and the Project and Application were no longer entitled to the protections of the HAA provided for the Preliminary Application. Applicant disputes this determination, believing that the Preliminary Application is in full force and effect.

G. On April 28, 2025, Applicant timely appealed to the Town Council (the "Appeal") (i) the Town's April 16, 2025, incompleteness determination, and (ii) the Town's apparent April 16, 2025, determination that the Preliminary Application had expired. Applicant *asserts* that, under Gov. Code § 65941.1(e)(2), if the Applicant resubmits the Application within 90 days of Applicant's receipt of the Town's April 16, 2025, incompleteness determination, then the Preliminary Application will not expire and will continue to be entitled to protections of the HAA..

H. Pursuant to Gov. Code § 65943(c), the Town is required to hear the Appeal within 60 days of Applicant's filing the appeal. Pursuant to Gov. Code § 65943(d), the Applicant and Town may mutually agree to an extension of this time limit.

I. Long desires to withdraw as Applicant, with Oswalt continuing as the sole Applicant party.

J. The Parties are aware of a pending judicial action in California related to the above issues, in particular Case No. 25CV462276, a declaratory relief action that the Town brought against Arya Properties, LLC and Los Gatos Boulevard Properties, LLC, in Superior Court in Santa Clara County (the "Arya Matter"). This action addresses the number of 90-day resubmittals allowed under the HAA.

K. Thereby, as provided in this Agreement, the Parties desire to toll and extend all statutory and other deadlines (including

any and all applicable statute of limitations for either party to initiate litigation related to the Preliminary Application or the Application), including any deadline for the Applicant to resubmit the Application responding to the Town's incompleteness comments under Gov. Code § 65941.1(e) and for the Town to hear the Appeal under Gov. Code § 65943(c).

L. The Parties have and intend to continue discussions regarding the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

1. Recitals. The foregoing Recitals are true and correct and, by this reference, are hereby incorporated herein in their entirety.
2. Long Withdrawal as Applicant. The Parties agree that, as of the Effective Date, Long has withdrawn as Applicant, with Oswalt continuing as the sole Applicant party, and that such withdrawal by Long shall not adversely impact the legitimacy and/or legal standing of Oswalt (as the sole Applicant) in the Application, including the appeal, any resubmittal, any determination that the Project is a "builder's remedy project" (as asserted by Oswalt), or any rights under state law.
3. Agreement to Toll. The Parties agree that, for the term of this Agreement (as defined in Section 4), all statutory and other deadlines (including any and all applicable statutes of limitations for either party to initiate litigation related to the Preliminary Application or the Application);, any deadline for the Applicant to resubmit the Application responding to the Town's incompleteness comments under Gov. Code § 65941.1(e)(2), and for the Town to hear the Appeal under Gov. Code § 65943(c); and .any requirement by either Party to pay fees or costs associated with or applicable to the Project, are hereby tolled.
4. Term of Agreement. The term of this Agreement (the "Term"), unless extended by mutual agreement of the Parties, is from the Effective Date until the earlier of the following:
(a) 60 days from the date that the Superior Court of Santa Clara County issues an appealable decision in the Arya Matter, or (b) 60 days from the date one Party provides written notice via certified mail or personal delivery to terminate to the other Party. All statutory and other deadlines (including any and all applicable statutes of limitation for either Party to initiate litigation relating to the HAA or otherwise) will run from the date that this Agreement is terminated.
5. No Admission. Nothing in this Agreement shall be admissible in any litigation between the Parties other than in an action to enforce the terms of this Agreement. Nothing in this Agreement is intended as, shall constitute, or be used as evidence of an admission by any Party of any wrongdoing, liability, or fault, a waiver of any right or defense, or an estoppel, either as among the Parties or with respect to any person or entity not a Party to this Agreement.
6. Evidence Code § 1152. The terms of this Agreement, and all communications and drafts related to this Agreement, are subject to Evidence Code § 1152, and shall not be admissible in any action between the Parties other than an action to enforce the terms of this Agreement.

7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

Signatures provided by electronic image shall have the same force and effect as original signatures.

8. Notices. Except as noted herein, all notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered, emailed, or mailed to the respective Party as follows:

If to Town: The Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attn: Town Manager
Email: manager@losgatosca.gov

With copy to: The Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030
Attn: Town Attorney
Email: attorney@losgatosca.gov

If to Applicant: Lonny L. Oswalt
101 Blossom Hill Rd
Los Gatos, CA 95032
Email: loswalt@mobileframe.com

With copy to: Berliner Cohen LLP
10 Almaden Boulevard, Eleventh Floor
San Jose, CA 95113
Attn: Tyler A. Shewey
Email: tyler.shewey@berliner.com

Notices shall be deemed delivered when they are (i) personally delivered, or (ii) shall be deemed delivered five days after posting if mailed using the United States Postal Service.

9. Headings. The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

10. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.

11. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

12. Governing Law; Venue. This Agreement shall be governed by the laws of the State of California, excluding its conflict of laws principles. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be heard and filed in a court of competent jurisdiction in the County of Santa Clara.

13. Entire Agreement. This Agreement contains all the representations and the entire agreement and understanding among the Parties with respect to the subject matter hereof, and supersedes all prior understandings, agreements (whether written, verbal, implied or otherwise), and communications with respect thereto. None of the terms hereof shall be amended, waived, or otherwise modified except pursuant to a written instrument duly executed by the Parties.

14. Binding on Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties and the Parties' successors, administrators, managers, assigns, and employees, and shall be binding upon and shall inure to the benefit of the Parties' officers and agents acting in their official capacity.

15. Authority to Bind. Each Party covenants and represents that it is fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each signatory to this Agreement represents and covenants that he or she possesses the necessary capacity and authority to sign and enter into this Agreement and to bind the Party on whose behalf he or she is a signatory.

IN WITNESS WHEREOF, the Parties hereby agree to the full performance of the terms set forth herein.

APPLICANT:

TOWN:

By: _____
Toby Long, AIA

By: _____
Chris Constantin, Town Manager

Dated: _____

Dated: _____

By: _____
Lonny L. Oswalt

Dated: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
Tyler A. Shewey

By: _____
Gabrielle Whelan, Town Attorney